



***GEARING UP FOR THE 2012  
ELECTION SEASON:  
WHAT EVERY FEDERAL  
EMPLOYEE NEEDS TO KNOW***

# FEDERAL HATCH ACT

5 U.S.C. 7321-7326



## The Hatch Act:

*Who is covered?*

# FEDERAL HATCH ACT

5 U.S.C. 7321-7326



## TWO CATEGORIES OF EMPLOYEES

### MORE RESTRICTED

- EMPLOYEES IN CERTAIN POSITIONS (e.g, career SES)
- EMPLOYEES OF INTELLIGENCE- AND ENFORCEMENT-TYPE AGENCIES (EXCEPT PAS)

### LESS RESTRICTED

#### ALL OTHERS

- GS
- WG
- PAS
- SCHEDULE C
- NONCAREER SES

# FEDERAL HATCH ACT: RESTRICTED AGENCIES

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



- **CRIMINAL AND NATIONAL SECURITY DIVISIONS (DOJ)**
- **CENTRAL INTELLIGENCE AGENCY**
- **DEFENSE INTELLIGENCE AGENCY**
- **ELECTIONS ASSISTANCE COMMISSION**
- **FEDERAL BUREAU OF INVESTIGATION**
- **FEDERAL ELECTIONS COMMISSION**
- **MERIT SYSTEMS PROTECTION BOARD**
- **NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY**

# FEDERAL HATCH ACT: RESTRICTED AGENCIES

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



- NATIONAL SECURITY AGENCY
- NATIONAL SECURITY COUNCIL
- OFFICE OF CRIMINAL INVESTIGATION (IRS)
- OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
- OFFICE OF INVESTIGATIVE PROGRAMS (CUSTOMS)
- OFFICE OF LAW ENFORCEMENT (BATF)
- OFFICE OF SPECIAL COUNSEL
- SECRET SERVICE

# FEDERAL HATCH ACT: RESTRICTED POSITIONS

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



- CAREER SES
- ADMINISTRATIVE LAW JUDGES
- MEMBERS OF CONTRACTS APPEALS BOARDS
- ADMINISTRATIVE APPEALS JUDGES

# FEDERAL HATCH ACT

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPARTS B & D



## The Hatch Act:

*What may all federal employees do?*

# FEDERAL HATCH ACT DOs:

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPARTS B & D



ALL FEDERAL EMPLOYEES MAY—

- JOIN POLITICAL CLUBS OR PARTIES
- EXPRESS OPINIONS ABOUT CANDIDATES AND ISSUES
- SIGN NOMINATING PETITIONS
- ATTEND POLITICAL RALLIES AND CONVENTIONS
- PARTICIPATE IN NONPARTISAN ACTIVITIES

# FEDERAL HATCH ACT

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART B



## The Hatch Act:

*What may less restricted employees do?*

# FEDERAL HATCH ACT DOs

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART B



GENERALLY, LESS RESTRICTED EMPLOYEES MAY –

## 1. ENGAGE IN PARTISAN POLITICAL CAMPAIGNING

*(E.G., DISTRIBUTE CAMPAIGN LITERATURE, ORGANIZE CAMPAIGN EVENTS, SPEAK ON BEHALF OF A CANDIDATE, ETC.)*

## 2. ENGAGE IN PARTISAN POLITICAL MANAGEMENT

*(E.G., HOLD PARTY OFFICE, ORGANIZE PARTY EVENTS, SERVE ON A PARTY COMMITTEE, ETC.)*

# FEDERAL HATCH ACT

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



## The Hatch Act:

*What prohibitions apply to all employees?*

# FEDERAL HATCH ACT

5 U.S.C. § 7324; 5 C.F.R. PART 734.101



## POLITICAL ACTIVITY MEANS:

AN ACTIVITY DIRECTED TOWARD THE SUCCESS OR FAILURE OF A —

- POLITICAL PARTY
- CANDIDATE FOR PARTISAN POLITICAL OFFICE, OR
- PARTISAN POLITICAL GROUP

# **FEDERAL HATCH ACT DON'Ts**

**5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C**



## **1. USE OFFICIAL AUTHORITY OR INFLUENCE TO INTERFERE WITH OR AFFECT AN ELECTION**

- **Use of official title**
- **Subordinates**
- **Agency social media (Facebook, Twitter, website)**
- **Personal use of social media**
- **New case decisions**

# **FEDERAL HATCH ACT DON'Ts**

**5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C**



## **2. SOLICIT OR DISCOURAGE POLITICAL ACTIVITY OF ANYONE WITH BUSINESS BEFORE THEIR AGENCY**

- **Actual pending business (permits, licenses, grants, contracts, enforcement actions, investigation, audits, etc.)**

# FEDERAL HATCH ACT DON'Ts

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



## 3. SOLICIT OR RECEIVE POLITICAL CONTRIBUTIONS

- Solicitation letters
- Fundraising events (including phone banks)
- Campaign treasurer
- Websites (links to)
- Social media/blogs
- New case decisions

A LESS RESTRICTED EMPLOYEE MAY HOST A MEET AND GREET OR SPEAK AT A FUNDRAISER

**FEDERAL HATCH ACT DON'Ts**  
**5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C**



**4. BE CANDIDATES FOR PUBLIC OFFICE IN PARTISAN ELECTIONS**

- **NONPARTISAN ELECTIONS**
- **PARTY OFFICE (e.g., PRECINCT COMMITTEE PERSON)**
- **DESIGNATED COMMUNITIES**

# **CANDIDACY**

**5 U.S.C. § 7323**



## **WHEN DOES IT BEGIN?**

### **WHEN AN INDIVIDUAL —**

- **BEGINS TO COLLECT SIGNATURES FOR NOMINATING PETITIONS**
- **BEGINS TO FUNDRAISE**
- **MAKES AN ANNOUNCEMENT TO THE PRESS**
- **FILES NOMINATING PETITIONS**
- **PUTS A CAMPAIGN COMMITTEE TOGETHER**

# NONPARTISAN ELECTIONS / CANDIDACIES

5 U.S.C. § 7323



## NONPARTISAN CAN BECOME PARTISAN WHEN EMPLOYEE / CANDIDATE —

- SEEKS AND RECEIVES ENDORSEMENT OF POLITICAL PARTY
- ADVERTISES ENDORSEMENT OF POLITICAL PARTY
- USES POLITICAL PARTY RESOURCES
- ANNOUNCES HE / SHE IS A POLITICAL PARTY CANDIDATE

**KEY: EVIDENCE SHOWING PARTISAN POLITICS ENTERED A CAMPAIGN**

# FEDERAL HATCH ACT DON'Ts

5 U.S.C. § 7324; 5 C.F.R. PART 734, SUBPART C



## 5. ENGAGE IN POLITICAL ACTIVITY WHILE —

- ON DUTY
- IN A GOVERNMENT OFFICE
- WEARING A UNIFORM OR OFFICIAL INSIGNIA
- USING A GOVERNMENT VEHICLE

**(exception: some PAS/EOP employees)**

# FEDERAL HATCH ACT

5 U.S.C. § 7324; 5 C.F.R. PART 734.101



## POLITICAL ACTIVITY MEANS:

AN ACTIVITY DIRECTED TOWARD THE SUCCESS OR FAILURE OF A —

- POLITICAL PARTY
- CANDIDATE FOR PARTISAN POLITICAL OFFICE, OR
- PARTISAN POLITICAL GROUP



**Not Prohibited Political Activity (Examples):**

**1. Displaying items with the following:**

**NRA**

**“Repeal healthcare bill”**

**“Right-to-life”**

**“Pro-choice”**

**“I support the war”**

**“Peace not war”**

**2. Supporting or opposing ballot initiatives or pending legislation**

# FEDERAL HATCH ACT

5 U.S.C. § 7324; 5 C.F.R. PART 734.101



# FEDERAL HATCH ACT

5 U.S.C. § 7324; 5 C.F.R. PART 734.101



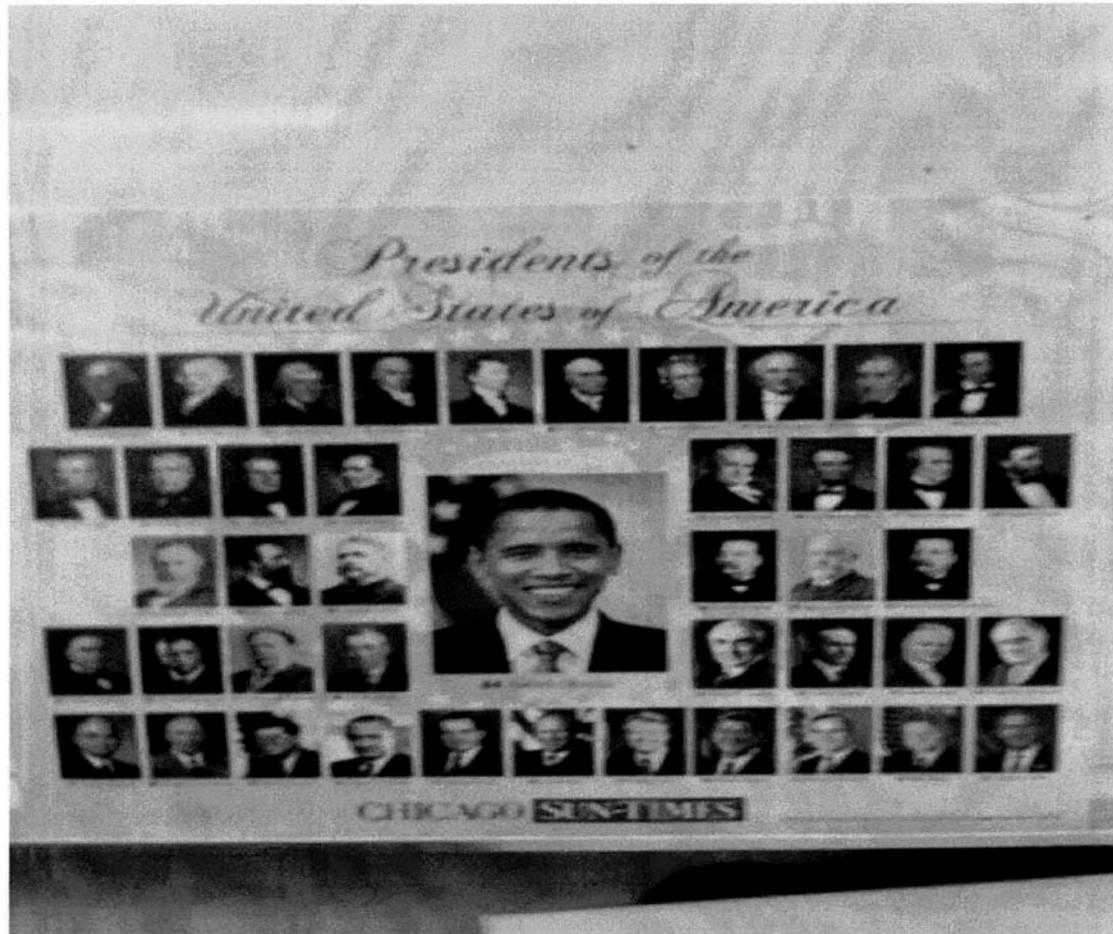
## Prohibited Political Activity (Issues):

- Buttons, posters and T-shirts
- Screen savers
- E-mails
- Blogs
- Social media
- Telecommuting
- Candidate photographs

(An employee's personal vehicle may have a political bumper sticker.)

# FEDERAL HATCH ACT

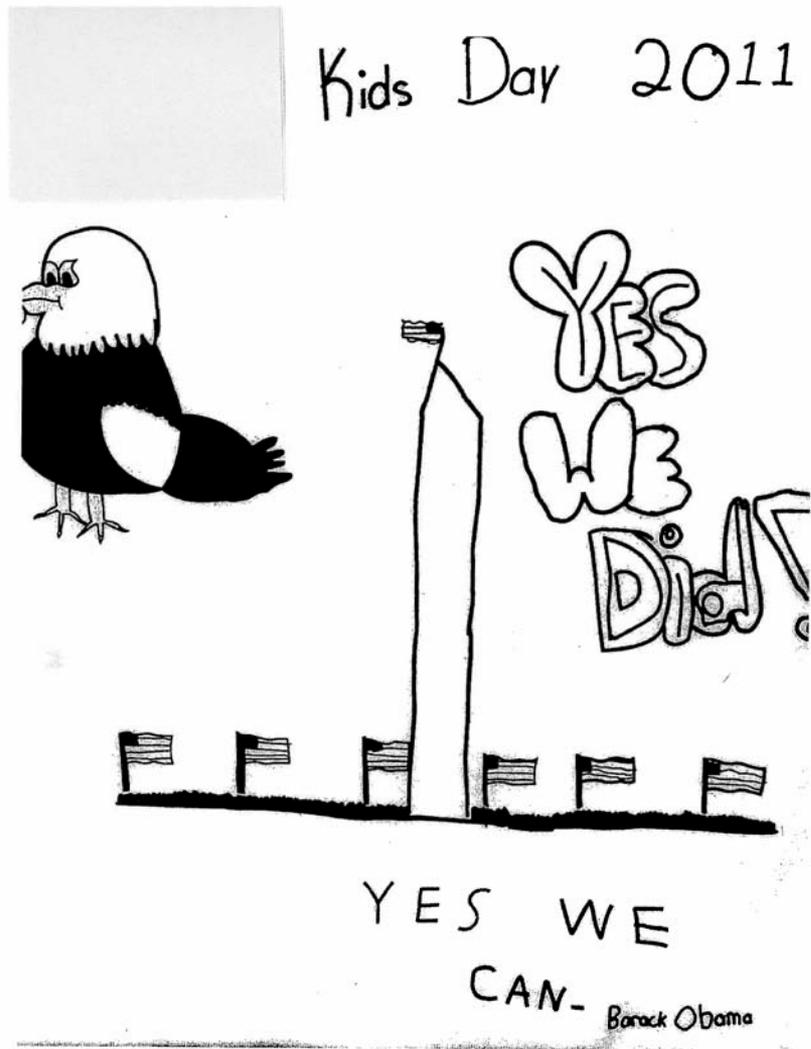
5 U.S.C. § 7324; 5 C.F.R. PART 734.101



**FEDERAL HATCH ACT**  
5 U.S.C. § 7324; 5 C.F.R. PART 734.101



Kids Day 2011



# FEDERAL HATCH ACT: EOP/PAS COVERAGE

5 U.S.C. § 7324(b); 5 C.F.R. PART 734, SUBPART E



## Exception applies to:

THOSE WHOSE DUTIES AND RESPONSIBILITIES CONTINUE OUTSIDE  
NORMAL DUTY HOURS AND WHILE AWAY FROM THE NORMAL DUTY  
POST, AND ARE —

1. PAID FROM AN APPROPRIATION FOR THE EOP, OR
1. APPOINTED BY THE PRESIDENT AND SENATE-CONFIRMED (PAS),

WHO —

A) OCCUPY POSITIONS LOCATED IN THE U.S., AND

B) DETERMINE POLICIES TO BE PURSUED IN —

- RELATIONS WITH FOREIGN POWERS, OR
- NATIONWIDE ADMINISTRATION OF FEDERAL LAWS

**FEDERAL HATCH ACT:  
EOP / PAS COVERAGE (*cont'd*)**  
5 U.S.C. § 7324(b); 5 C.F.R. PART 734, SUBPART E



**SUCH PAS AND EOP EMPLOYEES MAY ENGAGE IN POLITICAL ACTIVITY WHILE —**

- ***ON DUTY***
- ***IN A GOVERNMENT ROOM OR BUILDING***
- ***WEARING A UNIFORM OR OFFICIAL INSIGNIA***
- ***USING A GOVERNMENT VEHICLE***

**IF COSTS ASSOCIATED WITH POLITICAL ACTIVITY ARE NOT PAID FOR BY MONEY DERIVED FROM THE U.S. TREASURY**

# FEDERAL HATCH ACT: EOP / PAS

5 U.S.C. § 7324(b); 5 C.F.R. PART 734, SUBPART E



## MIXED TRAVEL -- Hatch Act Regulation v. FECA or PECA (Hard Time Formula)

### 5 C.F.R. § 734.503 (d):

For any cost of a political activity of an employee that is required to be reported to the Federal Election Commission under the Federal Election Campaign Act (FECA) or the Presidential Election Campaign Act (PECA), the employee shall use the same method of allocation as used under the FECA or PECA and regulations thereunder in lieu of the allocation method in paragraph (c) of this section.

# FEDERAL HATCH ACT: EOP / PAS

5 U.S.C. § 7324(b); 5 C.F.R. PART 734, SUBPART E



## OFFICIAL EVENTS v. POLITICAL EVENTS

### FACTS TO CONSIDER:

- the type of event and the reason for holding it
- whether candidates (including incumbents seeking reelection) will be present at the event and what their role will be
- the relationship, if any, between the event and official agency business
- whether a candidate's request is one reason for the agency political appointee to attend the event
- whether the event was scheduled prior to a candidate's involvement or after
- the agency political appointee's motivation for attending the event

# FEDERAL HATCH ACT: EOP / PAS

5 U.S.C. § 7324(b); 5 C.F.R. PART 734, SUBPART E



## OFFICIAL EVENTS v. POLITICAL EVENTS

### FACTS TO CONSIDER (cont.):

- the frequency of similar types of events during non-election years and whether agency political appointees participated in such events in those years
- the proximity of the event to the date of the election
- who invited the agency political appointee to attend (e.g., congressional office, campaign staff, OPA, other agency officials, political party)
- the parties responsible for planning and organizing the event
- whether the event is open or closed to media
- remarks made during the event by any person
- other event invitees and the audience, i.e., whether party operatives or donors will be present

# FEDERAL HATCH ACT

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



## The Hatch Act:

*What additional prohibitions apply to further restricted employees?*

**FEDERAL HATCH ACT DON'Ts:  
FURTHER RESTRICTED EMPLOYEES**  
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



**FURTHER RESTRICTED EMPLOYEES MAY NOT ENGAGE IN PARTISAN  
POLITICAL CAMPAIGNING AND POLITICAL MANAGEMENT**

**EXAMPLES:**

- VOLUNTEER FOR A PARTISAN POLITICAL CAMPAIGN
- MAKE CAMPAIGN SPEECHES
- DISTRIBUTE CAMPAIGN LITERATURE
- ORGANIZE A POLITICAL RALLY, MEETING OR FUNDRAISER
- HOLD POLITICAL PARTY OFFICE OR BE A PARTY DELEGATE
- PARTICIPATE IN PARTISAN VOTER REGISTRATION DRIVES
- CIRCULATE NOMINATING PETITIONS

**KEY: NO ACTIVITY IN CONCERT WITH A POLITICAL PARTY  
OR CANDIDATE**

# DISCIPLINARY ACTION (Penalties)

5 U.S.C. § 7326



## MERIT SYSTEMS PROTECTION BOARD MAY ORDER EMPLOYEE'S —

- REMOVAL

OR

- SUSPENSION (30-DAY MINIMUM)

# FEDERAL HATCH ACT: OSC PHONE / E-MAIL CONTACTS



## HATCH ACT UNIT:

**(800) 85-HATCH**

**(202) 254-3650**

***[hatchact@osc.gov](mailto:hatchact@osc.gov)***

## OSC SPEAKERS / OUTREACH:

**(202) 254-3600**

## OSC WEBSITE:

***[www.osc.gov](http://www.osc.gov)***

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



Preventing Conflicts of Interest  
in the Executive Branch

# **Executive Compensation and Public Financial Disclosure:**

## **Exercise**



# Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

<b>Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year)</b>	<b>Reporting Status</b> (Check Appropriate Boxes)	<b>Incumbent</b> <input type="checkbox"/>	<b>Calendar Year Covered by Report</b>	<b>New Entrant, Nominee, or Candidate</b> <input checked="" type="checkbox"/>	<b>Termination Filer</b> <input type="checkbox"/>	<b>Termination Date (If Applicable) (Month, Day, Year)</b>	<b>Fee for Late Filing</b> Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a \$200 fee.
<b>Reporting Individual's Name</b>	<b>Last Name</b> Maxwell		<b>First Name and Middle Initial</b> James			<b>Reporting Periods</b> Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.  Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.	
<b>Position for Which Filing</b>	<b>Title of Position</b> Commissioner		<b>Department or Agency (If Applicable)</b> Federal Insurance Commission				<b>Nominees, New Entrants and Candidates for President and Vice President:</b>  Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.  Schedule B--Not applicable.  Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.  Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.  Schedule D --The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.
<b>Location of Present Office (or forwarding address)</b>	<b>Address (Number, Street, City, State, and ZIP Code)</b> 456 A St., SW., Washington, DC 20000			<b>Telephone No. (Include Area Code)</b> 202-555-5566			
<b>Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)</b>	<b>Title of Position(s) and Date(s) Held</b>						
<b>Presidential Nominees Subject to Senate Confirmation</b>	<b>Name of Congressional Committee Considering Nomination</b> Committee on Banking, Housing and Urban Affairs			<b>Do You Intend to Create a Qualified Diversified Trust?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	<b>Certification:</b>						
<b>Other Review (If desired by agency)</b>	<b>Signature of Reporting Individual</b>			<b>Date (Month, Day, Year)</b>			
	<b>Signature of Other Reviewer</b>			<b>Date (Month, Day, Year)</b>			
<b>Agency Ethics Official's Opinion</b>	<b>Signature of Designated Agency Ethics Official/Reviewing Official</b>			<b>Date (Month, Day, Year)</b>			
<b>Office of Government Ethics Use Only</b>	<b>Signature</b>			<b>Date (Month, Day, Year)</b>			
<b>Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)</b>							
(Check box if filing extension granted & indicate number of days _____) <input type="checkbox"/>							
(Check box if comments are continued on the reverse side) <input type="checkbox"/>							
<b>Agency Use Only</b>							
<b>OGE Use Only</b>							

# SCHEDULE A

Reporting Individual's Name  
Maxwell, James

Assets and Income	Valuation of Assets at close of reporting period										Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.															
BLOCK A	BLOCK B										BLOCK C															
<p>For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period, or which generated more than \$200 in income during the reporting period; together with such income.</p> <p>For yourself, also report the source and actual amount of earned income exceeding \$200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than \$1,000 (except report the actual amount of any honoraria over \$200 of your spouse).</p> <p>None <input type="checkbox"/></p>	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type				Amount						Date (Mo., Day, Yr.)  Only if Honoraria
																Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	
Examples											x	x							Law Partnerships Income \$130,000							
	Central Airlines Common										x															
	Doe Jones & Smith, Hometown, State											x														
	Kempstone Equity Fund												x													
	IRA: Heartland 500 Index Fund													x												
1	Tysons Financial Group, Inc.																			Salary \$327,500						
2	Tysons Financial Group, Inc. deferred compensation																									
3	Tysons Financial Group, Inc. stock options										x															
4	Tysons Financial Group, Inc. RSUs												x													
5	Tysons Financial Group, Inc. pension plan and 401(k)														x											
6	TFG Moderate Growth Fund																									

\* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Reporting Individual's Name Maxwell, James	<b>SCHEDULE C</b>	Page Number 19 of
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**Part I: Liabilities**

Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude

a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None

Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x)												
					\$10,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000		
Examples	First District Bank, Washington, DC	1991	8%	25 yrs.			x										
	John Jones, Washington, DC	1999	10%	on demand			x		x								
1																	
2																	
3																	
4																	
5																	

\*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

**Part II: Agreements or Arrangements**

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves

of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Continued participation in Tysons Financial Group 401(k) and pension. No further contributions by employer.	Tysons Financial Group, Leeds, NJ	04/89
2	TFG deferred compensation will be distributed after resignation.	Tysons Financial Group, Leeds, NJ	8/98
3	Continued health insurance	Tysons Financial Group, Leeds, NJ	8/98
4			
5			
6			

Reporting Individual's Name Maxwell, James	<b>SCHEDULE D</b>	Page Number 20 of
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**Part I: Positions Held Outside U.S. Government**

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature. None

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Tysons Financial Group, Leeds, NJ	Corporation	Vice President	04/1989	Present
2					
3					
4					
5					
6					

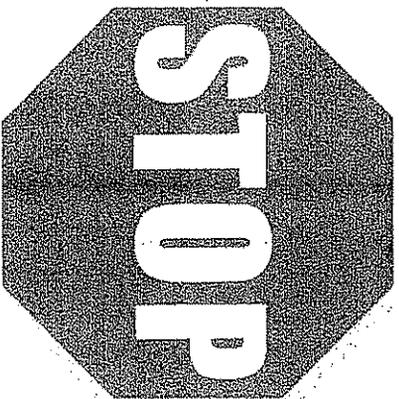
**Part II: Compensation in Excess of \$5,000 Paid by One Source**

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source. Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate. None

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Tysons Financial Group, Leeds, NJ	Vice President for Global Opportunities
2		
3		
4		
5		
6		

**Executive Compensation and  
Public Financial Disclosure:**

**Answers**





Reporting Individual's Name Maxwell, James	<b>SCHEDULE C</b>	Page Number 19 of
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a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x)													
						\$10,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000			
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x											
	John Jones, Washington, DC	Promissory note	1999	10%	on demand			x		x									
1																			
2																			
3																			
4																			
5																			

\*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

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Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves

of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Pursuant to company's compensation policy, I will receive a performance-based bonus for services rendered in 2011 up the date of resignation.	Tyson's Financial Group, Inc., Leeds, NJ	08/98
2			
3			
4			
5			
6			







Reporting Individual's Name Maxwell, James	<b>SCHEDULE C</b>	Page Number 19 of
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None

Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x)													
					\$10,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000			
Examples First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x											
John Jones, Washington, DC	Promissory note	1999	10%	on demand					x									
1																		
2																		
3																		
4																		
5																		

\*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

**Part II: Agreements or Arrangements**

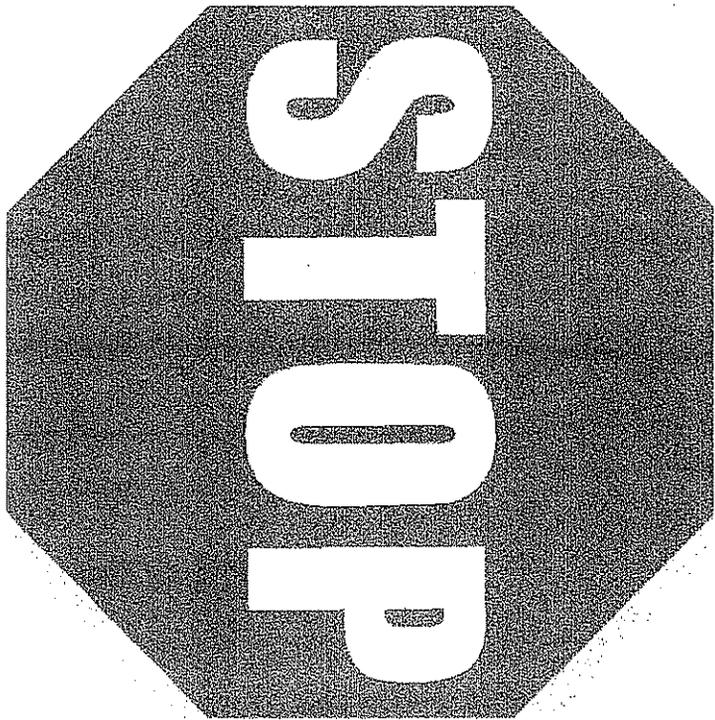
Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves

of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None

Example	Status and Terms of any Agreement or Arrangement	Parties	Date
	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Pursuant to company's compensation policy, I will receive a performance-based bonus for services rendered in 2011 up the date of resignation.	Tysons Financial Group, Inc., Leeds, NJ	08/98
2	Pursuant to the TFG deferred compensation plan, the balance of my account will be distributed in 12 quarterly payments starting within 90 days of resignation.	Tysons Financial Group, Inc., Leeds, NJ	8/98
3			
4			
5			
6			







Reporting Individual's Name Maxwell, James	<b>SCHEDULE C</b>	Page Number 19 of
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### Part I: Liabilities

Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude

a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x)														
						\$10,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000				
Examples	First District Bank, Washington, DC John Jones, Washington, DC	Mortgage on rental property, Delaware Promissory note	1991 1999	8% 10%	25 yrs. on demand			x												
1																				
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### Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves

of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

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3	Vested stock options will be exercised or forfeited within 90 days of confirmation. If I divest the options by exercising them, I will divest resulting stock within 90 days of confirmation. Unvested options will be forfeited at resignation.	Tysons Financial Group, Inc., Leeds, NJ	8/98
4			
5			
6			



## INCENTIVE STOCK OPTION

### Definition

An incentive stock option is a contract between an employer and an employee that provides the employee with an option to purchase a specified number of shares of the employer's stock at a specified price (the "strike price"). An incentive stock option is a type of "call" option because it provides the right to purchase stock. Unlike some other types of "call" options, however, an incentive stock option is not traded on the open market. Instead, it is part of an employee's compensation.

Incentive stock options can be an attractive form of compensation. Depending on whether an incentive stock option plan satisfies certain requirements of the tax code, the options may qualify for preferential tax treatment. Qualifying incentive stock option plans allow employees to defer taxation until they have exercised the options and subsequently sold the resulting stock. Incentive stock options can also serve the employer's purpose of retaining employees because they often have vesting requirements, and employees typically forfeit such options if they terminate their employment before the options vest.

### Financial Disclosure Requirements

A filer who has an incentive stock option should report the following information about an incentive stock option that has a value over \$1,000 on **Schedule A**:

- the name of the underlying stock and an indication that the asset is an option;
- a category of asset value; and
- the category of amount of income, which is "none" in most cases.

The option normally will not produce income. Any income is normally associated with the sale of the underlying stock, not with the option.

The value of an option may not be readily ascertainable if the strike price exceeds the market value of the stock. In this situation, where the filer would lose money by exercising the option, the option is said to be "underwater." When an option is underwater, the filer may write "value not readily ascertainable" across the columns in **Block B of Schedule A**. Instead of reporting a category of asset value in Block B, the filer should report the following in **Block A of Schedule A**:

- the name of the underlying stock and an indication that the asset is an option;
- the number of shares that the filer has an option to purchase;
- the strike price;
- the expiration date;
- an indication as to whether the option is vested; and
- for an unvested option, the date on which the unvested option will vest.

If a filer has exercised an option and received stock through an incentive stock option plan, the filer should also report the stock on **Schedule A**, as a separate line item. Specifically, the filer should report on **Schedule A** the following information about any stock that has a value over \$1,000 or that produced income over \$200 during the reporting period:

- the name of the stock;
- the category of asset value; and
- the type and the category of amount of income.

For transactions over \$1,000 that involve stock acquired through an incentive stock option plan, a filer should report the following information on **Schedule B, Part I**:

- the name of the stock;
- the type of transaction;
- the date of the transaction; and
- the category of amount of the transaction.

The filer should report both the purchase of stock and any subsequent sale of the stock as separate line items. However, the filer should not report the grant of an incentive stock option on Schedule B, Part I, because the grant of an option is not a reportable “transaction” for purposes of Schedule B, Part I.

If the filer is continuing to participate in an incentive stock option plan or if the filer has retained an incentive stock option that the filer has not yet exercised, the filer should report the following information on **Schedule C, Part II**:

- the name of the employer;
- an indication that the plan is an “incentive stock option plan”;
- the terms of the plan, including an indication as to whether the filer will forfeit any unvested options and an indication as to whether the filer will receive any additional grant of options in the future; and
- the date on which the filer entered the plan.

The filer should similarly report a spouse’s incentive stock options on **Schedule A** and any transactions involving the underlying stock on **Schedule B, Part I**. However, the filer should not report a spouse’s continued participation in an incentive stock option plan on **Schedule C, Part II**.

### **Conflicts Analysis**

The conflicts analysis for an incentive stock option is the same as the conflicts analysis for the underlying stock. While the filer holds either an option or the underlying stock, the filer may not participate personally and substantially in a particular matter that will have a direct and predictable effect on the financial interests of the issuer of the underlying stock. The conflict arises when the filer first has an option to purchase the stock, even if the filer has not yet exercised that option.

If the stock is publicly traded, the filer may qualify for a *de minimis* exemption under 5 C.F.R. § 2640.202 after the filer has purchased the stock. However, the filer may not rely on a *de minimis* exemption if the filer continues to have any option to purchase stock that the filer has not yet purchased. The exemptions at 5 C.F.R. part 2640 do not cover a financial interest in a stock option.

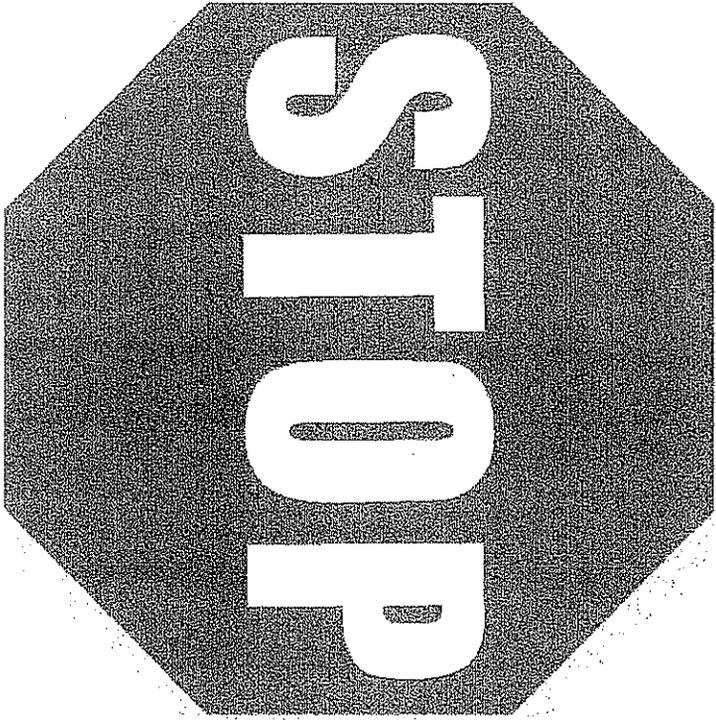
In some cases, filers who are new entrants or Presidential nominees may have negotiated with their former employer regarding the disposition of unvested incentive stock options. If the employer has agreed to accelerate the vesting schedule in order to enable the employee to exercise the option before entering government service, it is likely that any acceleration will constitute an “extraordinary payment” under 5 C.F.R. § 2635.503 if the value of either the stock or the option is greater than \$10,000. If an accelerated vesting occurs after the filer enters government service, the reviewer will need to consider the applicability of 18 U.S.C. § 209.

### **Special Consideration for Certificates of Divestiture**

Some reviewers may be aware of an issue involving requests for Certificates of Divestiture for stock acquired under an incentive stock option plan. The issue arose because Certificates of Divestiture are intended for sales of property that produce capital gains, rather than those that produce only ordinary income. However, taxpayers sometimes needed to hold stock acquired under incentive stock option plans for a period of time before the Internal Revenue Service (IRS) would tax the proceeds of a sale of that stock as capital gains, rather than solely as ordinary income.

This holding period raised a question about the availability of a Certificate of Divestiture whenever an employee needed to divest stock acquired under an incentive stock option plan before expiration of the holding period. As a result, Congress amended the tax code to accelerate the holding period when stock is sold pursuant to a Certificate of Divestiture. However, provisions of the tax code affect the extent to which an individual may rely upon a Certificate of Divestiture depending on the factual circumstances of a sale. Filers should consult their own tax advisors or the IRS to resolve questions about the applicability of the exception and to determine whether a sale would produce capital gains or only ordinary income.







Reporting Individual's Name Maxwell, James	<h2 style="margin: 0;">SCHEDULE C</h2>	Page Number 19 of
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### Part I: Liabilities

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None

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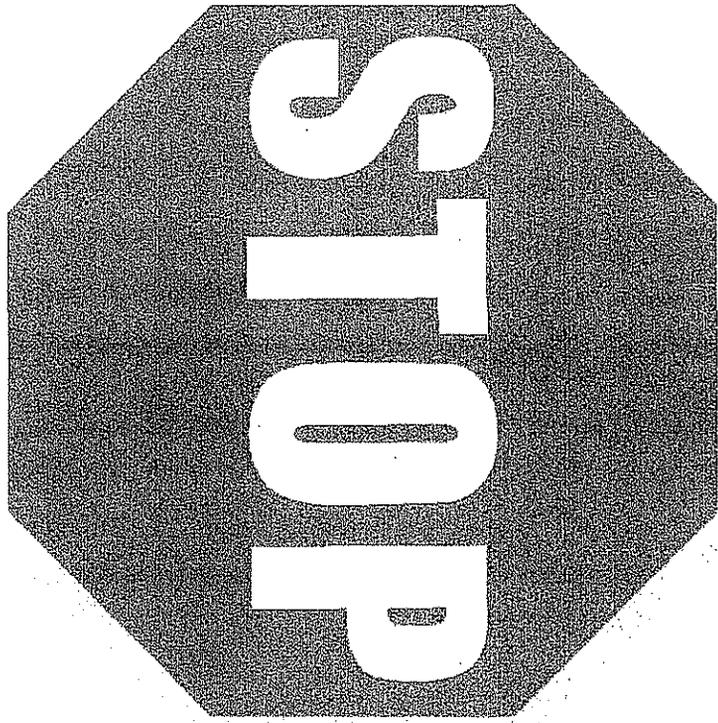
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None

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1	Pursuant to company's compensation policy, I will receive a performance-based bonus for services rendered in 2011 up the date of resignation.	Tyson's Financial Group, Inc., Leeds, NJ	08/98
2	Pursuant to the TFG deferred compensation plan, the balance of my account will be distributed in 12 quarterly payments starting within 90 days of resignation.	Tyson's Financial Group, Inc., Leeds, NJ	8/98
3	Vested stock options will be exercised or forfeited within 90 days of confirmation. If I divest the options by exercising them, I will divest resulting stock within 90 days of confirmation. Unvested options will be forfeited at resignation.	Tyson's Financial Group, Inc., Leeds, NJ	8/98
4	Pursuant to the company's compensation plan, my unvested restricted stock units will be forfeited at resignation.	Tyson's Financial Group, Inc., Leeds, NJ	10/08
5			
6			

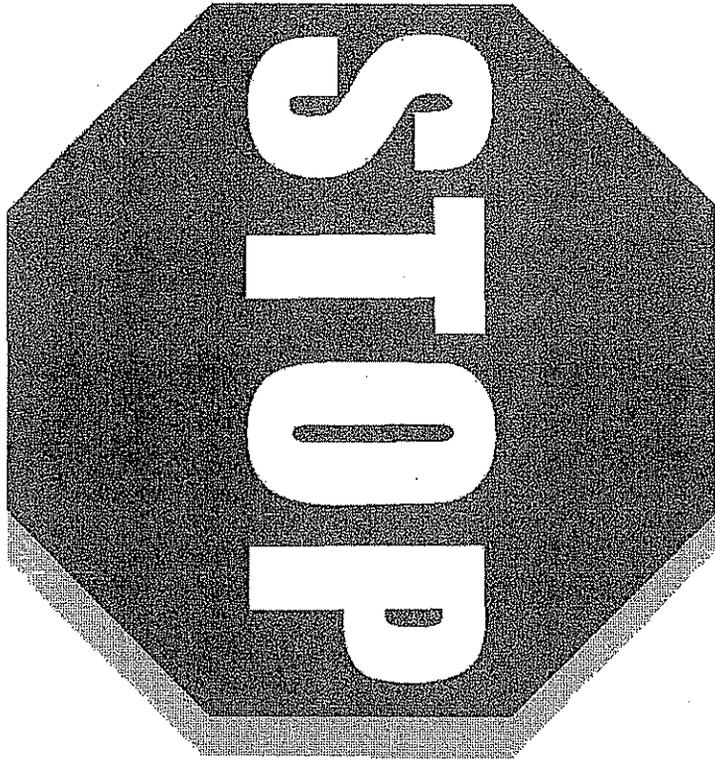














Reporting Individual's Name Maxwell, James	<b>SCHEDULE C</b>	Page Number 19 of
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### Part I: Liabilities

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Examples	First District Bank, Washington, DC John Jones, Washington, DC	Mortgage on rental property, Delaware Promissory note	1991 1999	8% 10%	25 yrs. on demand			x												
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2	Pursuant to the TFG deferred compensation plan, the balance of my account will be distributed in 12 quarterly payments starting within 90 days of resignation.	Tysons Financial Group, Inc., Leeds, NJ	8/98
3	Vested stock options will be exercised or forfeited within 90 days of confirmation. If I divest the options by exercising them, I will divest resulting stock within 90 days of confirmation. Unvested options will be forfeited at resignation.	Tysons Financial Group, Inc., Leeds, NJ	8/98
4	Pursuant to the company's compensation plan, my unvested restricted stock units will be forfeited at resignation.	Tysons Financial Group, Inc., Leeds, NJ	10/08
5	Continued participation in Tysons Financial Group 401(k). No further contributions by employer. Continued participation in defined benefit plan.	Tysons Financial Group, Inc., Leeds, NJ	4/89
6	Pursuant to company's compensation policy, my spouse and I will continue to receive free health insurance.	Tysons Financial Group, Inc., Leeds, NJ	8/98







# Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year)		Reporting Status (Check Appropriate Boxes)	Incumbent <input type="checkbox"/>	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate <input checked="" type="checkbox"/>	Termination Filer <input type="checkbox"/>	Termination Date (If Applicable) (Month, Day, Year)	<b>Fee for Late Filing</b> Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a \$200 fee.
Reporting Individual's Name		Last Name Maxwell		First Name and Middle Initial James				
Position for Which Filing		Title of Position Commissioner		Department or Agency (If Applicable) Federal Insurance Commission				
Location of Present Office (or forwarding address)		Address (Number, Street, City, State, and ZIP Code) 456 A St., SW., Washington, DC 20000				Telephone No. (Include Area Code) 202-555-5556		<b>Reporting Periods</b> Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.  Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)		Title of Position(s) and Date(s) Held						
Presidential Nominees Subject to Senate Confirmation		Name of Congressional Committee Considering Nomination Committee on Banking, Housing and Urban Affairs		Do You Intend to Create a Qualified Diversified Trust? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				<b>Nominees, New Entrants and Candidates for President and Vice President:</b>  Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.  Schedule B--Not applicable.  Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.  Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.  Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.
Certification		Signature of Reporting Individual				Date (Month, Day, Year)		
ICERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.		Signature of Other Reviewer				Date (Month, Day, Year)		
Other Review (If desired by agency)		Signature of Designated Agency Ethics Official/Reviewing Official				Date (Month, Day, Year)		
Agency Ethics Official's Opinion		Signature				Date (Month, Day, Year)		
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).		Signature				Date (Month, Day, Year)		
Office of Government Ethics Use Only								
Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)								
(Check box if filing extension granted & indicate number of days _____) <input type="checkbox"/>								
(Check box if comments are continued on the reverse side) <input type="checkbox"/>								
Agency Use Only								
OGE Use Only								

# SCHEDULE A

Reporting Individual's Name Maxwell, James		Page Number 2 of
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Assets and Income  BLOCK A	Valuation of Assets at close of reporting period  BLOCK B										Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.  BLOCK C																											
<p>For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding \$1,000 at the close of the reporting period, or which generated more than \$200 in income during the reporting period, together with such income.</p> <p>For yourself, also report the source and actual amount of earned income exceeding \$200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than \$1,000 (except report the actual amount of any honoraria over \$200 of your spouse).</p> <p>None <input type="checkbox"/></p>											Type	Amount										Date (Mo., Day, Yr.)  Only if Honoraria																
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than \$201)	\$201 - \$1,000		\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000	Other Income (Specify Type & Actual Amount)						
Examples	Central Airlines Common																																					
	Doe, Jones & Smith, Hometown, State																																		Law Partnership Income \$130,000			
	Kempstone Equity Fund																																					
	IRA: Heartland 500 Index Fund																																					
1	Tysons Financial Group, Inc.																																	Salary & Bonus \$467,500				
2	Tysons Financial Group, Inc. - bonus receivable for 2011													X																								
3	Tysons Financial Group, Inc. deferred compensation (tracks S&P 500)																																					
4	Tysons Financial Group, Inc. stock options (value not readily ascertainable)																																					
5	--1800 vested shares: strike \$27, exp. 3/2013 --2300 unvested shares:																																					
6	strike \$28, vest 7/2013, exp. 4/2014																																					

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Reporting Individual's Name

Maxwell, James

**SCHEDULE A continued**  
 (Use only if needed)

Page Number

3 of

Assets and Income		Valuation of Assets at close of reporting period											Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.																							
BLOCK A		BLOCK B											BLOCK C																							
		None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type				Amount							Date (Mo., Day, Yr.)  Only if Honoraria								
																	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000		\$100,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000	Other Income (Specify Type & Actual Amount)			
1	Tyson's Financial Group, Inc. RSUs			X																X																
2	Tyson's Financial Group, Inc. stock		X															X																		
3	Tyson's Financial Group defined benefit pension plan (value not readily ascertainable)																																		Will receive \$2,000/month at age 62	
4	Tyson's Financial Group, Inc. 401(k):																																			
5	--TFG Fidelity Moderate Growth Fund			X										X																						
6																																				
7																																				
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Reporting individual's Name Maxwell, James	<b>SCHEDULE C</b>	Page Number 19 of
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2	Pursuant to the TFG deferred compensation plan, the balance of my account will be distributed in 12 quarterly payments starting within 90 days of resignation.	Tyson's Financial Group, Inc., Leeds, NJ	8/98
3	Vested stock options will be exercised or forfeited within 90 days of confirmation. If I divest the options by exercising them, I will divest resulting stock within 90 days of confirmation. Unvested options will be forfeited at resignation.	Tyson's Financial Group, Inc., Leeds, NJ	8/98
4	Pursuant to the company's compensation plan, my unvested restricted stock units will be forfeited at resignation.	Tyson's Financial Group, Inc., Leeds, NJ	10/08
5	Continued participation in Tyson's Financial Group 401(k). No further contributions by employer. Continued participation in defined benefit plan.	Tyson's Financial Group, Inc., Leeds, NJ	4/89
6	Pursuant to company's compensation policy, my spouse and I will continue to receive free health insurance.	Tyson's Financial Group, Inc., Leeds, NJ	8/98

Reporting Individual's Name Maxwell, James	SCHEDULE D	Page Number 20 of
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**Part I: Positions Held Outside U.S. Government**

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature. None

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Tyson's Financial Group, Inc., Leeds, NJ	Corporation	Vice President	04/1989	Present
2					
3					
4					
5					
6					

**Part II: Compensation in Excess of \$5,000 Paid by One Source**

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source. None

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Tyson's Financial Group, Inc., Leeds, NJ	Vice President for Global Opportunities
2		
3		
4		
5		
6		



August 24, 2011

Danielle E. Olsen  
General Counsel  
Federal Insurance Commission  
456 A St. SW.,  
Washington, DC 20000

Dear Ms. Olsen:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Commissioner, Federal Insurance Commission.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign from my position with Tysons Financial Group, Inc. ("TFG"). Pursuant to TFG's compensation policy for departing executives, I am entitled to receive an annual bonus for calendar year 2011 following my resignation. TFG will calculate this bonus using an objective formula that is based solely on the company's earnings for the period from January 1, 2011 through the date of my resignation. If I begin my service as Commissioner prior to receiving this payment, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of TFG to make this payment, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1).

I currently hold the following equity interests in TFG: common stock; unvested and vested stock options; and unvested restricted stock units. I will forfeit all TFG stock options and restricted stock units that are unvested at the time of my resignation. Within 90 days of my confirmation, I will divest all of my common stock and all of my vested stock options in TFG. If I divest the stock options by exercising them, I will divest the resulting stock within 90 days of my confirmation. Until I have divested all of these financial interests, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of TFG unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). In addition, for a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which TFG is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I am a participant in the TFG Executive Deferred Compensation Plan. The balance of my deferred compensation account will be distributed in 12 quarterly payments, beginning within 90 days of my resignation. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of TFG to make these payments, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1).

Under the TFG Executive Health Plan, my spouse and I will continue to receive free health insurance, consistent with the corporation's practice for departing executives. TFG will continue making all payments to the health provider under this plan for as long as either I or my spouse is living. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of TFG to make these payments, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1).

...[other ethics commitments]

Finally, I understand that as an appointee I am required to sign the Ethics Pledge (Exec. Order No. 13490) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this and any other ethics agreement.

Sincerely,

James Maxwell

# 18<sup>th</sup> National Government Ethics Conference:

## Developing Real Agency-Wide Support for Your Ethics Program



**Sean C. Dent, Associate General Counsel  
Federal Housing Finance Agency**

**Karen Dalheim, Senior Attorney  
U.S. Department of Defense**

September 2011

# Program Objectives



- Identify proven ways to increase support for your ethics program
- Explain strategies for improving communication and outreach techniques
- Apply key approaches to realistic work scenarios
- Meet a new colleague

# Four Familiar Faces of Ethics



- **Shock** - Do you realize what this means for me?
- **Worry** - But I don't want to go to jail.
- **Anger** - I'm so upset I don't know what I'll do!
- **Disbelief** - You're joking, right?

# Shakespeare on Honesty



“To be honest as this world goes  
is to be one man picked out of ten thousand.”

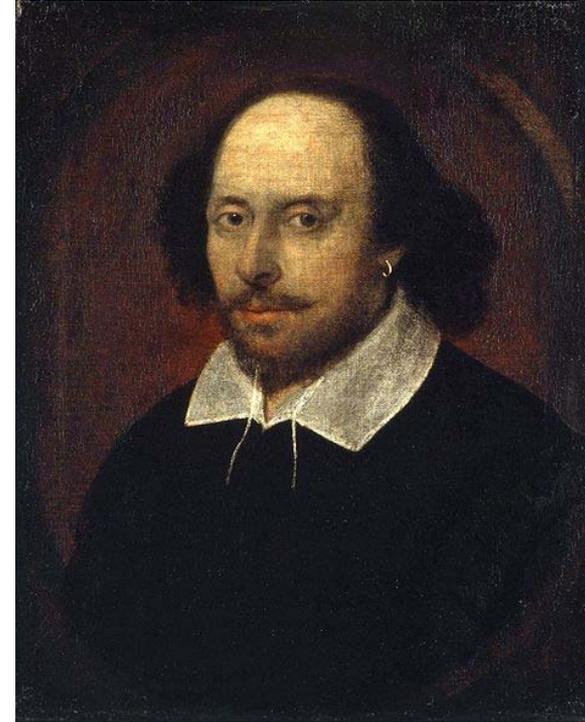
-*Hamlet*

“All men have their faults, and honesty is his.”

- *Timon of Athens*

“Take note, take note, O world.  
To be direct and honest is not safe.”

- *Othello*



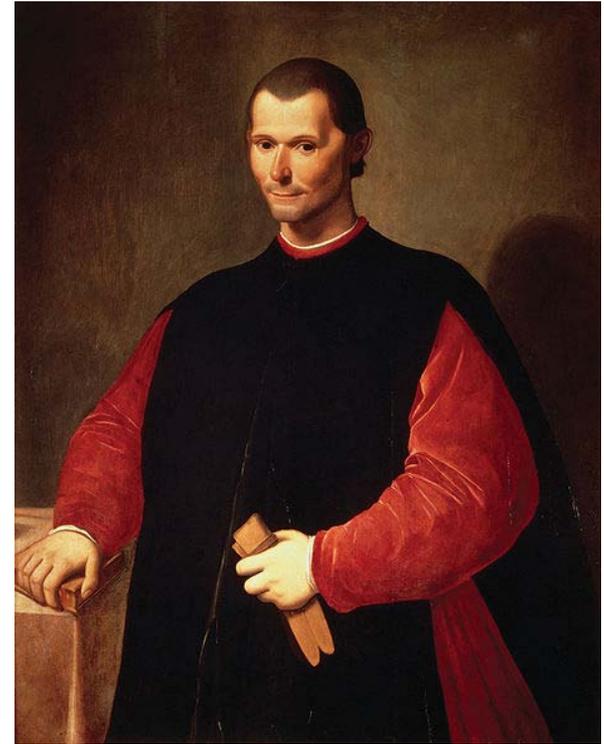
<http://en.wikipedia.org/wiki/File:Shakespeare.jpg>

# Machiavelli on Appearances



“Every one admits how praiseworthy it is in a prince to keep faith, and to live with integrity and not with craft. [I]t is unnecessary for a prince to have all the good qualities I have enumerated, but it is very necessary to appear to have them. [T]o have them and always observe them is injurious, [but] to appear to have them is useful.”

- *The Prince* (1532).



[http://en.wikipedia.org/wiki/File:Portrait\\_of\\_Niccol%C3%B2\\_Machiavelli\\_by\\_Santi\\_di\\_Tito.jpg](http://en.wikipedia.org/wiki/File:Portrait_of_Niccol%C3%B2_Machiavelli_by_Santi_di_Tito.jpg)

# Five Ways to Increase Program Support



- Manage expectations before they manage you
- Physically demonstrate your availability to employees
- Broaden the moral perspective of employees
- Incorporate ethics into agency operations
- Address the ethical hazards of leadership

# Manage expectations before they manage you



- Help employees to develop moral imagination
- Highlight both goal and vision
- Be authentic – is what everyone wants wrong?
- Appreciate that collateral damage may occur
- Acknowledge the existence of ethical luck

# Physically demonstrate your availability



Your job is to make sure employees know who you are BEFORE they need you.

- CFC Events
- Office Parties
- Award Ceremonies
- Blood Drives
- Yoga Classes
- Softball Teams
- Employee Appreciation Events
- Town Halls

You will many receive questions and develop valuable relationships.

# Broaden the moral perspective of employees



Effective compliance programs and values-based ethics programs are interdependent

## Compliance-based Ethics

Focuses on rules and consequences of breaking rules.



## Values-based Ethics

Focuses on enhancing ethical decision making and doing the “right” thing.

# Broaden the moral perspective of employees



## Ethical Decision-Making Quick Test

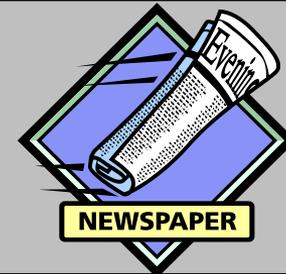
Is it legal?



Is it right?



How would it look on the front page of the Washington Post?

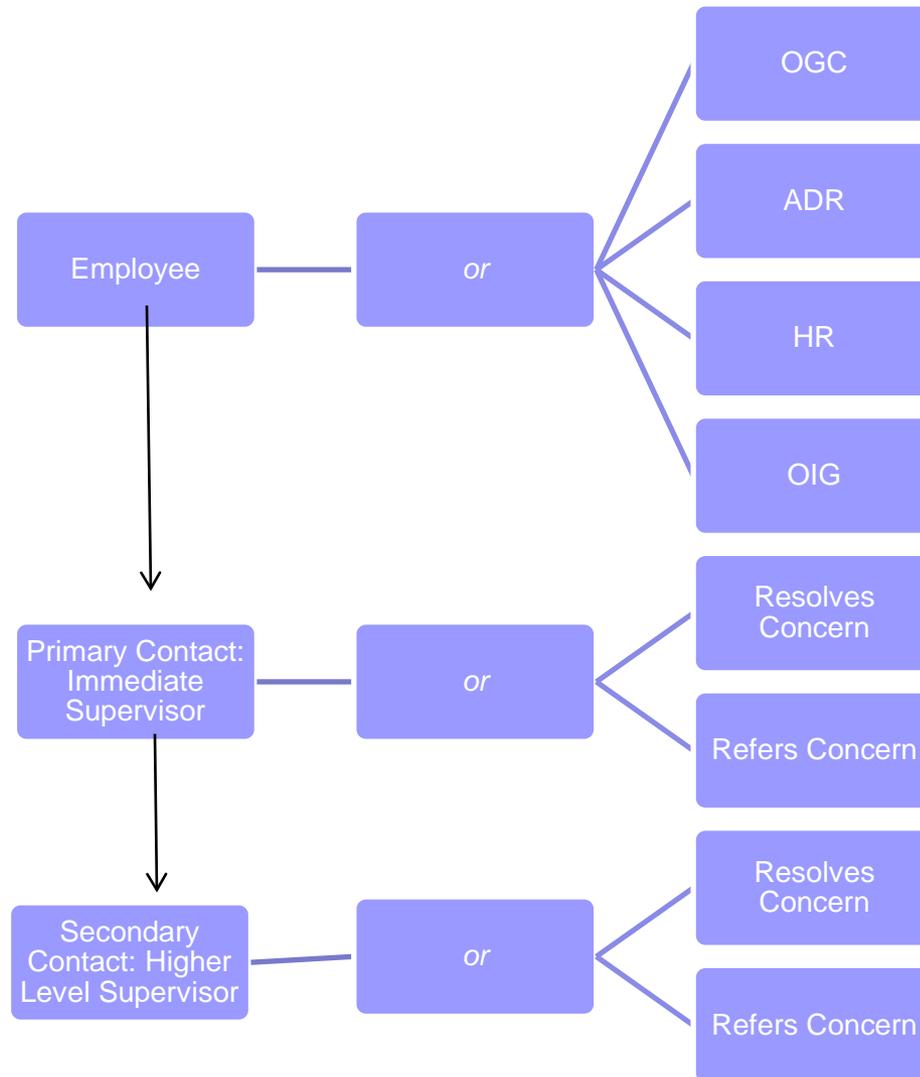


# Incorporate ethics into agency operations



- Alternative Dispute Resolution
- Annual Strategic Plan
- Annual Awards Program
- Agency Committees (non-voting member)
- Personnel Policies
- Organizational Charts

# Incorporate ethics into agency operations



# Address the ethical hazards of leadership



- Ethical leaders and effective leaders are not mutually exclusive
- It is a leaders duty to care about ethics
- Self control and moral learning are critical
- Leaders are responsible for the unethical decisions of others
- Take time to engage in self reflection

# Wrap-up



- As ethics officials, we play a critical role in fostering support for our programs and modeling ethical behaviors.
- All of us can strengthen our ethics programs by improving outreach techniques and promoting ethical decision-making.

# Questions



Need more information?

- Contact Sean C. Dent at 202-414-3099 or [Sean.Dent@fhfa.gov](mailto:Sean.Dent@fhfa.gov)
- Contact Karen Dalheim at 703-571-9446 or [Karen.Dalheim@osd.mil](mailto:Karen.Dalheim@osd.mil)

**2011 NATIONAL GOVERNMENT  
ETHICS CONFERENCE**

*Orlando, Florida*

**Panel Session Materials**

*Building a Team Oriented Conflict Management  
System for Advisory Committee Members*

**Panel Members**

*Robert Flaak, GSA  
John Szabo, NRC  
Vince Salamone, OGE*

## **INDEX OF PANEL MATERIALS**

<input type="checkbox"/> Case Study Facts. . . . .	<b>3</b>
<input type="checkbox"/> List of Resource Materials . . . . .	<b>4</b>
<input type="checkbox"/> Sample SGE Invitation Letter. . . . .	<b>7</b>
<input type="checkbox"/> Sample Representative Invitation Letter . . . . .	<b>8</b>
<input type="checkbox"/> Sample Review of Financial Disclosure Report Memo . . . . .	<b>9</b>
<input type="checkbox"/> Sample 208(b)(3) Waiver . . . . .	<b>11</b>
<input type="checkbox"/> Other FACA Materials (Available on OGE's Website) . . . . .	
<input type="checkbox"/> Slides for Panel Session. . . . . (Available on OGE's Website & Mobile App)	



## **CASE STUDY FACTS**

### **1. New Agency:** Agency for Renewable Energy Sources (ARES)

The United States is experiencing a sustained period of high gasoline and heating oil prices. These high prices have created a public outcry that the “old energy” companies are manipulating energy prices because of their monopoly on energy supplies. Good Government groups have also criticized the Government for not doing enough to promote “new energy.”

To address criticism of U.S. domestic energy policy and violence at gas stations, Congress created a new agency whose sole focus is to help the nation diversify its energy portfolio and help address national energy supply shortages. ARES will promote and help expand the use of various renewable energy sources. You are the new DAEO for ARES whose motto is ***“Tomorrow’s Energy Today.”***

### **2. Forming New Advisory Committees:**

The Director of ARES will be creating at least two advisory committees to help the agency accomplish its national energy promotion and expansion mission (some have called ARES’ mission as the “New Manhattan Project” and others have dubbed it the “New Deal” on Energy).

ARES’ organic statute provides for the creation of these two committees:

- (1) *Advisory Committee for Compliance with Energy Efficiency Standards (ACCEES).*
- (2) *Renewable Energy Advisory Panel – (statute only authorizes REAP’s creation).*

### **3. Information on Two Prospective Committee Members:**

Meet **Johnny Solaris** (Prospective Member #1) & **Robert Wendmills** (Prospective Member #2).

The new Director of ARES has asked both #1 & #2 to serve on these advisory committees. While visiting ARES, both #1 & #2 show up at your office. They were sent to you by the CMO. Your CMO is concerned about possible ethics and conflicts issues they might have once they begin their work on the committee. You’ve told the CMO that you want to have the opportunity to meet with persons who will be providing the agency any type of advisory or technical services.

#1 & #2 have been asked to provide their advice and views on matters involving the energy industry, including new ways to enhance potential energy supplies. They will be providing only temporary services. They may be expected to meet periodically as well as do some administrative and preparatory reading work at home.

#1 Has extensive knowledge and expertise of energy exploration, development, and distribution.

#1 Has served in both Federal and State Governments and has provided some consulting services, but he is not and has never been a lobbyist registered under the Lobbying Disclosure Act.

#1 Will be paid for his services including travel expenses and per diem.

#1 REAP staff recommended his name as a possible member and he is a professor at the University of Southern California with impeccable energy credentials; he founded a non-profit group and serves as a Board member of the Energy for Tomorrow Institute.

#1 The Agency may ask #1 to speak at the United Nations at "Global Energy Needs II Session."

#2 Has knowledge of the energy industry, including ways of financing "new energy" development.

#2 Was recommended by some energy companies.

#2 Will not receive pay for his services, but will receive travel reimbursement.

#2 Does private energy consulting and has stock in several venture capital companies.

#2 Has served as a spokesperson for "clean energy groups" at energy forums held nationwide.

## **LIST OF RESOURCE MATERIALS**

### **DAEOgrams**

- **"Guidance on Waivers under 18 U.S.C. § 208(b), Authorizations Under 5 C.F.R. § 2635.502(d), and Waivers of Requirements under Agency Supplemental Regulations"** - April 22, 2010, DO-10-005
- **"New OLC Opinion on the Emoluments Clause and Service on Advisory Boards"** - August 6, 2007, DO-07-024
- **"Counting Days of Service for Special Government Employees"** - January 19, 2007, DO-07-002
- **"Federal Advisory Committee Appointments"**- August 12, 2005 - DO-05-12
- **"SGEs and Representatives on Federal Advisory Committees"** - July 19, 2004 - DO-04-022
- **"Financial Disclosure Reporting Requirements for Special Government Employees"** - October 23, 2003, DO-03-021
- **"Summary of Ethical Requirements Applicable to Special Government Employees"** - February 15, 2000, DO-00-003

### **OGE informal Advisory Opinions**

- 82 x 22 (member designation)
- 84 x 04 (counting of days)
- 90 x 05 (volunteers)
- 93 x 14 (representative status)
- 00 x 07 (not arbiter of employee status)
- 07 x 04 (waivers)
- 07 x 9 (personal services contracts)

### **OGE Regulations**

- 5 C.F.R. Part 2640.301 et. seq. (individual waivers)
- 5 C.F.R. § 2640.203(g)(3) (SGE employment exemption)

### **Other Sources:**

- 5 U.S.C. app. II § 2 (definition of “advisory committee”)
- 5 U.S.C. § 2104 (definition of officer)
- 5 U.S.C. § 2105 (definition of employee)
- 18 U.S.C. 202(a) (definition of special Government employee)
- OLC Op. 12-9-93 (status of members)
- OLC Op. 5-8-02 (application of conflict of interest laws to appointees)
- OGE Ethics Program Review Guidelines for SGEs, (see Section IX, p. 40-45)
- House Lobbyist Disclosure Database:  
<http://disclosures.house.gov/ld/ldsearch.aspx>
- Senate Lobbyist Disclosure Database:  
<http://soprweb.senate.gov/index.cfm?event=choosefields>

- “Application of the Emoluments Clause to a Member of the President’s Council on Bioethics” (March 9, 2005):  
[http://www.justice.gov/olc/2005/050309\\_emoluments\\_clause.pdf](http://www.justice.gov/olc/2005/050309_emoluments_clause.pdf)
- “Application of the Emoluments Clause to a Member of Federal Bureau of Investigation Director’s Advisory Board (June 15, 2007):  
[http://www.justice.gov/olc/2007/fbi\\_advisory\\_board\\_opinion\\_061507.pdf](http://www.justice.gov/olc/2007/fbi_advisory_board_opinion_061507.pdf)
- “Financial Interest of Nonprofit Organizations” (January 11, 2006):  
<http://www.justice.gov/olc/11106nonprofitboards.pdf>

**Appointment Authorities:**

<p><b>Details:</b></p> <ul style="list-style-type: none"> <li>■ 31 U.S.C. § 1535</li> <li>■ 5 U.S.C. § 3341</li> <li>■ 5 C.F.R. §300.301</li> </ul>	<p><b>Intergovernmental Personnel Act:</b></p> <ul style="list-style-type: none"> <li>■ 5 U.S.C. Chapter 33, Subchapter VI</li> <li>■ 5 C.F.R. Part 334</li> </ul>	<p><b>Volunteers:</b></p> <ul style="list-style-type: none"> <li>■ 31 U.S.C. § 1342</li> <li>■ 5 U.S.C. § 3111</li> <li>■ 5 C.F.R. Part 308</li> </ul>
<p><b>Experts and Consultants:</b></p> <ul style="list-style-type: none"> <li>■ 5 U.S.C. § 3109</li> <li>■ 5 C.F.R. Part 304</li> </ul>	<p><b>Personal Services Contract:</b></p> <ul style="list-style-type: none"> <li>■ 48 C.F.R. 37.104</li> </ul>	<p><b>RESERVED</b></p>

**Training for SGEs**

- OGE Online training module for SGEs on ethics rules\*\*
- To Serve with Honor, A Guide on the Ethics rules That Apply to Advisory Committee Members Serving As Special Government Employees, OGE, March 2008\*\*

**References for FACA**

- The Federal Advisory Committee Act (FACA) - 5 U.S.C. App, P.L. 92-463  
<http://www.gsa.gov/portal/category/21244>
- FACA Implementing Regulations - 41 CFR 102-3  
<http://www.gsa.gov/portal/category/21244>
- FACA Information  
[www.eFACA.gov](http://www.eFACA.gov)

- FACA Database or Shared Management System  
[www.gsa.gov/facadatabase](http://www.gsa.gov/facadatabase)
- Guidance on Preparing Advisory Committee Charters  
<http://www.gsa.gov/portal/category/21243>
- GSA Guidance on Use of Lobbyists on Advisory Committees  
<http://www.gsa.gov/portal/category/21243>

**\*\*Note:** OGE Regulations, DAEOgrams or Legal Advisories, Informal Advisory Opinions, and OGE Program Review Guidelines are all available on OGE's Website at [www.oge.gov](http://www.oge.gov). Due to the launch of OGE's new website after the printing of this packet, we could not provide you the new website addresses of the OGE materials listed above.

### **Invitation Letter to a Prospective Member (SGE Status)**

Mr. Johnny Solaris  
University of Southern California  
12 Pacific Ocean Drive  
Pasadena, CA 90095

Dear Mr. Solaris:

I am writing to invite you to serve as a **[Special Government Employee (SGE)]** member of the Renewable Energy Advisory Panel (REAP) for a one-year term beginning September 12, 2011. I am enclosing a copy of the Board's charter for your information.

As a **[n SGE]** member of the committee, you will be asked to share your **[best independent]** judgment on issues related to energy exploration, development, and distribution focusing on alternative energy sources and diversification. The Committee's first meeting will be held in Washington, DC, on October 16, 2011. A copy of the meeting agenda will be forwarded to you in the near future. As a **[n] [SGE]** member, you will receive compensation from ARES, including reimbursement for travel and per diem, in lieu of subsistence, when travel is required.

Upon receipt of your acceptance, you will be asked to complete personnel forms, which will be sent under separate cover and require your immediate attention. You will be required to complete a confidential financial disclosure report (OGE Form 450). **[As an SGE, you will be subject to Federal ethics rules and requirements. For your information, we have enclosed a copy of a short booklet discussing the application of these ethics rules to SGEs.]**

I trust you will find it possible to accept this invitation, and give us the benefit of your **experience with** and viewpoints on important national energy issues that will be considered by this committee. You may indicate your acceptance or declination by signing and returning the enclosed Acknowledgement of Invitation by mail or facsimile at the following address by September 26, 2011:

Mr. Joe Hitrogrin  
Designated Federal Official  
Energy Policy Division  
Agency for Renewable Energy Sources  
1000 Sunshine Street, NW – Room 1221B  
Washington, DC 20405  
Fax: (202) 501-1007

Thank you for your assistance in this matter. Should you have any questions, please feel free to contact Mr. Hitrogrin at (202) 208-4462. Upon learning of your acceptance, Mr. Hitrogrin will contact you concerning the logistics for the Committee's inaugural session.

Sincerely,

Sarah Geodermal  
Director  
Agency for Renewable Energy Sources

2 Enclosures [**OGE 450 Form, SGE Booklet**]

## Invitation Letter to a Prospective Member (Representative)

September 12, 2011

Robert Wendmills  
Alternative Energy Advisors, LLC  
125 K Street, Suite 500  
Washington, DC 20405

Dear Mr. Wendmills:

I am writing to invite you to serve as a **[Representative]** member on the Agency for Renewable Energy Sources' Renewable Energy Advisory Panel (REAP) for a one year term beginning on September 12, 2011. I am enclosing a copy of the REAP's charter for your information.

As a **[Representative]** member of REAP, you will be asked to represent the alternative energy industry's viewpoints **[on energy exploration, development, and distribution focusing on alternative energy sources and diversification]** and help REAP in developing advice and recommendations for ARES' consideration. The first meeting will be held at October 16, 2011. A copy of the agenda will be shortly forwarded to you. **[Representative]** members will not receive compensation from ARES, but will receive reimbursement for travel and per diem, in lieu of subsistence. **[As a representative member, you will generally not be subject to any Federal ethics rules applicable to SGE-members of REAP.]**

I trust you will find it possible to accept this invitation and give us the benefit of **[the renewable energy industry's]** viewpoints on the important issues that will be considered by REAP. You may indicate your acceptance or declination by signing and returning the enclosed Acknowledgement of Invitation by mail or facsimile at the following address by September 26, 2011:

Mr. Joe Hitrogin  
Designated Federal Official  
Energy Policy Division  
Agency for Renewable Energy Sources  
1000 Sunshine Street, NW – Room 1221B  
Washington, DC 20405  
Fax: (202) 501-1007

Upon receipt of your acceptance, Mr. Hitrogin will contact you concerning the logistics for REAP's inaugural session. Any questions you have may be directed to Mr. Hitrogin.

Sincerely,  
Sarah Geodermal  
Director  
Agency for Renewable Energy Sources

Enclosure

September 1, 2011

MEMORANDUM TO: Johnny Solaris

FROM: John L. Szabo  
Ethics Counselor  
Office of the General Counsel

SUBJECT: REVIEW OF FINANCIAL DISCLOSURE REPORT

I reviewed the confidential financial disclosure report (OGE Form 450) that you signed on July 1, 2011, as a new member of the Renewable Energy Advisory Panel (REAP).

On the basis of this review, I signed the report, subject to the condition that you not personally and substantially participate, as a REAP member, in any particular Government matter that will directly and predictably affect the financial interest of the Energy for Tomorrow Institute (ETI), unless you obtain in advance a waiver, pursuant to 18 U.S.C. § 208(b)(3).

This determination is based on 18 U.S.C. § 208(a), which prohibits special Government employees, such as REAP members, from participating in a particular matter which will have a direct and predictable affect on their financial interest or the financial interest of their spouse; minor children; any organization they serve as officer, director, trustee, general partner, or employee; or any person with whom they are negotiating with or have an arrangement concerning future employment, unless they receive an advance waiver, pursuant to 18 U.S.C. § 208(b)(3). Under Management Directive 6.3, a member of REAP can receive this waiver from the Director of the Agency for Renewable Energy Sources (ARES), if the Director determines, after consultation with an ethics counselor in the Office of the General Counsel (OGC), that the need for the member's services outweighs the potential for a conflict of interest.

You reported that your Individual Retirement Account (IRA) contains stock issued by the General Electric Company (GE), which has subsidiaries and major investments in the energy field. You also reported owning the Vanguard Energy Investment Fund, which is an energy sector mutual fund. Unless you receive a waiver pursuant to 18 U.S.C. § 208(b)(3), you should not participate personally and substantially in any particular Government matter that directly and predictably affects the financial interest of GE if your GE stock exceeds \$15,000 in value. However, you may participate in matters of general applicability affecting GE, if the value of your interest does not exceed \$25,000. If the value of your Vanguard Energy Investment Fund exceeds \$50,000, you should not participate personally and substantially in any particular matter that you know directly and predictably affects the financial interest of any holding in the fund invested in the energy sector, unless you receive a waiver.

With respect to your employer, the University of Southern California (USC), you are allowed, as an advisory committee member, to participate personally and substantially in any particular matter of general applicability affecting USC that does not have a special and distinct effect on you or USC, other than as part of a class. 5 C.F.R. § 2640.203(g). However, you should not

participate in any particular matter involving parties (such as a contract or grant) that will directly and predictably affect the financial interests of USC, unless you obtain in advance a waiver, pursuant to 18 U.S.C. § 208(b)(3).

Because your spouse is employed by the Americans for Energy Independence, a position for which she receives a fixed salary, you should not participate personally and substantially in any particular matter that you know will have a direct and predictable effect on your spouse's compensation or employment. You should also not participate personally and substantially in any particular matters involving specific parties in which the Americans for Energy Independence is a party or represents a party, unless you are authorized in advance by the Director, Office of Research, ARES, after consultation with an OGC ethics counselor, pursuant to 5 C.F.R. § 2635.502(d). You stated that, for the duration of your service on REAP, your spouse has agreed not to communicate to ARES on behalf of her employer.

Moreover, you should not participate personally and substantially in any particular matter involving specific parties if Constellation Energy Corporation is a party or represents a party, for a period of one year from the date you last provided consulting services to Constellation Energy, unless you are authorized in advance, pursuant to 5 C.F.R. § 2635.502(d). Unless you first receive an authorization pursuant to 5 C.F.R. § 2635.502(d), you should not participate personally and substantially in any particular matter involving specific parties in which the Sierra Club is a party or represents a party, for a period of one year after you last provided service to the Sierra Club.

Finally, prior to a committee meeting, you should apprise Mr. Joseph Hitrogin, the Designated Federal Official for REAP, of any changes to the assets or positions listed on your financial disclosure report. Please feel free to contact me if you have any questions regarding this advice or any of the laws or regulations on conflicts of interest.

cc: Sarah Geodermal, Director, ARES  
Marvin M. Holder, Director, Office of Research, ARES  
Joseph C. McGregor, Chairman, REAP  
Joseph Hitrogin, DFO, REAP

September 12, 2011

TO: Johnny Solaris  
Member, Renewable Energy Advisory Panel  
Agency for Renewable Energy Sources

FROM: Sarah Geodermal  
Director  
Agency for Renewable Energy Sources

RE: CONFLICT OF INTEREST WAIVER UNDER 18 U.S.C. § 208(b)(3)

This memorandum grants you a limited waiver from the provisions of the Federal financial conflict of interest law, 18 U.S.C. § 208, regarding your participation as a member of the Renewable Energy Advisory Panel (REAP), an advisory committee established under the Federal Advisory Committee Act.

Section 208(a) prohibits Government employees, including special Government employees (SGE), from participating personally and substantially in a particular matter which will have a direct and predictable affect on their financial interest or the financial interest of certain organizations with which they are affiliated (including their employers) and other persons whose interests are imputed to them, such as their spouse, minor children, or general partners.

Under 18 U.S.C. § 208(b)(3), an employee's appointing official may grant a waiver of this prohibition to an SGE serving on a Federal advisory committee, such as REAP, when the individual has made full disclosure of the financial interests at issue and when the need for the individual's services outweighs the potential for a conflict of interest. Pursuant to Management Directive 6.3, I have been delegated the authority to grant individual waivers under 18 U.S.C. § 208(b)(3) to members serving on REAP, after consultation with an ethics counselor in the Office of the General Counsel (OGC).

The REAP advises the Agency for Renewable Energy Sources (ARES) on matters of energy exploration, development, and distribution, focusing on alternative energy sources and diversification. You were appointed to REAP because of your extensive knowledge and more than three decades of expertise in energy, including fossil fuels, nuclear, solar, and wind power. Your involvement in the field of energy includes active participation in prominent environmental organizations and more than two hundred scientific journal articles that you authored. You have received the 2009 Bailey Award for Environmental Excellence from the National Academy of Science and were recognized by Science magazine as one of the ten most significant leaders in alternative energy. The agency committee, that reviewed applications for membership on REAP, noted that it would be difficult to find someone else who has the same background and expertise that is needed for this panel.

The financial disclosure report you submitted lists your membership on the board of directors for the Energy for Tomorrow Institute (ETI), which receives research grants from ARES. Although you receive no compensation for your service on the ETI board nor receive any compensation from any ARES grants to the ETI, the financial interest of the ETI is imputed to you under 18 U.S.C. § 208.

Under 18 U.S.C. § 208(a), a Federal employee may not participate in any particular matter affecting his or her financial interest, unless the employee receives a waiver. This limited waiver permits you to participate personally and substantially in any particular matter of general applicability that would affect the financial interest of the ETI, based on the following considerations:

(1) The Government has a particularly strong need for your services in light of your extensive experience, insights, and knowledge. REAP members are selected not only for their specialized knowledge, but also for their diversity, composed of persons who have different technical, scientific, technological, or other perspectives. This diversity ensures that no one member is in a position to determine policy in favor of one affected interest, which serves as a restraint against real or apparent threats to REAP's objectivity.

(2) It is expected that, in carrying out its mission, REAP will focus largely, if not exclusively, on general policy matters. In general, considerations of broad policy options that are directed to the interests of a large and diverse group of persons do not create a conflict under 18 U.S.C. § 208. However, committee discussions and deliberations may also involve particular matters of general applicability (e.g., regulations, legislation, guidelines, etc.). It is well recognized that particular matters of general applicability pose less risk of a conflict of interest as they do not have a unique or special affect upon the interests or legal rights and responsibilities of a specific person or organization.

(3) Federal advisory committees, like REAP, are necessarily composed of persons who are associated with those academic and industry sectors that are the primary subject of a committee's work. Consequently, it is expected that persons qualified to serve on REAP will have interests, financial and otherwise, in its work. This includes not only employment interests, but also investment interests, as experience has shown that experts frequently acquire securities through their employment or as a result of familiarity with the programs of other similar companies or industry sectors. That a member may have a financial interest that may be affected is simply unavoidable in view of the work and membership of REAP.

(4) The Office of Government Ethics has issued certain regulatory exemptions to the conflict of interest statute, such as an exemption permitting special Government employees (SGE) serving on advisory committees to participate in particular matters of general applicability in certain cases when the SGE's financial interests consist of their non-Federal employment interests (5 C.F.R. § 2640.203(g)), as well as other regulatory

exemptions for certain securities and other financial interests that may also be applicable and allow an SGE's participation in certain particular matters.

Accordingly, based on my review of your financial interests, as well as other pertinent information, including the knowledge and expertise you provide to REAP, I have determined, after consultation with an OGC ethics counselor, that the need for your service on REAP outweighs the potential for a conflict of interest created by the financial interest from your membership on the board of the ETI.

Therefore, I hereby issue you a waiver to allow your participation as a REAP member in matters of general applicability that could have a direct and predictable effect on you or ETI, provided that the proposed matter would not have a special or distinct effect on you or ETI, other than as part of a class. This waiver does not extend to your participation in any particular matters involving parties that affect the ETI, such as a contract, license, or grant.

The OGC, after consulting with the Office of Government Ethics, has no objection to the issuance of this waiver.

cc: Marvin M. Holder, Director, Office of Research ARES  
Joseph C. McGregor, Chairman, REAP  
Joseph Hitrogin, DFO, REAP  
John L. Szabo, Ethics Counselor, OGC



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# Federal Advisory Committee Membership Balance Plan

## GSA Committee Management Secretariat

### Background:

*The Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.) and the FACA Implementing Regulations (FACA Regulations) (41 CFR 101-6 and 102-3) provide the basis for and guidance concerning the management and operation of Federal advisory committees. Typically, groups subject to FACA require open, pre-announced meetings; public access to discussions, deliberations, records and documents; opportunity for the public to provide, at a minimum, written comments; fairly balanced membership; and the evaluation of conflicts of interest for certain members. In general, the provisions of FACA apply when the government establishes or utilizes (i.e., manages and controls) a group, made up of two or more individuals which includes at least one non-Federal employee, to provide collective advice and recommendations to a Federal official. There are also exceptions and best practices that allow managers to solicit advice outside of the FACA structure.*

*This document provides guidance to Federal agencies on how to prepare the Membership Balance Plan that is required for discretionary, and is strongly recommended for non-discretionary, Federal advisory committees. Please work with your department or agency Committee Management Officer to ensure that applicable internal requirements are followed.*

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This is a best practices guidance document prepared by the U.S. General Services Administration (GSA) Committee Management Secretariat, the statutory government entity responsible for FACA oversight. Please send comments to: CMS@GSA.GOV. Please cite the title of this guidance in any correspondence.

### Introduction:

Section 5(b)(2) of the FACA requires "...the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee." The corresponding FACA regulations reiterate this requirement at 41 CFR § 102-3.30(c), and, for discretionary committees being established, renewed, or reestablished, require agencies to provide a description of their plan to attain fairly balanced membership during the charter consultation process with GSA (41 CFR § 102-3.60(b)(3)). The document created through this process is the Membership Balance Plan. The regulations further clarify that (1) the purpose of the membership balance plan is to ensure "that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee;" and (2) "[a]dvisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed." (41 CFR § 102-3.60(b)(3)).

FACA mandates that Federal advisory committees be balanced in the points of view represented by the members, but leaves it to the discretion of each agency on how to do this. The FACA regulations

offer guidance in achieving a balanced Federal advisory committee membership, which include considering:

- (i) The Federal advisory committee's mission;
- (ii) The geographic, ethnic, social, economic, or scientific impact of the Federal advisory committee's recommendations;
- (iii) The types of specific perspectives required, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors;
- (iv) The need to obtain divergent points of view on the issues before the Federal advisory committee; and
- (v) The relevance of State, local, or tribal governments to the development of the Federal advisory committee's recommendations." (41 CFR § III of App. A to Subpart B)

FACA requires all Federal advisory committees to be balanced, regardless of whether they are discretionary (agency authority) or non-discretionary (statutory or Presidential) committees. Although the FACA regulations only address the Membership Balance Plan requirements for discretionary committees, GSA recommends that Executive departments and agencies apply these requirements to non-discretionary committees as well. This is a good practice and is consistent with Section 5(b)(2) of FACA which requires balanced advisory committees.

This guidance document is intended to provide a framework for prospective, analytical thinking regarding committee membership balance, and further agency FACA compliance. Agencies are encouraged to include additional

information beyond what is suggested in this guidance document, as they deem appropriate.

## Elements of the Membership Balance Plan:

The FACA Membership Balance Plan informs, and is consistent with, the federal advisory committee's charter, especially the section on advisory committee membership and designation. The plan is submitted as supporting documentation when an agency establishes a Federal advisory committee. The agency should update the plan whenever a Federal advisory committee is renewed or reestablished, and also when a Federal advisory committee's charter is amended. The plan is a stand-alone document that describes how the agency intends to achieve balance in terms of the points of view represented and the functions to be performed by the Federal advisory committee. Elements of a Membership Balance Plan include:

- (1) Name.** State the legal name of the Federal advisory committee.
- (2) Authority.** Identify the authority for establishing the Federal advisory committee (e.g., cite the statute, Executive Order, or note that the Federal advisory committee is established under agency authority).
- (3) Mission/Function.** Describe the mission/function of the Federal advisory committee.
  - (a) If the Federal advisory committee is discretionary, the mission/function will be a primary factor influencing the balance of the Federal advisory committee.

(b) If the Federal advisory committee is statutory or created by Executive Order, the composition of the Federal advisory committee may already be prescribed by the authorizing legislation (which may result in a pre-determined balance of the members).

**(4) Points of View.** Based on the purpose of the Federal advisory committee, this section:

- (a) should describe the process that will be used to ensure the committee is balanced in terms of the points of view represented for the function(s) to be performed by the committee. This should include identifying the categories (e.g., individual expertise or represented interests) from which candidates will be considered;
- (b) could identify an anticipated relative distribution of candidates across the categories; and
- (c) should discuss how a determination was made to appoint any individuals as Special Government Employee (SGE) or Representative (Rep) members.

This analysis will affect the size of the Federal advisory committee, how it will be structured, and whether it is balanced. Although numerical parity is not required, too many or too few individuals representing one interest or area of expertise could result in the Federal advisory committee not being balanced in the viewpoints represented. If the Federal advisory committee is statutory or created by Executive Order, the exact number of members or a cap on the total number of members may be specified in the authorizing legislation.

This section should clearly state that membership balance is not static and may change, depending on the work of the committee.

**(5) Other Balance Factors.** List any other factors your agency identifies as important in achieving a balanced Federal advisory committee. These factors, which are not legally required, could include, the geographic location of candidates, importance of including regional, state, or local government expertise, consideration of the impact on local or specific communities, diversity in work sector (e.g., private industry, academia), etc.

**(6) Candidate Identification Process.**

Summarize the process intended to be used to identify candidates for the Federal advisory committee, key resources expected to be tapped to identify candidates (e.g., recommendations from current and former Federal advisory committee members, publication of nomination notices, search of relevant professional associations, etc), and the key persons (by position, not name) who will evaluate Federal advisory committee balance (e.g., the Designated Federal Official, agency FACA attorney, agency head, etc). The summary should:

- (a) describe how the process will result in consideration of a cross-section of those directly affected, interested, and qualified, and/or will identify individuals with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed (41 CFR § 102-3.60(b)(3));

- (b) identify the key agency staff (again, by position, not name) involved in determining balance on the Federal advisory committee;
- (c) briefly describe how Federal advisory committee vacancies, if any, will be handled by the agency (vacancies, and the length of time they remain unfilled, can impact the balance of the Federal advisory committee); and
- (d) state the membership term limit of Federal advisory committee members, if applicable. Term limits result in turnover of membership and new perspectives, which affects the balance of a Federal advisory committee.

**(7) Subcommittee Balance.** Subcommittees subject to FACA should either state that the process for determining Federal advisory committee member balance on subcommittees is the same as the process for the parent Federal advisory committee, or describe how it is different.

**(8) Other.** Provide any additional information that supports the balance of the Federal advisory committee.

**(9) Date Prepared/Updated.** Insert the actual date the Membership Balance Plan was initially prepared, along with the date(s) the Plan is updated. This is not the date the charter consultation is held with GSA.

## FACA WEB References:

The Federal Advisory Committee Act (FACA) –  
<http://www.gsa.gov/portal/content/100916>

Implementing Regulations (41 CFR 101-6 and 102-3) –  
<http://www.gsa.gov/portal/content/104034>

Committee Management Secretariat Website -  
<http://www.gsa.gov/faca>

The GSA FACA Database -  
<http://www.fido.gov/facadatabase/>

*Committee Management Secretariat  
Office of Committee and Regulatory Management  
January 2011*



# Preparing Federal Advisory Committee Charters

## GSA Committee Management Secretariat

### Background:

*The Federal Advisory Committee Act (FACA) 5 U.S.C., App., and the FACA Implementing Regulations (41 CFR 102-3) provide the basis for and guidance concerning the management and operation of federal advisory committees (FACs).*

*Regardless of whether a FAC is Presidential, statutory, or discretionary, it will require a formal federal advisory committee charter before it can conduct business. The charter marks the formal establishment of the FAC.*

*A charter contains certain specific components, and requires specific approval and handling. This guidance document provides a combination of statutory, regulatory, and best practice guidance to ensure proper charter preparation. Transparency and clarity are the primary objectives.*

*Current statutory and regulatory requirements for the components of a FAC charter are identified in §9 of FACA (5 U.S.C. App.), and are repeated in the FACA implementing regulations in 41 CFR 102-3.75. The guidance provided in both documents is broad and leaves room for interpretation. As a result, some departments and agencies choose a minimalist approach to writing charters, while other departments and agencies provide excessive information, some of which is*

*better suited to advisory committee by-laws or operating instructions. Insertion into the charter of excessive and often unnecessary procedural requirements can leave the department or agency subject to legal challenge.*

### Introduction:

This guidance is provided by the GSA Committee Management Secretariat (“Secretariat”) to help executive agencies comply with federal statutes regarding preparation of charters in the establishment of federal advisory committees (FACs). The Secretariat provides interpretation of statutory language in the Federal Advisory Committee Act, clarification of regulatory language contained in the FACA implementing regulations (41 CFR 102-3), and best practice guidance for writing effective and compliant advisory committee charters.

It is GSA’s goal to ensure agencies produce FAC charters that provide the necessary information to inform readers without adding unnecessary litigation risk, while at the same time, meeting the requirements of FACA, the FACA implementing regulations, guidance from GAO and other appropriate sources, and ensuring transparency and clarity.

### Consultation with GSA:

For discretionary FACs, agencies are required to consult with the Secretariat when they establish, reestablish, or renew an advisory committee, or when they make major amendments to an existing advisory committee charter. Although agencies are not required to consult with the Secretariat for non-discretionary advisory committees,

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This is a best practices guidance document prepared by the U.S. General Services Administration (GSA) Committee Management Secretariat, the statutory government entity responsible for FACA oversight. Please send comments to: [CMS@GSA.GOV](mailto:CMS@GSA.GOV). Please cite the title of this guidance in any correspondence.

the Secretariat requests that agencies provide a draft copy of the charter for format and content review. Our experience and knowledge concerning the format and content of charters will help agencies produce a well written charter that will limit mistakes and problems.

## Frequently Asked Questions:

### 1. Who prepares the charter for a FAC?

The agency creating or housing the FAC will prepare the charter. In most cases, the charter will be drafted by the Designated Federal Officer (DFO) assigned to the committee. If the DFO is not yet appointed, the charter may be drafted by staff of the office that will support the FAC. In some agencies, the Committee Management Officer (CMO) may be involved. GSA does not prepare agency charters.

### 2. Can an agency ask GSA for informal advice in the development or preparation of a new charter?

Yes. GSA encourages informal coordination between the CMO and GSA regarding the format and content of new advisory committee charters.

### 3. How long should a typical charter be? What should be included?

As noted elsewhere in this guidance, there are 15 statutory and recommended components that should be incorporated into a FAC charter. Typically, this will require about two or three pages.

### 4. Does a charter have to be signed for it to be approved?

No. An approval signature is not required. Some agencies have the approving official sign a separate approval document and, in some cases, agency officials do sign the charter. That is an agency decision.

### 5. Should a charter for a non-discretionary advisory committee contain extensive language from the enabling document or statute?

No. The enabling document should be properly cited in the charter, and where appropriate, clarification can be included in the charter to briefly explain details relevant to the 15 charter components (see below).

### 6. Should a charter for an advisory committee contain language that prescribes behavior of advisory committee members?

No. The charter sets parameters for the committee as an entity, and should not set behavior for specific individuals (e.g., guidance on ethics). Such language is best conveyed in appointment letters.

### 7. Are the charter filing requirements for major and minor amendments the same?

Yes. All amended charters are required to be filed as outlined in the Charter Filing Requirements section below. Amending any existing advisory committee charter does not constitute renewal of the advisory committee.

### 8. Are subcommittees required to file a charter?

Subcommittees that report directly to a Federal officer or agency require a formal charter and must follow the same public notification and filing procedures as the parent committee.

## Format and Content of an Advisory Committee Charter:

- Before you do anything else, agency staff or Designated Federal Officers (DFOs) who are developing an advisory committee should first contact the Committee Management Officer (CMO) at your agency for advice and guidance.

- The purpose of the advisory committee charter is to specify the committee’s mission or charge, and general operational characteristics (not membership behavior). The charter should include all of the statutorily required components, as well as five other components (\*) that are not explicitly required (at this time) but improve the overall charter and provide valuable additional information for interested parties. The fifteen sections, in order, are:

**1. Committee’s Official Designation (Title).**

Provide the committee’s exact legal name.

- \* **2. Authority.** Provide the authority for the establishment of the committee (e.g., cite the statute, Executive Order, or note that the committee is agency authority) and reference that the committee is being established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App.

**3. Objectives and Scope of Activities.**

Describe the objectives and scope of the committee’s mission or charge.

**4. Description of Duties.** Describe the particular functions the advisory committee is expected to perform. In the absence of specific statutory authority or Presidential directive to the contrary, these duties must be advisory only.

**5. Agency or Official to Whom the Committee Reports.** Identify the agency or official (by title or position) to whom the advisory committee provides its advice. Normally, this is the agency head.

**6. Support.** Identify the agency (and component/office) responsible for providing necessary support for the committee.

**7. Estimated Annual Operating Costs and Staff Years.** Provide the estimated annual fiscal year costs to operate the advisory committee in dollars and staff years (in full-time equivalent, or FTE). The cost expenditure categories used in the Annual Comprehensive Review of

Federal Advisory Committees should be used to estimate these costs. The cost estimates include the salary cost of staff support with benefits.

- \* **8. Designated Federal Officer.** This paragraph should indicate that a full-time or permanent part-time employee, appointed in accordance with agency procedures, will serve as the DFO (or designee). It should also state that the DFO will approve or call all of the advisory committee’s and subcommittees’ meetings, prepare and approve all meeting agendas, attend all committee and subcommittee meetings, adjourn any meeting when the DFO determines adjournment to be in the public interest, and chair meetings when directed to do so by the official to whom the advisory committee reports.

**9. Estimated Number and Frequency of Meetings.** Provide the estimated number of meetings anticipated within a fiscal year and, if known, how frequently (e.g., “approximately every four months”) the meetings will occur.

**10. Duration.** State the period of time anticipated to be necessary for the advisory committee to carry out its purposes. For a committee that will exist for a longer period, “continuing” is appropriate.

**11. Termination.** Provide the committee’s termination date, if less than two years from the date of the committee’s establishment.

- \* **12. Membership and Designation.** Provide the estimated number of members, a description of the expertise required, and/or groups to be represented in order to achieve a fairly balanced membership and whether the committee will be composed of Special Government Employees (SGEs), Representative members, Regular Government Employees (RGE), or members from several categories.

- \* **13. Subcommittees.** Provide a statement as to whom (the agency) has the authority to create subcommittees and states that

subcommittees must report back to the parent committee, and must not provide advice or work products directly to the agency.

- \* **14. Recordkeeping.** State that the records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with General Records Schedule 26, Item 2 or other approved agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.

**15. Filing Date.** This is the date that the charter is filed with Congress. See Charter filing Requirements section for more information.

## Public Notification Requirements:

A notice to the public in the Federal Register is required when a discretionary advisory committee is established, renewed, or reestablished. Upon receiving notice from the Secretariat that its review is complete, the agency must publish a notice in the Federal Register announcing that the advisory committee is being established, renewed, or reestablished. For the establishment of a new advisory committee, the notice also must describe the nature and purpose of the advisory committee and affirm that the advisory committee is necessary and in the public interest.

Notices of establishment and reestablishment of advisory committees must appear at least 15 calendar days before the charter is filed, except that the Secretariat may approve less than 15 calendar days when requested by the agency for good cause. This requirement for advanced notice does not apply to advisory committee renewals, notices of which may be published concurrently with the filing of the charter.

## Charter Filing Requirements:

No advisory committee may meet or take any action until a charter has been filed by the CMO or by another agency official designated by the agency head to act on the behalf of the CMO.

To establish, renew, or reestablish a discretionary advisory committee, a charter must be filed with: the agency head; the standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency, the date of filing with which constitutes the official date of establishment for the advisory committee; the Library of Congress, Federal Advisory Committee Desk, Government Documents Section, 101 Independence Avenue, SE Washington, DC 20540-4174; and the Secretariat, by adding the chartered date to the Shared Management System (SMS). Charter filing requirements for non-discretionary advisory committees are the same as those outlined above, except the date of establishment for a Presidential advisory committee is the date the charter is filed with the Secretariat.

## FACA WEB References:

The Federal Advisory Committee Act (FACA) – <http://0225.0145.01.040/oip/facastat.pdf>

FACA Implementing Regulations (41 CFR 101-6 and 102-3) – [http://www.gsa.gov/gsa/cm\\_attachments/GSA\\_DOCUMENT/FACAFinalRule\\_R2E-cNZ\\_0Z5RDZ-i34K-pR.pdf](http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/FACAFinalRule_R2E-cNZ_0Z5RDZ-i34K-pR.pdf)

Committee Management Secretariat Website - <http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=8203&channelPage=/ep/channel/gsaOverview.jsp&channelId=-13170>

The GSA FACA Database - <http://www.fido.gov/facadatabase/>

*Committee Management Secretariat  
Office of Policy Initiatives  
September 19, 2008 (DRAFT)  
Rev. March 25, 2010*

# **Building a Team Oriented Conflict Management System for Advisory Committee Members**

Robert Flaak, GSA  
John Szabo, NRC  
Vince Salamone, OGE

**What is FACA?**

**Who manages the use of  
Federal Advisory  
Committees?**

# What is the Federal Advisory Committee Act (FACA)?

- **Federal Advisory Committee Act (FACA)**
  - Enacted in 1972; P.L. 92-463 Signed Oct 6, 1972
  - 5 U.S.C. App – Applies to the Executive Branch Only
  - Provides objective and accessible advice
  - Formalizes process for establishing, operating, overseeing & terminating Federal advisory committees
  - Created the Committee Management Secretariat
  - Requires that Federal advisory committees advise and recommend, not decide or implement
- Regulations for implementing FACA first published in 1989; updated by GSA in 2001 at 41 CFR Parts 101-6 and 102-3.

# Committee Management Secretariat

- **Sec. 7 (a) of FACA -- The [OMB] Director shall establish and maintain within the Office of Management and Budget a Committee Management Secretariat, which shall be responsible for all matters relating to advisory Committees.**
- **In 1976 Executive Order 12024 delegated all responsibilities of the President for implementing FACA to the GSA Administrator. The Administrator delegated responsibility for these activities to the GSA Committee Management Secretariat.**
- **Under section 7 of FACA, GSA:**
  - **Prepares regulations to implement FACA**
  - **Issues administrative guidelines and management controls**
  - **Assists other agencies in implementing and interpreting the Act**

# FACA Footprint (FY2007-2010)

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
<b>Total Committees (incl. PACs)</b>	924	922	953	1,046
<b>Total Meetings</b>	6,942	6,701	7,222	7,254
<b>Total Members</b>	65,121	63,813	81,940	74,321
<b>Total Costs</b>	\$350M	\$344M	\$361M	\$387M
<b>Federal Staff Compensation</b>	\$160M	\$166M	\$172M	\$181M
<b>Non-Federal Compensation</b>	\$52M	\$52M	\$58M	\$59M
<b>Travel &amp; per Diem</b>	\$59M	\$58M	\$60M	\$71M
<b>Misc. Costs</b>	\$79M	\$68M	\$71M	\$76M
<b>Federal Staff Support (in FTE)</b>	1,572	1,517	1,537	1,570

# Key Agency FACA Players

- **Committee Management Officer (CMO)**: Section 8(b) of FACA requires Agency heads to designate a CMO, who is responsible for exercising control and supervision over that agency's committee management program. [Also see: 41 CFR Sections 102-3.105 (c) and 3.115]
- **Designated Federal Officer (DFO)**: Required by section 10(e) and (f) of FACA. Effectively the liaison between the agency and Federal advisory committee responsible for day-to-day advisory committee management and operations, the DFO must approve all meetings and agendas and attend each committee meeting. [41 CFR Section 102-3.120]
- Agency Program Officials, FACA Attorneys, Ethics Officials, travel/personnel/records staff, public affairs office, FOIA points of contact, and others.

# Establishment Authorities

Type	Authority	Discretionary (Y/N)
Required by Statute	Congress established by law, or directs agency or President to establish	Non-Discretionary
Presidential Authority	By Executive Order or other Presidential directive	Non-Discretionary
Authorized by Statute	Congress authorizes, but does not direct agency or President to establish	Discretionary <b>(Ceiling on such committees) – E.O. 12838</b>
Agency Authority	Under general agency authority in 5 U.S. C.	Discretionary <b>(Same)</b>

# Establishing a Federal Advisory Committee

- **Advisory Committees are Formally Chartered**
- **GSA Consultation Process**
- **Depends on Establishment Authority**
- **Charter Requirements**
- **Ensuring Independence**
- **Advisory Committees are Advisory Only**
- **What is the Balance Plan?**
- **Membership Requirements and Transparency**

# FACA Committee Lifecycle

## Committee vs. Membership Lifecycle

- Committee: Need; Authority; Chartering; Consultation, Approval and Filing. Establishment; Renewal; and Termination
- Membership: Authority; Balance; Designation; Selection Process; Ethics Forms; Appointment; Training; Updates; Reappointment (or not)

# DFO Duties & Responsibilities

- Oversight of FACA and the committee
- Calls committee meetings; approves agenda
- May chair meetings [cf. § 102-3.105(g)]; must be present
- Is the Government representative
- Maintains records on costs and membership
- Maintains committee records for the public
- May adjourn meeting when in public interest
- Must be either a full-time or permanent part-time Federal employee [see § 102-3.120]

# Case Study

- **Name:** Agency for Renewable Energy Sources
- **Mission:** Promote and help expand the use of renewable energy resources
- **Advisory Committees:**
  - Renewable Energy Advisory Panel (REAP)
  - Advisory Committee for Compliance with Energy Efficiency Standards (ACCEES)

# ARES

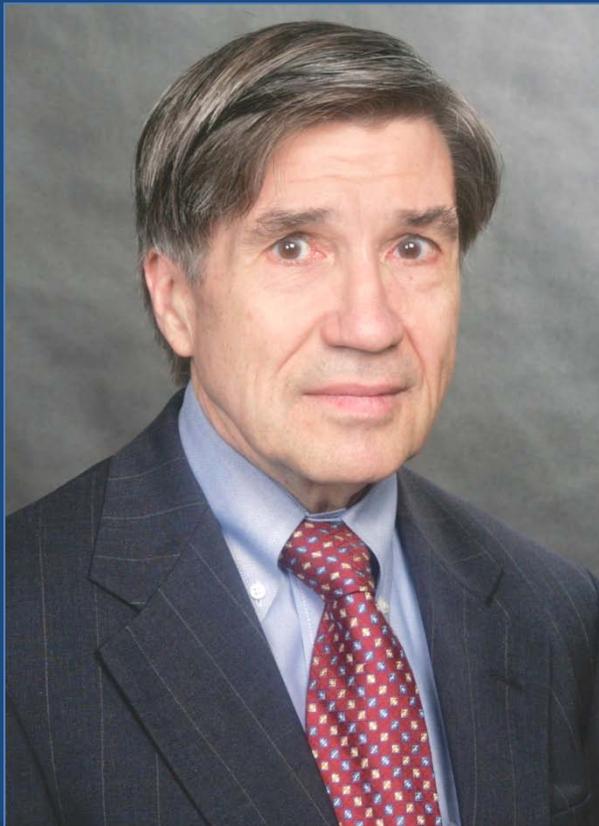
*Tomorrow's Energy Today*



# **Ethics Issues in Forming the Advisory Committee**

# Possible Members

**Johnny Solaris**



**Robert Wendmills**



# Committee Members

<b>Johnny Solaris</b>	<b>Robert Wendmills</b>
Will be paid for services to the committee	Will be paid for travel expenses only
Has knowledge and expertise about energy exploration, development, and distribution	Has knowledge about how to finance new energy development projects and companies
His name was put on the list of prospective candidates by committee staff	Several recommendations were received from energy groups supporting Bob's nomination
Professor at Univ. of Southern California, founder and board member of the Energy for Tomorrow Institute	Has private sector consulting business and owns stock in several venture capital companies
Great speaker; May be asked to represent agency at U.N. on "Global Energy Needs II Session"	Has served as a spokesperson for "clean" energy groups at energy forums held nationwide

# Designation Calls: Enabling Authority

- Legislation/Statute
- Presidential Executive Order; or
- Agency Authority or some other enabling documents



Source: 82 x 22, 05 x 4

# What does the FACA rule say about member designations?

- **41 C.F.R. 102-3.105** – Agency ensures that committee members are reviewed for conformance with ethics rules.
- **Appendix A to Subpart C of Part 102-3, Section IV, at 41 C.F.R. Part 102-3** – DAEO should be consulted prior to appointing members

# Ethics Official Duties

- Ensure proper designation of a person's status (including that of a member) for ethics purposes
- Have effective system for collecting, filing, and reviewing financial disclosure reports
- Provide ethics training and counseling, etc.
- Source: 5 C.F.R. 2638.203; Program Review Guidelines, section D, items #2 & #4

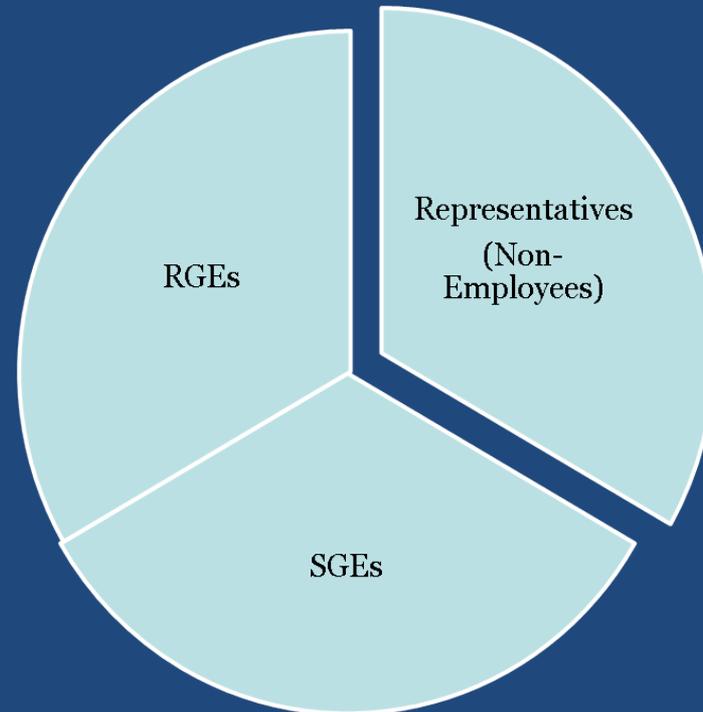
# Designation Guidance

- Presidential Memorandum, (February 9, 1962)
- Presidential Memorandum (May 2, 1963)
- Executive Order 11222 (May 8, 1965)
- Federal Personnel Manual (FPM)
- OLC Opinions and OGE Opinions



# Member Status

- Regular Government Employees
- Special Government Employees
- Representatives (Non-Employees)



# Who is a Special Government Employee?

- An officer or **employee** of the executive or legislative branch of the U.S. Government
- Retained, designated, appointed, or employed to perform, **with or without compensation**,
- **Temporary duties**, either on a full-time or intermittent basis,
- For not more than **130 days** during any period of 365 consecutive days.
- Source: Title 18, United States Code, Section 202.

# Special Government Employees

- Created to apply a **limited set of conflict of interest rules** to a group of individuals providing important, but limited services, to the Government.
- SGEs are expected to provide their own **“independent judgment”** or “individual best judgment.”
- Source: 82 x 22, 00 x 1, & 05 x 4

# Representatives

A representative is **not** an employee and is therefore not subject to Federal ethics rules.

- “**represent specific interest groups**” e.g., industry, consumers, labor, etc., and typically serve on advisory bodies
- “represent a **particular bias**”
- Source: 93 x 14 ; 00 x 1

# Role of “Balance”

FACA Sec. 5(b)(2); 41 CFR 102-3.30(c) & 3.60(b)(3) : Advisory committee memberships are to be **fairly balanced** in terms of **points of view** represented and the functions to be performed.

# Representatives



# Designation Factors (82 x 22)

- Compensation
- Use of recommendations of outside groups or organizations
- Authority to bind (or otherwise act as a spokesperson for outside entities)
- Spokesperson for the U. S. or a Government agency on committee matters

# Committee Members

<b>Johnny Solaris</b>	<b>Robert Wendmills</b>
Will be paid for services to the committee	Will be paid for travel expenses only
Has knowledge and expertise about energy exploration, development, and distribution	Has knowledge about how to finance new energy development projects and companies
His name was put on the list of prospective candidates by committee staff	Several recommendations were received from energy groups supporting Bob's nomination
Professor at Univ. of Southern California, founder and board member of the Energy for Tomorrow Institute	Has private sector consulting business and owns stock in several venture capital companies
Great speaker; May be asked to represent agency at U.N. on "Global Energy Needs II Session"	Has served as a spokesperson for "clean" energy groups at energy forums held nationwide

# Renewable Energy Advisory Panel

1. Statute requires the Director of ARES to create the advisory committee.
2. Statute “says that each member is asked to serve, as an individual, to exercise his or her best judgment in the best interests of the national renewable energy program and not to represent any special or parochial interests.”

# Advisory Committee for Compliance with Energy Efficiency Standards

1. Statute provides authorization to pay the travel of committee members but omits authorization for compensating them
2. Statute requires Secretary to ensure that the committee is reasonably representative of the energy industry, and users affected, including residential, commercial, and industrial users, selected after consultation with respective national associations.

# Common Designation Missteps

- Concluding that the **sole use of the term “representative”** (or some form of it) automatically ends the status inquiry
- Assuming that the agency’s **use of outside recommendations** in the selection process alone is sufficient to determine a member’s status
- Using representative appointments when members are **providing SGE-type services**

# Some Best Practices

- If members are serving as representatives, ensure they are informed of the group they are expected to represent on the committee
- If members serving as SGEs, make sure that members know their status when appointed

# DAEOgram Guidance



-- 2000 (SGEs)

-- 2003 (Financial Disclosure)

-- 2004 (Best Practices)

-- 2005 (Appointments)

-- 2007 (Counting of Days)

# **Managing Your Members' Conflicts of interest**

# **Case Study**

**New Facts**

# Financial Disclosure Requirements

- Public report (SF 278): Serve more than 60 days a year and paid at least 120% of GS-15 minimum basic rate
- Confidential report (OGE 450): For all other SGEs

# Part I: Assets and Income

## Continuation Page

<p>Specific stock, bond, sector mutual fund, type/location of real estate, etc. (Indicate the full name of each specific asset or investment. You may add the ticker symbol to the full name.)</p> <p>Name of Employer or Business; Source of Fees, Commissions, or Honoraria (Include brief description.)</p> <p>You may distinguish any entry for a family member by preceding it with S for spouse, DC for dependent child, or J for jointly held.</p>	<p>No longer held</p>
<p><sup>1</sup> University of Southern California (USC) - salary</p>	<input type="checkbox"/>
<p><sup>2</sup> (S) Americans for Energy Independence (AEI) - salary</p>	<input type="checkbox"/>
<p><sup>3</sup> Vanguard Energy Investment Fund - mutual fund</p>	<input type="checkbox"/>
<p><sup>4</sup> Wind Works Power Corp. - stock</p>	<input type="checkbox"/>
<p><sup>5</sup> Constellation Energy Corp. - consultant fees</p>	<input checked="" type="checkbox"/>
<p><sup>6</sup> Google - stock</p>	<input type="checkbox"/>
<p><sup>7</sup> IRA: General Electric, CocaCola, Citigroup, 3M - stocks</p>	<input type="checkbox"/>
<p><sup>8</sup> (S) 401k: TRowe Price Telecommunications Fund</p>	<input type="checkbox"/>
<p><sup>9</sup> Sierra Club - honorarium (magazine article)</p>	<input type="checkbox"/>

### Part III: Outside Positions

#### Report for Yourself:

- All positions outside the U.S. Government held at any time during the reporting period, whether or not you were compensated and whether or not you currently hold that position. Positions include an officer, director, employee, trustee, general partner, proprietor, representative, executor, or consultant of any of the following:
  - Corporation, partnership, trust, or other business entity
  - Non-profit or volunteer organization
  - Educational institution

#### Do Not Report:

- Any position with a
  - Religious entity
  - Social entity
  - Fraternal entity
  - Political entity
- Any position held by your spouse or dependent child
- Any position that you hold as part of your official duties

**Reportable Information** – Go to the last page to see examples of how to report outside positions

Organization <i>(include city and state where organization is located)</i>	Type of organization	Position	No longer held
<sup>1</sup> University of Southern California (USC)	university	professor	<input type="checkbox"/>
<sup>2</sup> Energy for Tomorrow Institute	non-profit organization	board member	<input type="checkbox"/>
<sup>3</sup> American Cancer Society	non-profit organization	vice-president	<input type="checkbox"/>
<sup>4</sup> Constellation Energy Corporation	energy company	consultant	<input checked="" type="checkbox"/>
<sup>5</sup>			<input type="checkbox"/>
<sup>6</sup>			

# JOHNNY SOLARIS – OGE 450

## Part I - Assets and Income

- University of Southern California – salary
- (S) Americans for Energy Independence (AEI) – salary
- Vanguard Energy Investment Fund – mutual fund
- Wind Works Power Corporation – stock
- Constellation Energy Corp. – consultant fees (no longer)
- Google – stock
- IRA: GE, Coca Cola, 3M – stock
- (S) 401k: TRowe Price Telecomm Fund – mutual fund
- Sierra Club – fee for one magazine article

# JOHNNY SOLARIS – OGE 450

## Part III – Outside Positions

- University of Southern California (USC) – professor
- Energy for Tomorrow Institute – board member
- American Cancer Society – vice pres., California Chapter
- Constellation Energy Corp. – consultant fees (no longer held)

# Financial Disclosure Best Practices

- Receive and review all reports within required time
- Obtain membership lists from all DFOs
- Receive updates of any changes in membership
- Send advisory memos on conflict issues on reports
- Inform members where where to get assistance on completing the report
- Follow-up on any ethics issues found on the report
- Advise members to inform DFO of any changes of their assets or positions

# Ethics Rules for Advisory Committee Members (SGE)

## Major Ethics Laws and Regulations

- Criminal statutes (18 USC 201-209)
- Standards of Conduct (5 CFR 2635)
- Financial disclosure (5 CFR 2634)
- Ethics training (5 CFR 2638)
- Others, e.g., Emoluments Clause, Foreign Gifts Act, Foreign Agents Act, Hatch Act

# **Criminal Conflict Law Restrictions**

## **(18 U.S.C. 201, 203, 205, 209)**

- **Prohibited from seeking, accepting, or agreeing to receive anything of value in return for being influenced in the performance of official acts (18 USC 201)**
- **Prohibited from representing--or receiving compensation for representing--a private party before any Federal agency or court on particular matters involving parties in which they personally and substantially participated (Special waiver for grants and contracts)**
  - **(If served more than 60 days, bar extends to such matters pending in agency served) (18 USC 203, 205))**
- **Exempt from prohibition on receiving salary or supplementation of salary for Government services (18 USC 209)**

# Other Statutory Restrictions

- No compensation from foreign governments for services, unless committee only provides advice (Emoluments Clause)
- No gifts from foreign governments over \$350 (Foreign Gifts and Decorations Act)
- No service as agent or lobbying for foreign principals (Foreign Agents Act)
- No partisan political activity while on duty or on Federal property (Hatch Act)

# Conflict of Interest Restriction (18 USC 208(a))

- Prohibited from participating personally and substantially in particular matters that affect personal financial interests or interests of spouse, minor children, and business associates (such as outside employers) or others with whom they are negotiating for employment
- Members who are SGEs not eligible for Certificate of Divestiture

# Individual Written Waivers (18 USC 208(b)(1), (3))

- **For All SGEs:** From appointing official certifying that financial interest is not so substantial as to be deemed likely to affect the integrity of their services (208(b)(1))
- **Only For Advisory Committee SGEs:** From appointing official certifying that need for their services outweighs potential for conflict of interest from financial interest (208(b)(3))
- **Consultation with OGE before granting a waiver, when practicable**

# Regulatory Exemptions

(18 USC 208(b)(2), 5 CFR 2640)

Includes the following—

- Securities: Minimal interest (\$15,000/\$50,000)
- Holdings of diversified mutual funds
- Particular matters affecting campus of multi-campus educational institution, medical products, and certain FDA committees
- General particular matters affecting non-Federal current or prospective employers (only FACA committee members)

# Standards of Conduct Restrictions

## (5 CFR Part 2635)

- No gifts from prohibited sources or because of Government service. Permits gifts for outside business or employment
- No unauthorized use of title or position for private gain
- No unauthorized disclosure of nonpublic information
- No misuse of Government property
- No honorary degrees from prohibited sources without DAEO approval
- No fundraising from persons whose interests they can substantially affect in official duties

# Other Conduct Restrictions

- No compensation for outside teaching, speaking, or writing relating to official duties, with limited application to SGEs (5 CFR 2635.807)
  - No restriction on teaching regular courses
- No expert witness (except for US) before Federal court or agency if US is party or has a direct and substantial interest if officially participated in same proceeding or matter that is subject of proceeding, unless DAEO authorizes
  - If serve more than 60 days, no expert witness if employing agency is party or has an interest, unless DAEO authorizes (5 CFR 2635.805)

# Impartiality Restriction

## (5 CFR 2635.502)

- No participation in particular matters involving parties affecting financial interest of person with a covered relationship
- “Covered relationship” includes members of household, relatives, business relations, former employer during previous year, and organizations in which there is active participation
- Agency Authorization may allow participation

# Conflict of Interest Remedies

- **Recusal**
- **Divestiture**
- **Waiver**
- **Exemptions**

# BEST PRACTICES

- Discuss options with member and DFO
- Consult OGE before issuing 208(b) waivers
- Document divestitures and waivers
- Provide waiver to committee chair, DFO, and relevant staff

# JOHNNY SOLARIS – OGE 450 RESOLUTION OF CONFLICTS

- University of Southern California – 5 CFR 2640.203(g) exemption
- Americans for Energy Independence – 5 CFR 2635.502 disqualification
- Vanguard Energy Fund – de minimis investment
- Wind Works Power Corp. – de minimis investment
- Constellation Energy Corp. – 502 disqualification
- IRA: GE – de minimis investment
- Sierra Club – 502 disqualification
- Energy for Tomorrow Institute – 18 USC 208(b)(3) waiver

# Consulting and Training

- Required to receive initial and annual training
- Training can be written materials

## **BEST PRACTICES**

- Provide annual ethics training at committee meetings (meeting can be closed under Sunshine Act exemptions)
- Include representatives in all training sessions
- Review disclosure report before appointment and inform new members of major ethics rules
- Encourage members to seek advice on ethics from counselors, providing their names and contact address
- If applicable, only sign appointment documents after review of financial disclosure report
- Provide members access to agency ethics website

# **Termination of Membership & Other Ethics Matters**

# Post-Employment

Prohibited for life from representing non-Federal parties to Government on particular matters involving parties in which they knowingly participated personally and substantially while serving the Government (18 U.S.C. 207)

## BEST PRACTICES

- Provide terminating members with post-employment law and materials
- Personally explain major restrictions before termination
- Recommend their contacting ethics counselors on any post-employment legal questions, even after termination
- Post names and addresses of ethics counselors on public website

# FACA Subcommittees

- Subcommittees:
  - perform work on behalf of the Chartered or Parent committee.
  - collect data, evaluate information, draft positions, suggest recommendations, do site visits
- What is the relationship between the Subcommittee and its Parent? The Agency?
- How are Subcommittees Established?
- How are Subcommittee members chosen?
- How does FACA Apply to Subcommittees?

# Increased Oversight

- Reports (GAO)
- Expanded Program Review Guidelines (OGE)
- FACA Database Requirements (GSA)
- Proposed FACA Amendments Legislation (Congress)
- Membership Restrictions (White House)



# To Serve With Honor

A Guide on the Ethics Rules  
That Apply to Advisory Committee  
Members Serving as Special  
Government Employees



U.S. Office of Government Ethics  
[www.usoge.gov](http://www.usoge.gov)  
March 2008

## SGE Game Plan for Peak Ethical Performance

- 1 Don't ever begin your committee work until you know what your role or status is on a committee.
- 2 Always get an "ethics checkup" before you begin your committee work.
- 3 Don't work on a committee matter that will affect your financial interests, unless some exception allows you to do so.
- 4 Always check with an ethics official if you have any concerns about an appearance of a conflict of interest.
- 5 Improve "your game" by becoming more familiar with Government ethics rules, especially those that are found in the Standards of Conduct and in the Conflict of Interest laws.
- 6 Talk to your agency ethics official if you anticipate doing some teaching, speaking, or writing as an outside activity for compensation or engaging in representational activity before the Government.
- 7 Understand the post-employment rules either before or after your advisory committee service ends.
- 8 Remember that learning more about the Government's ethics rules will help ensure that you serve your committee honorably.



The End!

## REQUEST FOR APPROVAL OF OUTSIDE ACTIVITY

### Part I - EMPLOYEE INFORMATION

<b>1. EMPLOYEE'S NAME (Last, First, MI)</b>		
Fenty, Robyn R.		
<b>2. AGENCY/PROGRAM (Address)</b>		<b>3. TELEPHONE &amp; E-MAIL</b>
321 A Street, NW Washington, DC 20005		Phone: 202-555-5556 E-Mail: rfenty@agency.gov
<b>4. TITLE OF POSITION</b>	<b>5. GRADE/STEP</b>	<b>6. SALARY</b>
Deputy Director of Public Affairs	GS-15	\$ 123,758
<b>7. FINANCIAL DISCLOSURE FILING STATUS</b>	<input type="checkbox"/> Public (SF 278) <input checked="" type="checkbox"/> Confidential (OGE 450 or other)	
<b>8. NAME OF IMMEDIATE SUPERVISOR</b>	<b>9. SUPERVISOR'S TELEPHONE, &amp; E-MAIL</b>	
J.Z. Rocnaton	Phone: 202-555-5554 E-Mail: jzroc@agency.gov	

**Part II - OUTSIDE ACTIVITY INFORMATION**

**i. Nature of Outside Activity** : Indicate the type of activity for which you request prior approval, and describe the specific duties or services to be performed:

- a.  **Teaching, Speaking, Writing or Editing\*** (See note in section b below)  **Board Service**  
 **Professional or Consultative Activity** (Complete section c below)  **Expert Witness**  
 **Other (explain):**

I have been asked by the American Society of Public Affairs Officers to serve as its Vice President beginning January 1, 2012.

**b. Describe in detail specific duties or services to be performed:**

I have been invited to give a panel presentation at the American Society of Public Affairs Officers' annual conference, October 18-20, 2011. I've been asked to speak on the pros and cons of using social media as a tool in public affairs.

\*For activities involving teaching, speaking, or writing, provide a syllabus, outline, summary, synopsis, draft, or similar description of the content and subject matter involved in the course, speech, or written product (including, if available, a copy of the text of any speech)

**c. Professional or Consultative Activity:** Complete this section if you will provide personal services directly to multiple clients, customers, or others.

**1. Type of Activity/Business:**

**2. Will you be self-employed/sole proprietor?**  Yes  No

**3. Identify any partners or others with whom you will provide services:**

**4. Estimate the total number of clients, customers, or others, to whom you would provide services during the activity period:**

ii. **Outside Employer**

a. **Name and address of outside employer:**

American Society of Public Affairs Officers  
700, 9<sup>th</sup> Street, NW. Washington DC

b. **Nature of business:**

Professional association

c. **Contact person, phone number, and email:**

B. Knowles, 202.555.5555  
bknowles@aspao.org

iii. **Compensation and Related Expenses**

a. **Compensation**

1. **Will the activity be compensated?**

Yes

No

2. **Method or basis of compensation** (Check all that apply):

Fee

Honorarium

Retainer

Salary

Advance

Royalty

Stock

Stock  
Options

**Other** (Describe):

**Non-Travel Related Expenses** (Describe):

3. **Compensation amount** (Estimated):

4. **Is Payor the same source as the employer identified above?**

Yes

No (Explain):

**b. Travel and related expenses:** Indicate whether travel is involved, and if so, whether the related expenses will be at your own expense or provided by the outside employer either in-kind or through reimbursement.

**1. Will outside activity require travel?**

Yes (Check one):     At own expense     In-kind or reimbursed  
 No

**2. If employer is providing travel related benefits, please describe those benefits:**

The Society will pay for any travel and lodging expenses associated with attending its annual conference. It will also pay for similar expenses to attend quarterly Chapter events in various locations across the US.

**c. Time:** Provide details with respect to the duration of the activity.

**1. Duration of activity:** From:  To:

**2. Estimated time devoted to the proposed activity**  
(e.g. hours/day; days/week; weeks/year):

Regarding the Vice Presidency, approximately 17 days attending annual conference and chapter meetings. All other work will be performed outside of government duty hours. The annual conference is slated for October 18-20, 2011

**3. Will work be performed entirely outside of your normal tour of duty?**

Yes     No

**If "no," estimate number of hours/days absent:**

17 days. See above.

## Outside Activity Analysis Sheet

Name of Employee:                      Robyn Fenty  
Position:                                    Deputy Director, Public Affairs

Proposed Outside Activity:    Serve as Vice President for the American Society for Public Affairs Officers and speak at annual conference

I.      Ethics Review Conclusions

- Request may be approved
- Request may be approved subject to conditions noted in Comments section below
- Request must be denied for reasons noted in Comments section below

II.     Comments

### III. Legal Analysis

Applicable Authority	Analysis, Key Questions, Additional Information
<p>18 USC 203 Compensation for representational services before the US</p> <p> 203 likely an issue</p> <p> 203 is a risk</p> <p> 203 not likely an issue</p>	
<p>18 USC 205 Representation on behalf of 3<sup>rd</sup> party before US</p> <p> 205 likely an issue</p> <p> 205 is a risk</p> <p> 205 not likely an issue</p>	
<p>18 USC 208 Conflicting Financial Interest</p> <p> 208 likely an issue</p> <p> 208 is a risk</p> <p> 208 not likely an issue</p>	

Applicable Authority	Analysis, Key Questions, Additional Information
<p>18 USC 209 Supplementation of Salary</p> <p> 209 likely an issue</p> <p> 209 is a risk</p> <p> 209 not likely an issue</p>	
<p>5 CFR 2635.201-205 Gifts from Outside Sources</p> <p> Gifts likely an issue</p> <p> Gifts are a risk</p> <p> Gifts not likely an issue</p>	
<p>5 CFR 2635.502 Impartiality</p> <p> .502 likely an issue</p> <p> .502 is a risk</p> <p> .502 not likely an issue</p>	

Applicable Authority	Analysis, Key Questions, Additional Information
<p>5 CFR 2635.702-705 Misuse of Position</p> <p> .702 likely an issue</p> <p> .702 is a risk</p> <p> .702 not likely an issue</p>	
<p>5 CFR 2635.802 Conflicting Outside Employment and Activities</p>	<p>If 208 and/or .502 analyses result in  then .802 should be considered.</p>
<p>5 CFR 2635.805 Service as an Expert Witness</p>	<p>Not applicable</p>
<p>5 CFR 2635.807 Teaching, Speaking and Writing</p> <p> .807 likely an issue</p> <p> .807 is a risk</p> <p> .807 not likely an issue</p>	

Applicable Authority	Analysis, Key Questions, Additional Information
<p data-bbox="237 310 581 386">5 CFR 2635.808 Fundraising Activities</p> <p data-bbox="237 457 537 541"> .808 likely an issue</p> <p data-bbox="237 569 480 638"> .808 is a risk</p> <p data-bbox="237 667 558 737"> .808 not likely an issue</p>	

## Table of Applicable Authorities for Outside Activities Analyses

Applicable Authority	Summary of Authority	Key Questions
<p>18 USC 203</p> <p><b>Bar on Receipt of Compensation for Representational Services</b></p> <p><b>Note-More limited restrictions apply to SGEs.</b></p>	<p>An employee may not receive compensation for the representation of anyone before any agency or court of the US (and certain other entities) on a matter in which the United States is a party or has a direct and substantial interest. This prohibition applies whether the employee renders the representation himself or shares in compensation from someone else's representation.</p>	<p>Will the activity be compensated?</p> <p>Will the compensation be in consideration for a representation before an agency or court of the US (or other specified entity)?</p> <p>Will the representation be in connection with a matter in which the US is a party or has a direct and substantial interest?</p> <p>Do any of the exceptions at (d)-(f) apply?</p>
<p>18 USC 205</p> <p><b>Bar on Representations Before the Government</b></p> <p><b>Note-More limited restrictions apply to SGEs.</b></p>	<p>An employee may not act as an agent or attorney for prosecuting any claim against the US nor may he receive any gratuity or share in consideration for his assistance in prosecuting such claim.</p> <p>An employee may not act as an agent or attorney or otherwise represent anyone before an agency or court of the US (and certain other entities), with or without compensation, on a matter in which the United States is a party or has a direct and substantial interest.</p>	<p>Will the activity involve a claim against the US?</p> <p>Will the activity be compensated?</p> <p>Will the activity involve the employee making a representation before an employee of a federal agency or court (or other specified entity)?</p> <p>Will the representational activity be on behalf of a third party?</p> <p>Will the representational activity be in connection with a matter in which the US is a party or in which it has a direct and substantial interest?</p> <p>Do any of the exceptions at (d)-(i) apply?</p>

<p>18 USC 208</p> <p><b>Bar on Acting in Matters Affecting a Financial Interest</b></p>	<p>An employee is prohibited from participating personally and substantially in a particular government matter if that matter will have a direct and predictable effect on the employee's own financial interest or on the interests of others that are imputed to him under the statute.</p>	<p>Will the federal employee be serving the outside entity as an:  officer  director  trustee  general partner, or  employee?</p> <p>Has the employee already negotiated for or does he have an arrangement for employment with the outside entity?</p> <p>Does the employee work on matters or is he likely to work on matters that could affect the interests of the outside entity?</p> <p>Does the employee work on matters that could affect his own financial interest in the outside activity (e.g. a consulting or other fee for service)?</p> <p>Does any exemption under 5 CFR part 2640 apply?</p>
<p>18 USC 209</p> <p><b>Bar on Receiving Salary or a Supplementation of Salary from Any Source but the Government</b></p> <p><b>*Note-This statute does NOT apply to SGEs.</b></p>	<p>An employee is prohibited from receiving any salary or contribution to or supplementation of salary from anyone but the Federal government as compensation for services as a government employee.</p>	<p>Is the outside activity compensated?</p> <p>Is it truly an "outside activity" and not an official duty activity?</p> <p>Does the outside activity involve services that are the same as the employee's official duties?</p> <p>Are there any "benefits" being offered in consideration for services?</p> <p>Are those benefits "customary" or are they specific to or contingent upon government service?</p> <p>Do any statutory "exceptions" apply?</p>

<p>5 CFR 2635.201-205</p> <p><b>Gifts from Outside Sources</b></p>	<p>An employee is prohibited from soliciting or accepting a gift from a prohibited source, or that is given because of his official position.</p>	<p>Is the item or benefit a gift?</p> <p>Is the outside entity a prohibited source?</p> <p>Is the gift a result of an outside business or employment activity of the employee?</p> <p>Is the gift being offered or enhanced because of the employee's official status?</p>
<p>5 CFR 2635.502</p> <p><b>Impartiality in Performing Official Duties</b></p>	<p>An employee should not participate in a particular matter involving specific parties in which he knows a person with whom he has a covered relationship is or represents a party if a reasonable person would question his impartiality.</p>	<p>Does the employee have a covered relationship with the outside entity?</p> <p>Does the outside entity appear before the agency?</p> <p>Does the employee work on, or is he likely to work on, government matters that involve the outside entity?</p>
<p>5 CFR 2635.702-705</p> <p><b>Misuse of Position</b></p>	<p>An employee shall not use his public office for his own private gain or for the private gain of others with whom he is affiliated in a nongovernmental capacity.</p> <p>An employee shall not use or permit the use of his position, title or authority to: induce or coerce a benefit; to imply that his agency or the government sanctions or endorses his personal activities; or to endorse any product, service or enterprise.</p> <p>An employee shall not misuse: nonpublic information; government property; or official time.</p>	<p>Is there any indication that the employee used his government position to obtain the outside position?</p> <p>How will the employee be identified in connection with the outside activity?</p> <p>Will the employee use any nonpublic information?</p> <p>Will any use of government time or government property be involved/permitted?</p>
<p>5 CFR 2635.802</p> <p><b>Conflicting Outside Employment and Activities</b></p>	<p>An employee shall not engage in outside employment or any outside activity if:</p> <p>It is prohibited by statute or regulation; or</p> <p>If it would require the employee's disqualification from matters so central or critical to the</p>	<p>Is the proposed employment or activity prohibited by agency statute or regulation?</p> <p>Would the outside activity create any disqualifications for the employee under the conflict of interest or impartiality provisions?</p>

	performance of his duties that it would materially impair his ability to perform his job.	How substantial are those disqualifications?
5 CFR 2635.805 <b>Service as an Expert Witness</b>  <b>*Note-More limited restrictions apply to SGEs.</b>	An employee shall not serve as an expert witness (other than on behalf of the US) with or without compensation, in any proceeding before a court or agency of the US, where the US is a party or has a direct and substantial interest unless authorized.	Does the outside activity involve the provision of services as an expert witness, as opposed to a fact witness?  Will the expert witness testimony be provided before a court or agency of the US?  Is the US a party or does it have a direct and substantial interest in the proceeding?  May authorization be given per 2635.805(c)?
5 CFR 2635.807 <b>Teaching, Speaking and Writing</b>	An employee shall not receive outside compensation for teaching, speaking or writing that relates to the employee's official duties per 2635.807(a)(2)(i).	Will employee receive "compensation" for the teaching, speaking or writing as defined in 2635.807(a)(2)(iii)?  Does the teaching, speaking or writing relate to the employee's duties as defined in 2635.807(a)(2)(i)?  For teaching ONLY, does the activity fall within the exception for certain courses at 2635.807(a)(3)?  How will the employee be identified in connection with the teaching, speaking or writing?
5 CFR 2635.808 <b>Fundraising Activities</b>	Any fundraising <b><u>in the federal workplace</u></b> must be conducted in accordance with 5 CFR Part 950 (the "CFC regulations.")  In addition:  An employee may engage in fundraising in his official capacity if he is authorized to do so according to his agency's	Will the employee be participating in an event where fundraising will take place?  Is the employee's participation in the activity official or personal?  What is the nature of the

	<p>authority to engage in such activity.</p> <p>An employee may engage in fundraising in his personal capacity provided he does NOT:</p> <p>Solicit funds from a subordinate or from anyone known to the employee to be a prohibited source; and</p> <p>Use or permit the use of his title, position or authority to further the fundraising effort.</p>	<p>employee's participation in the activity?</p> <p>Will the employee be engaging in fundraising on behalf of the outside entity?</p> <p>Is the outside entity a prohibited source?</p> <p>Who is being solicited in the fundraising activity?</p> <p>How will the employee be identified in connection with the fundraising activity?</p>
--	--	--

## Additional Restrictions for Presidential Appointees and Other Non-Career Employees

Applicable Authority	Summary of Authority	Key Questions
<p>5 CFR 2635.804</p> <p><b>Outside Earned Income Limitations</b></p> <p>See also 5 CFR 2636.301-304</p>	<p>A Presidential appointee to a full time non-career position shall not receive any outside earned income for any outside activity performed during that Presidential appointment.</p> <p>Covered non-career employees as defined in 2626.303(a) may not in any calendar year receive outside earned income attributable to that calendar year which exceeds 15 percent of the rate of basic pay for level II of the Executive Schedule.</p>	<p>Is the employee a Presidential appointee to a full time non-career position?</p> <p>Is the employee a covered non-career employee as defined in 2636.303(a)?</p> <p>Is the outside activity compensated?</p> <p>Is the compensation "outside earned income" as defined in 2626.303(b)?</p> <p>What is the amount of the expected "outside earned income?"</p>
<p>5 CFR 2636.305</p> <p><b>Compensation and Other Restrictions Relating to Professions Involving a Fiduciary Relationship</b></p>	<p>A covered non-career employee shall not:</p> <p>Receive compensation for practicing a profession involving a fiduciary relationship, or for affiliating with or being employed by an entity which provides professional services involving a fiduciary relationship.</p> <p>Permit his name to be used by any entity which provides professional services involving a fiduciary relationship.</p>	<p>Is the employee a covered non-career employee?</p> <p>Is the activity compensated?</p> <p>Does the activity involve the provision of professional services involving a fiduciary relationship, as defined in 2636.305(b), either as a sole practitioner or as an employee or affiliate of an entity that provides such services?</p> <p>Will the employee's name be used by the outside entity in connection with the provision of such services?</p>
<p>5 CFR 2636.306</p> <p><b>Compensation Restriction for Service as an Officer or Member of a Board</b></p>	<p>A covered non-career employee shall not receive compensation for serving as an officer or member of the board of any association, corporation or other entity.</p>	<p>Is the employee a covered non-career employee?</p> <p>Is the activity compensated?</p> <p>Does the activity involve service as an officer or member of the board of an outside entity?</p>
<p>5 CFR 2626.307</p> <p><b>Requirements for Advanced Authorization to Engage in Teaching for</b></p>	<p>A covered non-career employee may receive compensation for teaching only when specifically authorized in advance by the</p>	<p>Is the employee a covered non-career employee?</p> <p>Does the activity meet the definition of "teaching" per</p>

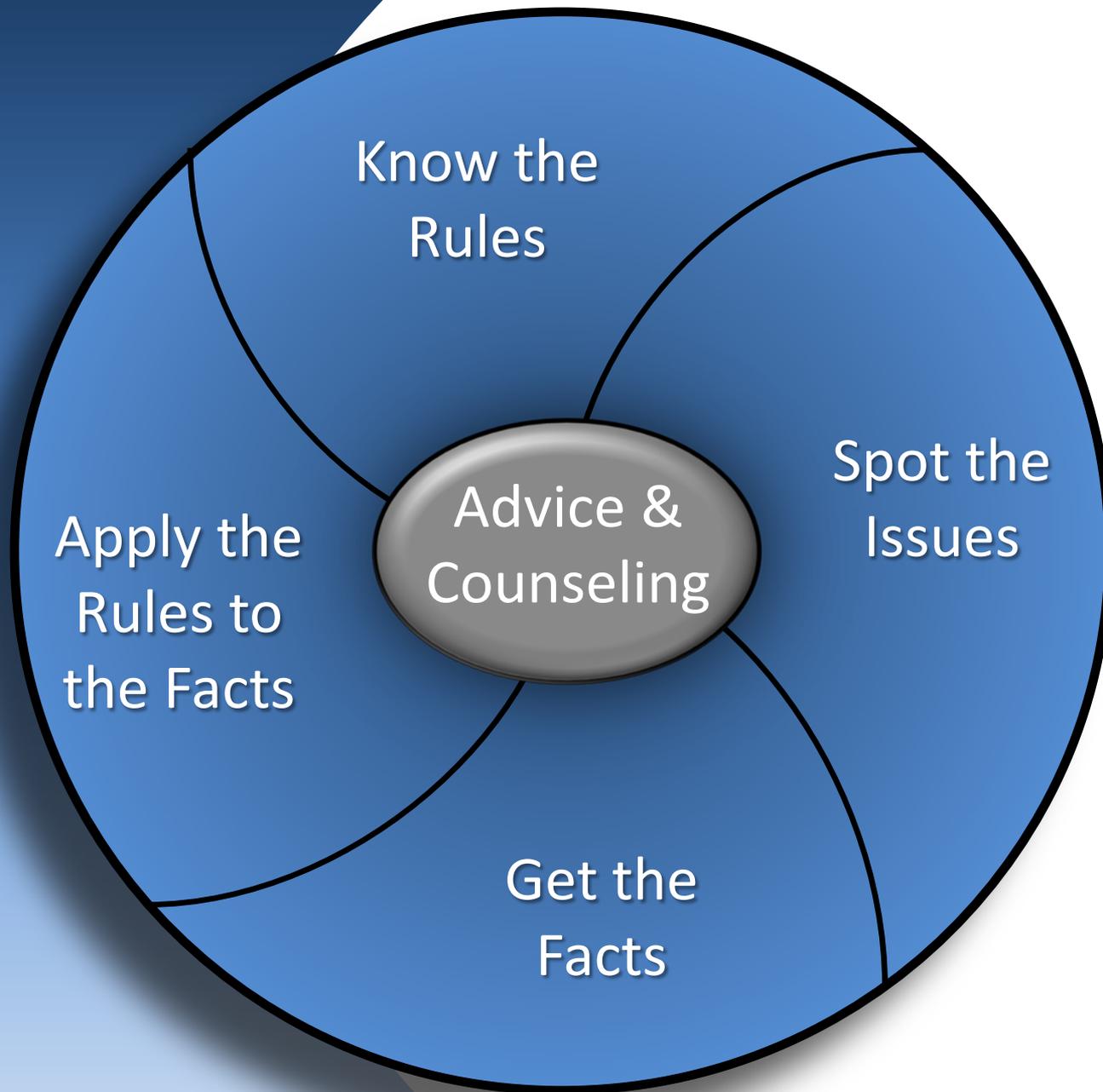
<b>Compensation</b>  <b>*Note-only the DAEO or ADAEO may authorize compensation under this part.</b>	designated agency ethics official.	2636.307(b)?  Will the activity be compensated? Does the teaching meet the standards for authorization?
--	------------------------------------	--

# Outside Activity Approval

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National Government Ethics  
Conference

September 13-15, 2011



Know the  
Rules

Spot the  
Issues

Advice &  
Counseling

Apply the  
Rules to  
the Facts

Get the  
Facts



## Table of Applicable Authorities for Outside Activities Analyses

Applicable Authority	Summary of Authority	Key Questions
<p data-bbox="382 968 571 1001">18 USC 203</p> <p data-bbox="382 1048 639 1186"><b>Bar on Receipt of Compensation for Representational Services</b></p> <p data-bbox="382 1233 678 1336"><b>Note-More limited restrictions apply to SGEs.</b></p>	<p data-bbox="755 968 1199 1428">An employee may not receive compensation for the representation of anyone before any agency or court of the US (and certain other entities) on a matter in which the United States is a party or has a direct and substantial interest. This prohibition applies whether the employee renders the representation himself or shares in compensation from someone else's representation.</p>	<p data-bbox="1222 968 1493 1043">Will the activity be compensated?</p> <p data-bbox="1222 1090 1605 1290">Will the compensation be in consideration for a representation before an agency or court of the US (or other specified entity)?</p> <p data-bbox="1222 1338 1599 1428">Will the representation be in connection with a matter in which the US is...</p>

### **635.803 Prior approval for outside employment and activities**

When required by agency supplemental regulation issued after February 3, 1993, an employee shall obtain prior approval before engaging in outside employment or activities. Where it is determined to be necessary or desirable for the purpose of administering its services program, an agency shall, by supplemental regulation, require employees or any category of employees to obtain prior approval before engaging in specific types of outside activities, including outside employment.

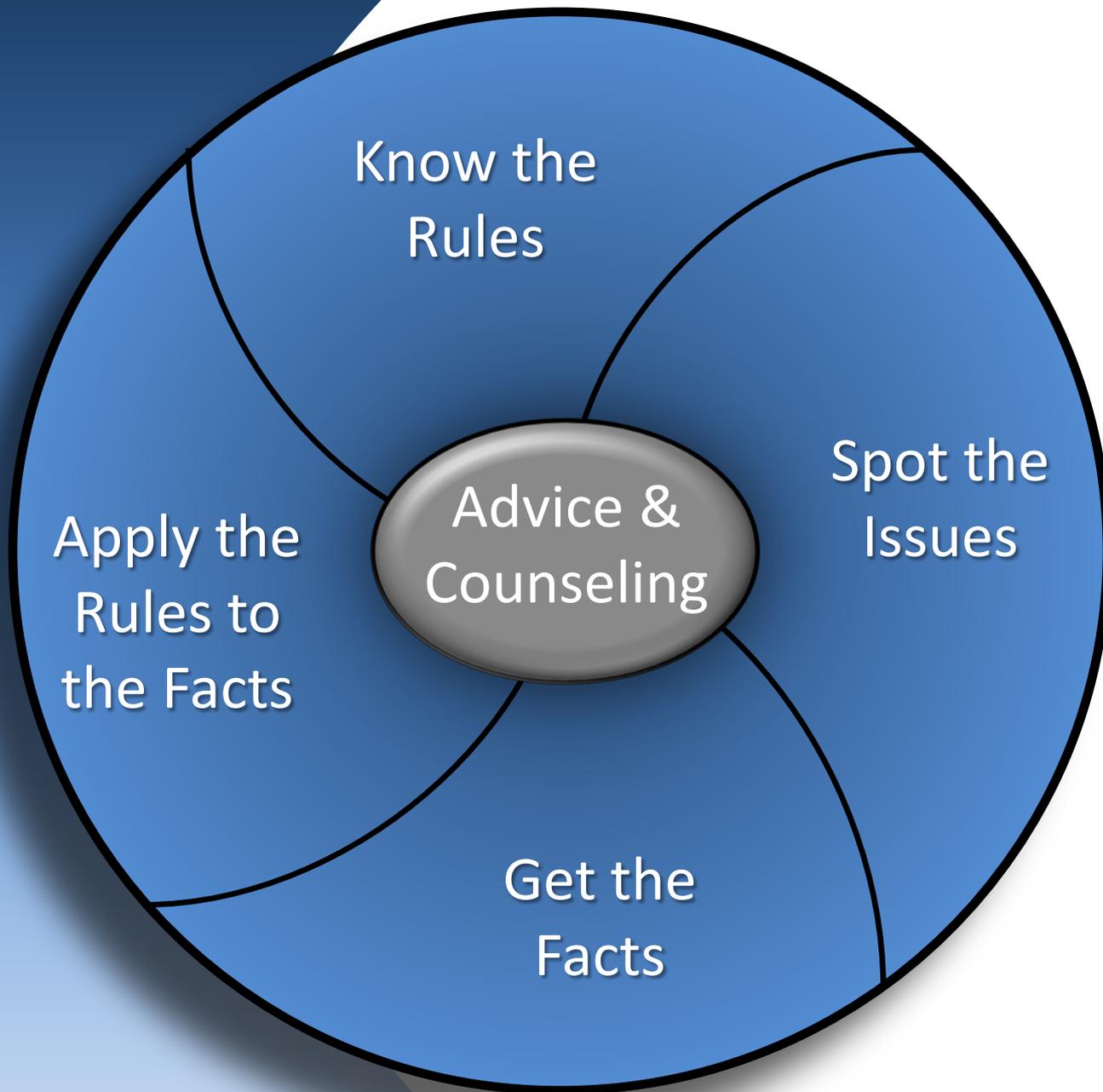


**REGULATION**

**Encourage contact with the ethics office**

**Provide advice & counsel as usual**

**Screen financial disclosures**



Know the  
Rules

Spot the  
Issues

Advice &  
Counseling

Get the  
Facts

Apply the  
Rules to  
the Facts

# Table Group Exercise

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## Analyzing Outside Activity Requests

Work in small groups to analyze a prior approval request for outside employment.

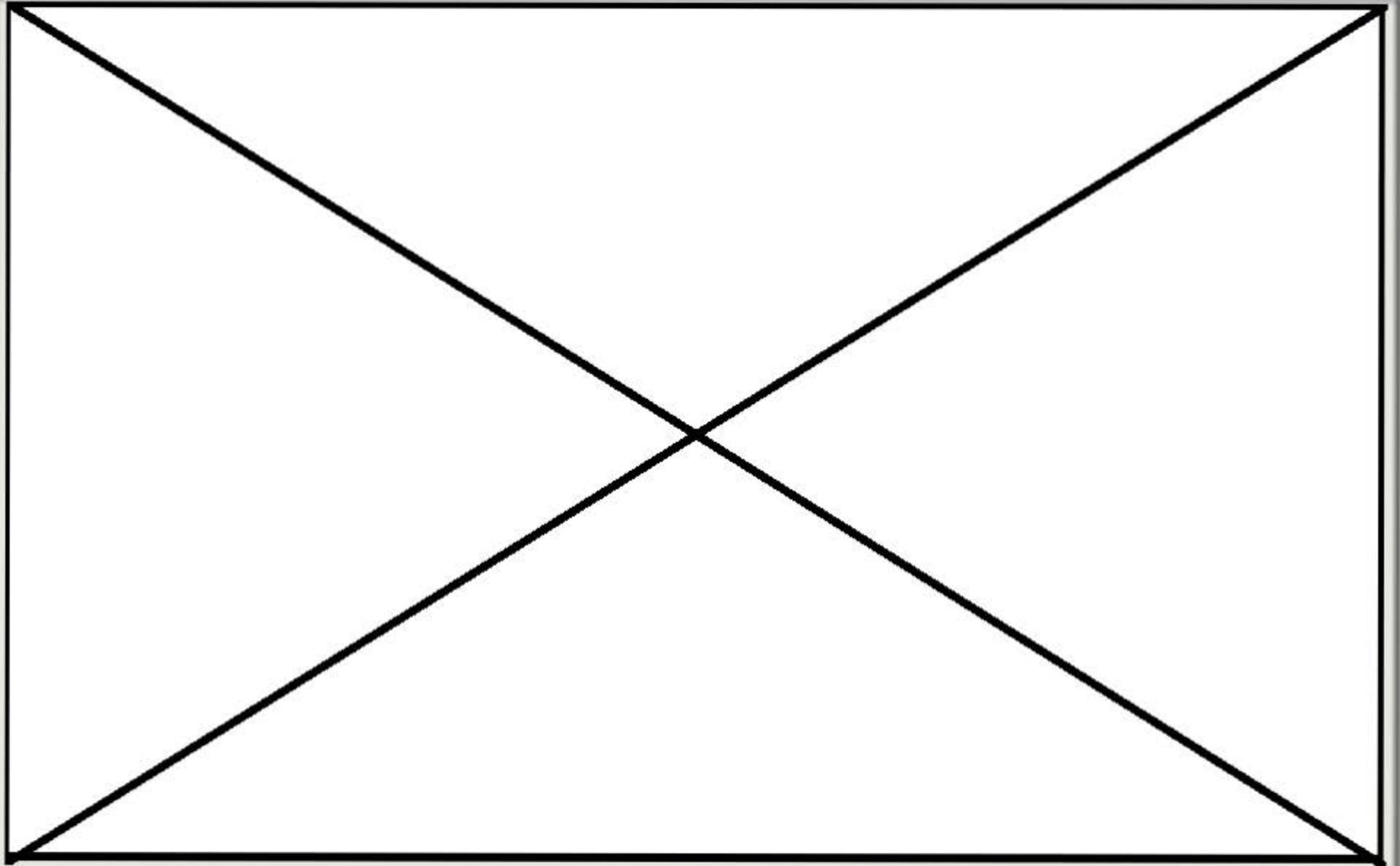
# How to Turn Ethics Training into Professional Development

And improve the stature of your agency, at the same time!



**Greg Weinman, United States Mint**

Is your Ethics training ... Boring

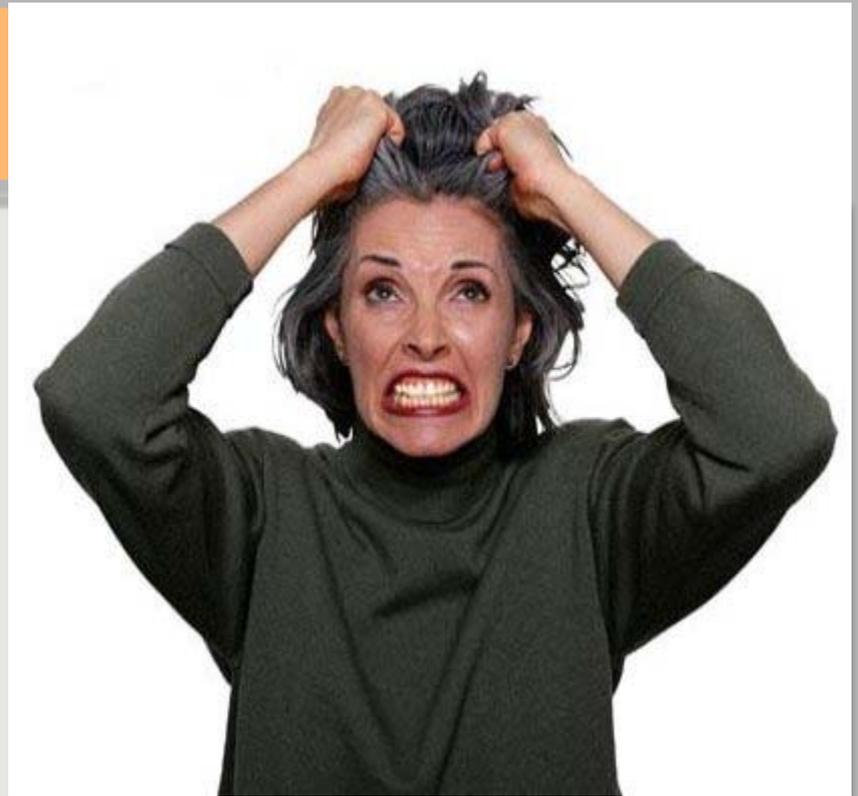


# The Challenge

## Introduction

Frustration

is a common theme



- **“I can’t get the employees to pay attention or take this seriously”**
- **“This stuff is just inherently dry and boring”**
- **“I see people checking their blackberries and having side conversations in the back of the room”**
- **“Can’t I just show a video in order to meet the requirement?”**

# The Challenge

## Introduction

Too many of us may not be looking at this from the best perspective



- Just because the regulations set out a minimum standard does mean this model is your best training plan
  - **United States Mint Ethics Program circa 1997 ...**

# The Challenge

## Introduction

**Education is not the  
filling of a pail**

**But rather  
the Lighting  
of a FIRE!**





# The Challenge

## Introduction

**We suggest stepping back a little from the regulatory requirement and think about ...**

- What is our REAL Objective in conducting ethics training
- What do we really want our employees to get out of this experience
- What can ethics training do for your program beyond merely meeting a regulatory requirement



# The Challenge

Some Real Objectives

Thoughts?

## The Next Hour or so ...

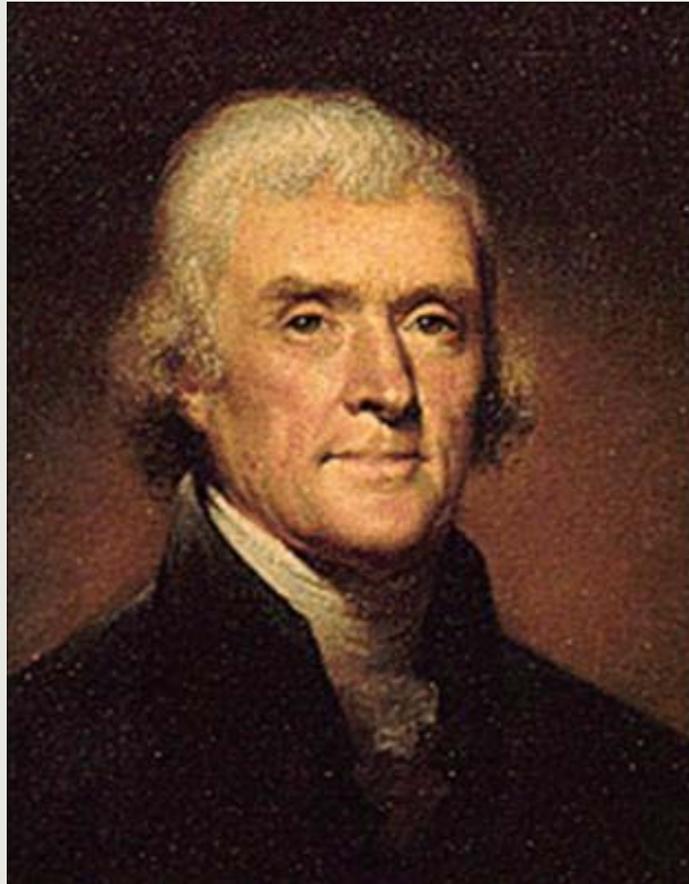
- Objectives
- Collateral Benefits
- A New Perspective
- Actual Training Tips
- Evaluations



# Some Real Objectives!



An opportunity to implement the proposition that  
**good ethics = good government**



# Some Real Objectives!



A key tool in our effort to keep our agency off the front page of the *Washington Post*



# Some Real Objectives!



**An  
opportunity  
to provide  
our  
employees  
with  
Perspectives  
and Answers  
That They Can  
Immediately  
Use**

# Some Real Objectives!



**A Way to Help our Employees Gain a  
Meaningful Appreciation of the Big  
Picture**

# Some Real Objectives!



- **Explain that the only way to really understand a rule or law is to recognize where it fits in the bigger scheme**
  - **Then Simplify it!**
- **Admit that system is complex, but then break it down into small digestible pieces**
- **Be careful not to train to the rule, but rather emphasize the gray zone, and advise employees to stay wide of the line**

# Some Real Objectives!



*“I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office upon which I am about to enter”*

**Our Best Chance to Promote the understanding that**  
**serving as an *oath taking public official***  
**is **bigger** than the individual role one plays,**  
**or the organization in which one serves**

# Some Real Objectives!



## Emphasize the WHO

- Try to expand the reach of your training beyond those required to receive it under the regulations
  - **We train everyone, every year**
  - **We explain that its not a matter of who has to come to training, but who GETS to come**



# Some Real Objectives!



**The path for our students to come see us as their lawyers, not the ethics police**

someone they can call when questions come up  
or when they find themselves at a policy cross-roads



# Some Real Objectives!



## Present as an Honest Broker

- If a rule is potentially illogical, don't deny it, but explain the risk is in ignoring it.
- If you can, explain how it got to this point and what the arguments are (pro and con) for the policy in question
  - **Especially true with the risks associated with the Hatch Act**
- I present myself as NOT part of senior leadership, but rather a third party servant
  - **“my job is to help keep you Out of trouble”**

## Watch the Confidentiality Question



# Some Real Objectives!



An opportunity to provide our employees the tools to spot the **red flags**



# Collateral Benefits and Uses

**Making  
training  
work for  
you beyond  
ethics itself**



# Collateral Benefits and Uses



- **Use this opportunity to answer questions employees have about government in general**
  - Tell them useful things they don't know
  - This makes you respectable as the presented, they learn to trust you

*For example:*

  - **Property management policy and the concept of authority as the guiding government principle**
  - **The difference between EEO and MSPB**
- **Drive employees to your website**
  - And drive them to your phone and your office

# Collateral Benefits and Uses



- Good training has had key collateral benefits
  - Employees not afraid to approach ethics officials anymore
  - Number of calls to our office for proactive ethics advice increased ten-fold, and continues to increase every time we do training
- Using training to achieve other purposes
  - Getting out to the facilities to find out what is really going on.
  - Office hours in the field/building and maintaining relationships
  - We learn a great deal about what is really happening in the organization because employees become comfortable with us
    - **Allows us to get ahead of problems before they develop into lawsuits , investigations or public relations nightmares**

## **A Change of Perspective**

**An Opportunity  
to Look at Your  
Ethics Training from a  
New Perspective**



# A Change of Perspective

## Context

### Change the context

- We wrapped the standard ethics training in a blanket of “public service”
  - Like slipping a pill into a PB&J sandwich
- We didn’t focus on games, gadgets or videos (although we will use them)
  - While training should be entertaining, it is more important to be **engaging**
- Come up with a snappy title for the training
  - How to do X



# A Change of Perspective

## Moving Beyond Training

### Thinking of your Training program as Ethics Education



- **Training** deals with learning specific skills or the specific performance of a task
  - **Education** is a matter of personal and professional development, enhancing an individual's ability to use his or her mind.
- **Training** is the arena of “how to”
  - **Education** is the arena of “WHY”

# A Change of Perspective

Moving Beyond Training

Thinking of your Training program as Ethics Education

Levels of Learning

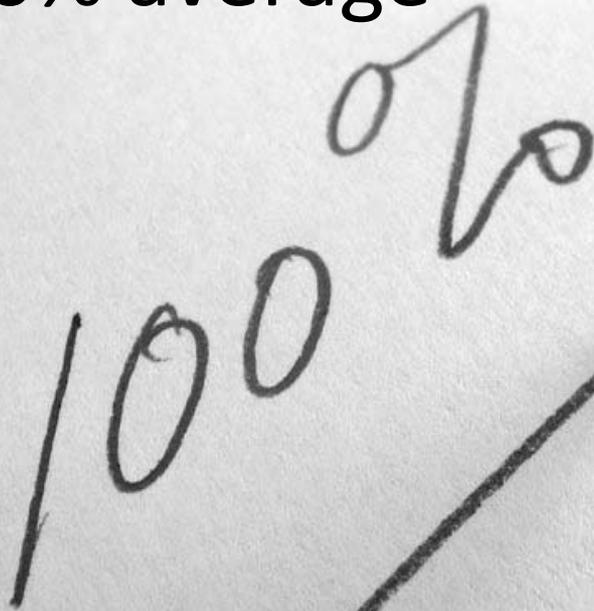


- Meta Level
- Emotional Level
- Cosmetic Level

# A Change of Perspective

Moving Beyond Training

Aim to **beat** the  
20% average



100  
20%



# Teaching Tips



- **Motivation**
- **Tone**
- **Questions**
- **Focus**
- **Environment**
- **Struggle**



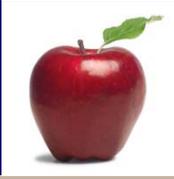


A motivated learner will learn  
whether the training is good or not



# MOTIVATION

It's not that I'm lazy, it's that I just don't care.



## Motivation Basics

- The material should be valuable to the student
  - To be perceived as valuable, Students need to appreciate the **purpose** of the experience.
  - People naturally perform better when they feel part of something bigger than themselves





## Motivation Basics

- Material is also perceived as valuable when it is immediately useful to the employee
- Every 15 minutes students should learn something new or identifiably useful





## Motivation Basics

- Fear & Failure are good motivators
  - Real-life consequences
  - Public pop quiz (Socratic method)



- Greet students at the door when they enter the classroom.
- Start the class on time.
- Make a grand stage entrance to hush a large class and gain attention
- Let students know that they can ask questions at any time
  - That you will be available to chat after class
  - Leave your business cards on the sign in table





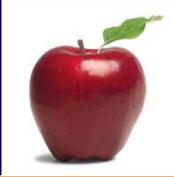
- Use care not to accidentally insult the employee's intelligence
  - Be careful not discount real concerns they may have in doing their jobs
  - Use care to treat employees as professionals





## Get the class engaged, asking real questions

- Must be willing to answer questions on the fly
  - Must actually be knowledgeable about the rules,
  - But use care not to overdo it by citing rules by their paragraph numbers
- Use open-ended questions



## A Dialog Between You and the Class

- Spread credit around liberally
- Allow audience a real opportunity to answer and discuss
  - Don't be a slave to your presentation
  - Think of discussion as a time investment



## Focus discussion is important

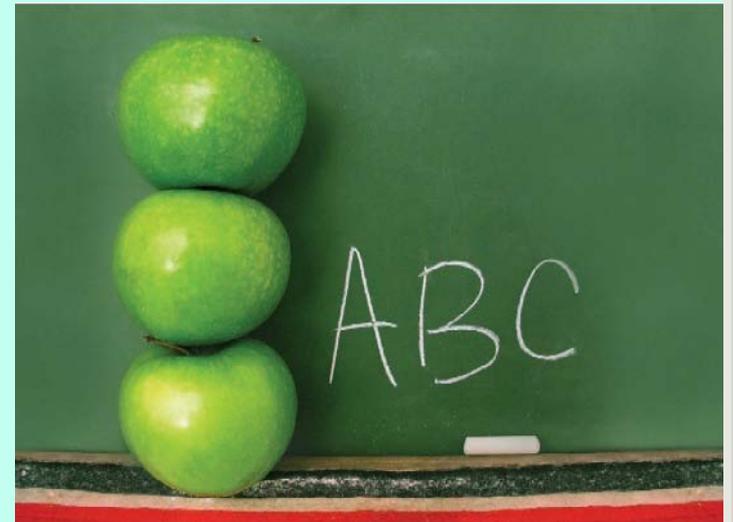
- Don't just kick in to the meat of the presentation
- Discuss something in the news or of particular interest to the agency
- Attract their interest immediately



**Then tell them how the hour is going to proceed**



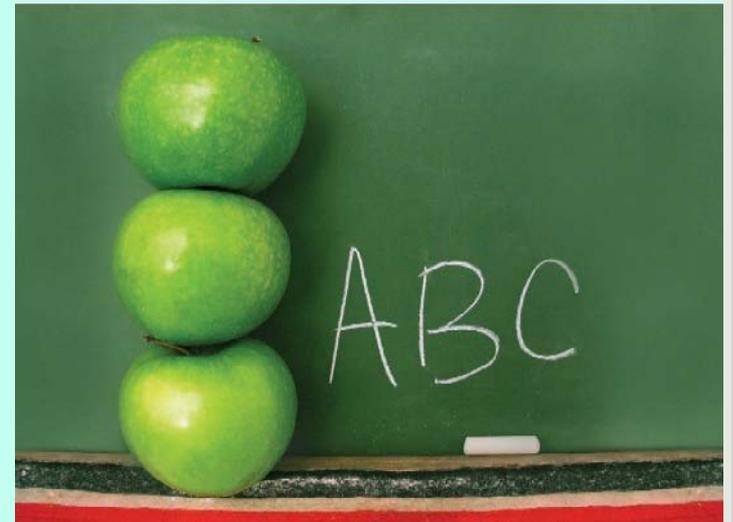
# Environment is Important





## Environment is Important

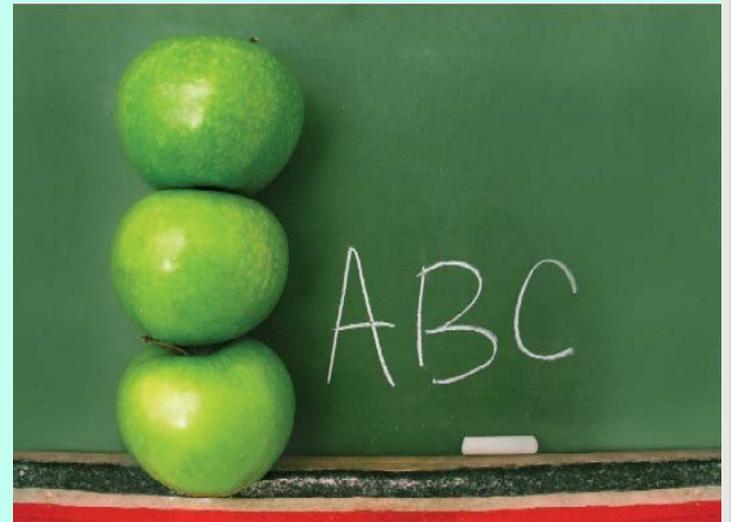
- Think of the class as your own production
- Make sure the room is the proper size for the audience
  - Not too big, not too cluttered
  - Be as close to your audience as you can get
    - **Intimate is better than distant**

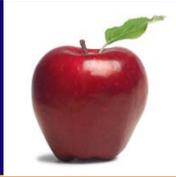




## Environment is Important

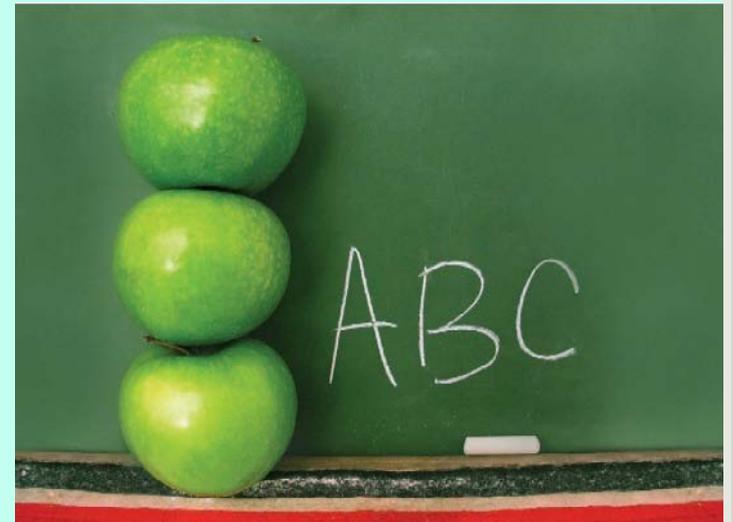
- Watch the Acoustics
  - Use a microphone if you need one.
  - Watch the external sound and activity outside the windows in order to avoid distractions
- Watch the Temperature
  - Better to be too cold than too hot





## Environment is Important

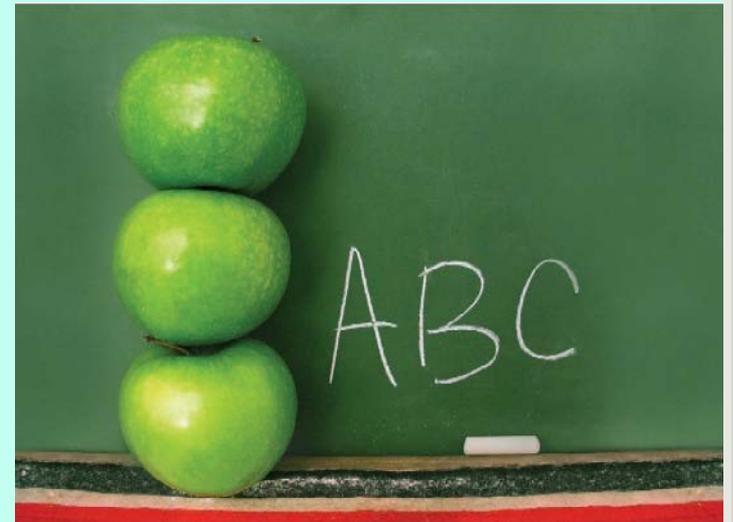
- Watch the Room Set-up
  - Set up the room horizontally as opposed to vertically so you can be equally close to as many participants as possible
    - **If possible, position yourself in the middle of the group**
  - Clean up the room

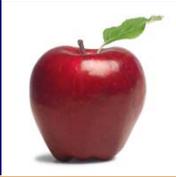




## Environment is Important

- Watch the Class Time
  - Morning is usually better than afternoon
    - **If possible, avoid the right-after-lunch spot**
  - Try to get folks coming on to the shift as opposed to those ready to go home

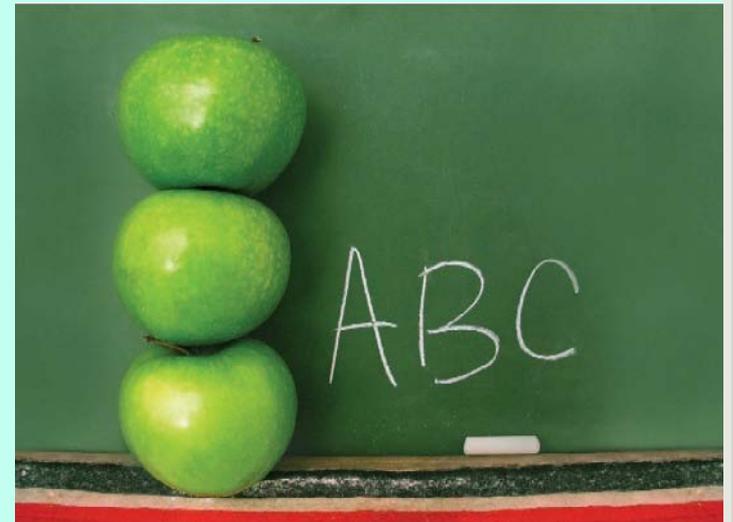




## Environment is Important

- Make the Occasion Special
  - Says that this is different, important and special
  - Says that the participants are important and matter
  - If your agency can pay for coffee or light refreshments, consider providing them.

**What else can we do to make training special?**





- **Have a list on the podium of things you want to make sure to cover that you can review at the break and at the end**





- **Consider the idea of plants in the audience to keep you on track**





- **Review the class list ahead of time**
  - If possible use care in how you group the students
  - Call on people by name as much as possible as it makes a more personal experience





- **Dress up for the occasion**
  - Even if it's a casual work environment, wear a tie/dress





- **Eavesdrop on students before or after class and join their conversation about course topics**





- **More Mental Effort = More Learning**
- **Errors are not necessarily the enemy of learning**
- **There is a dangerous human tendency toward overconfidence**





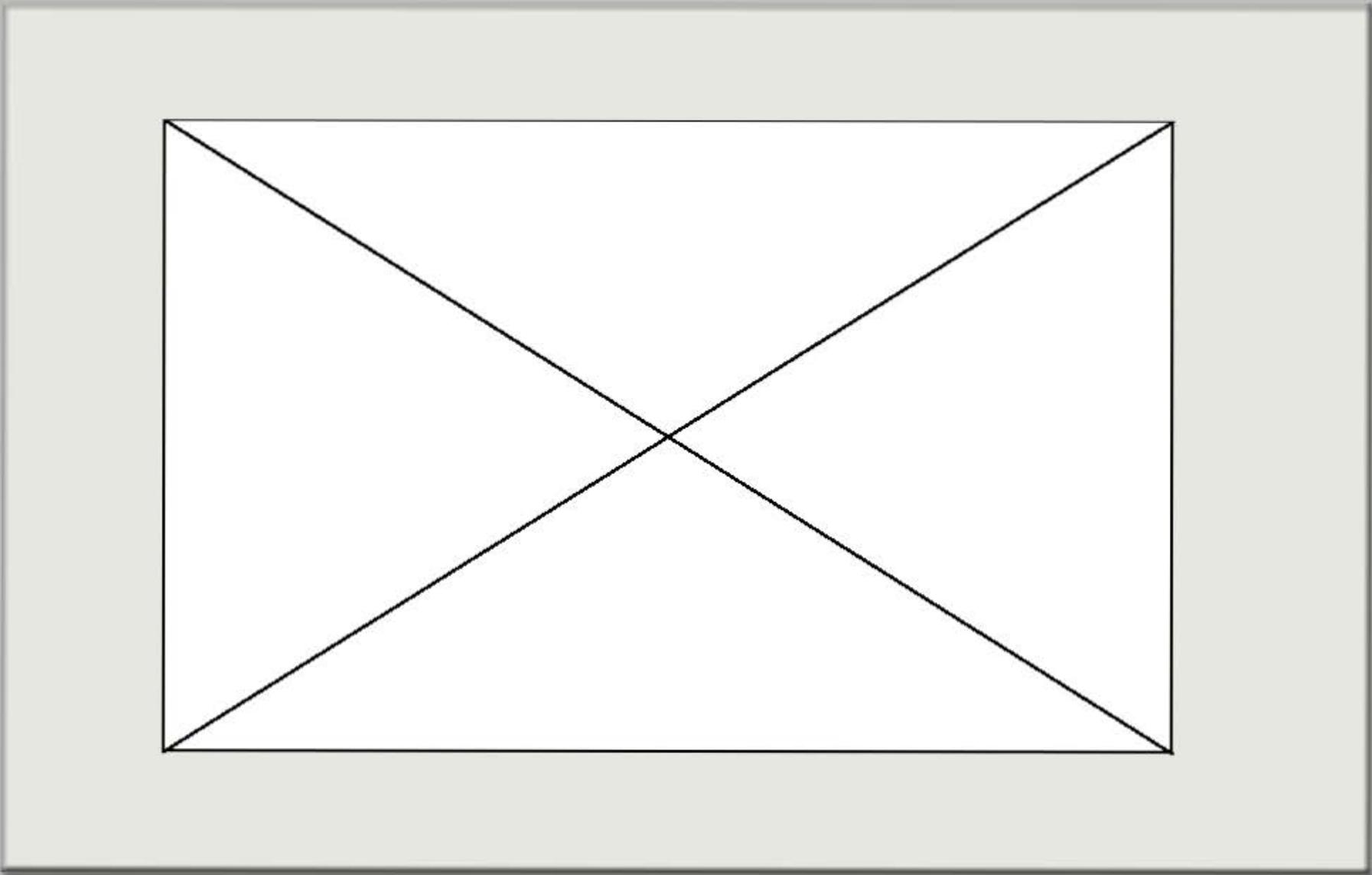
- If people think they know the answer:
  - they will pay less attention ... even if they are wrong
  - They actually don't recognize that what they just heard differs from their preconception
  - They actually get more confident in their earlier preconceptions





**The best way to approach this is to attack the misperception straight up.**

**If you don't make people see their own misconception, they will keep believing the misconception**





- **Make 'em struggle a bit and they'll remember!**
- **When we struggle to learn something ... and fail ... the moment we get it, the answer imprints itself more deeply in our mind than had struggle and failure not preceded it.**



- **How can we make this work with ethics?**
  - **Ask questions first, then present the material**
  - **Present difficult scenarios that challenge the students**

# Evaluations

- **Boils down to one key question**

- Would you recommend this training to a friend or colleague?
- If not, why not?



Excellent  
 Very good  
 Good  
 Average  
 Poor

# Evaluations

- If you are going to “Test” what they learned,
  - *don't* do it immediately, wait a month
  - do some sampling (check how they do in various scenarios)
  - **Key: Can they see the red flags**



Conclusion

# Wrap Up



# Ethics for an Outsourced Government

Kathleen Clark

Professor of Law  
Washington University in St. Louis

18th National Government Ethics Conference

September 2011

# Acknowledgment

(my own conflict of interest?)

This research was supported by a contract from the Administrative Conference of the United States (ACUS).

# Methodology

90+ interviews with:

- Contractors & their trade associations
  - » Professional Services Council (PSC)
  - » Defense Industry Initiative (DII)
- Executive Branch officials:
  - » Procurement
  - » Ethics
- Government Investigators
  - » IGs
  - » GAO
- NGOs
  - » good government groups
  - » unions
- Hill staffers
- False Claims Act lawyers

# An Illustration of the Problem

- Dan Jester
  - Advised Treasury on AIG bailout
  - Owned Goldman Sachs stock
  - Handled AIG bailout in a way that benefited Goldman Sachs -- and himself

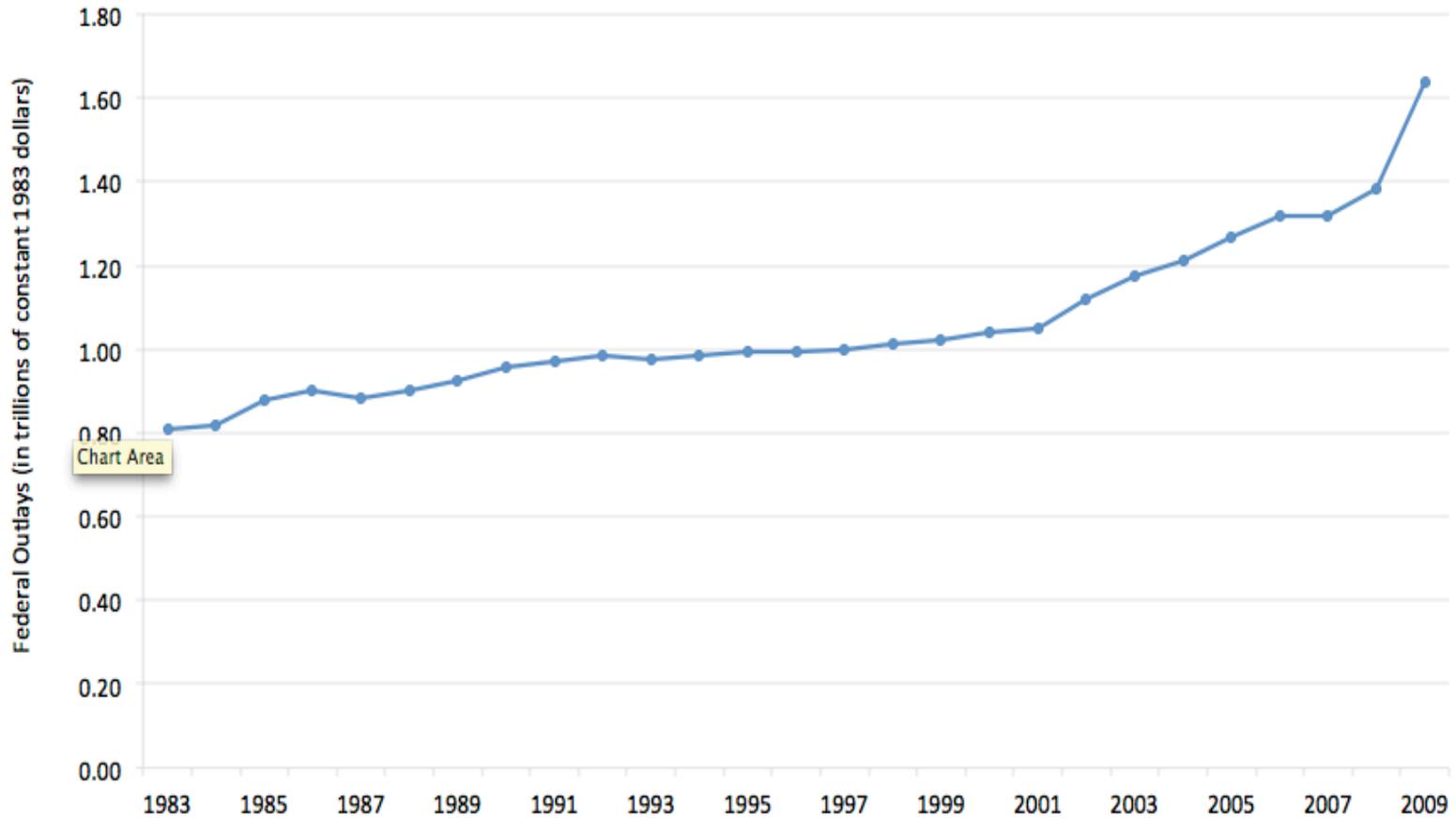
# Criminal Conflict of Interest Statute

18 U.S.C. § 208(a) (excerpt)

“ . . . [W]hoever, being **an officer or employee** of the executive branch . . . **participates personally and substantially . . . through . . . the rendering of advice, . . . in a . . . particular matter in which, . . . he . . . has a financial interest**”

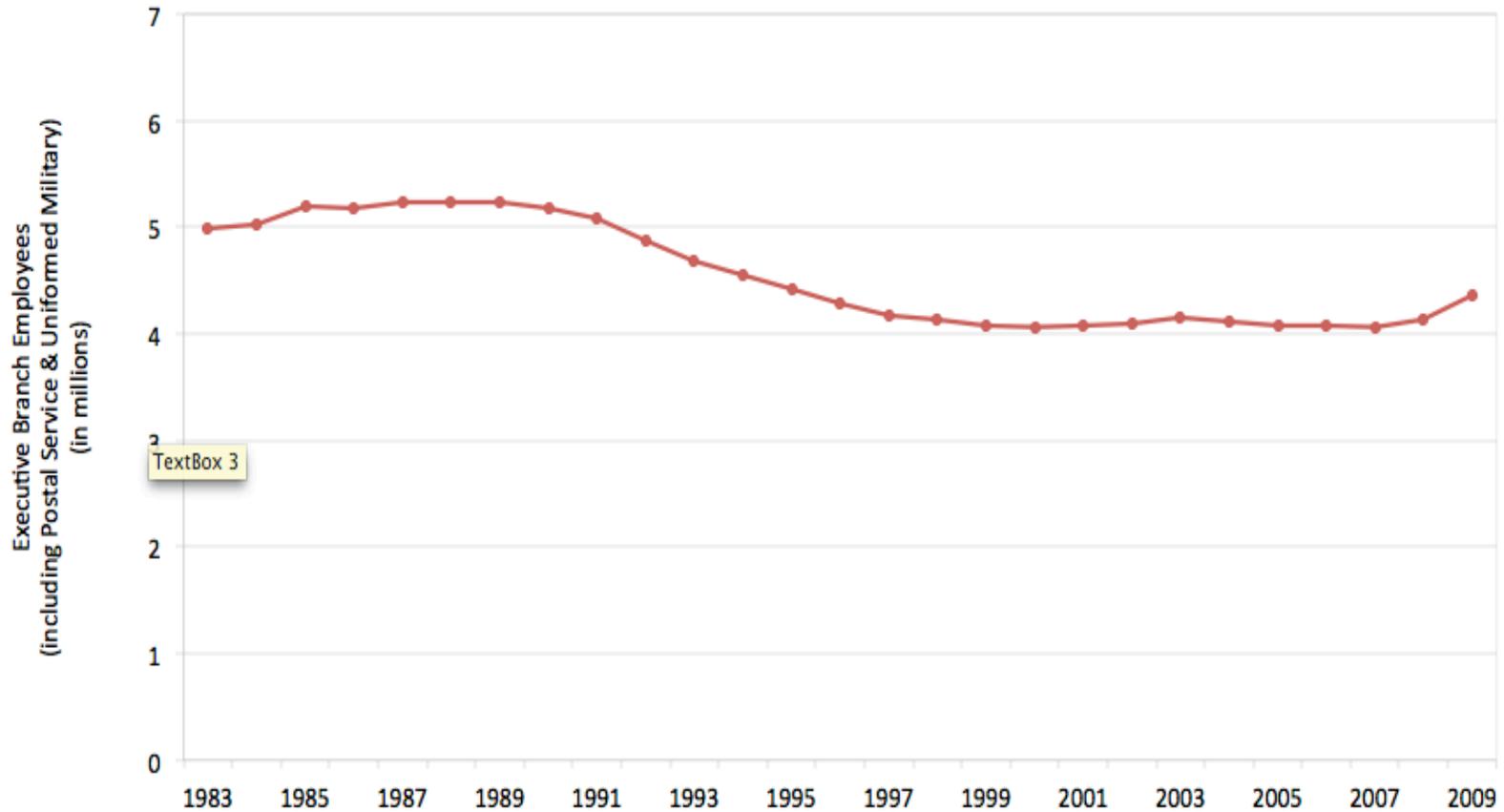
# Federal Government Spending

Expansion of Federal Government Spending from 1983 - 2009



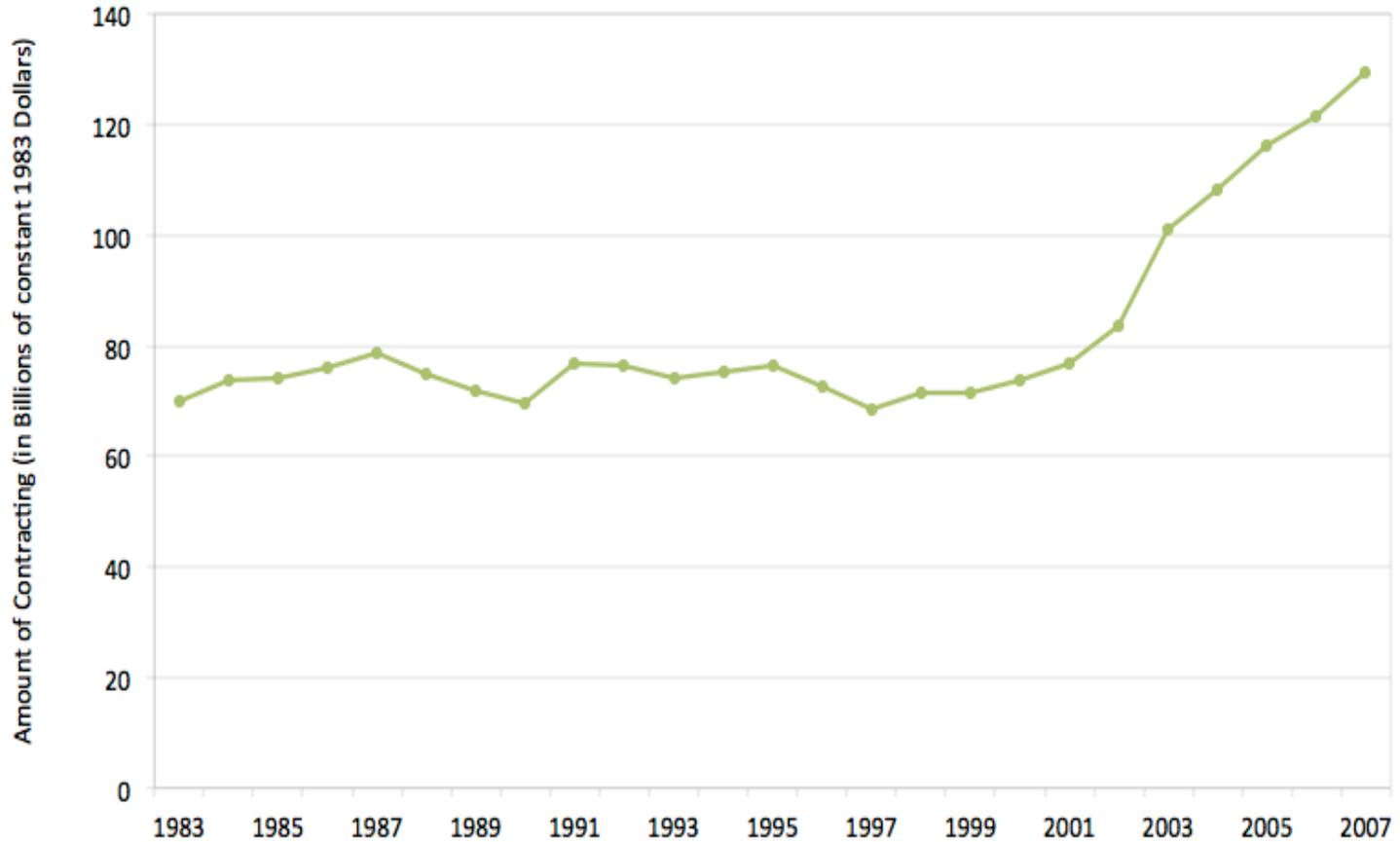
# Number of Federal Employees

Number of Executive Branch Employees from 1983 - 2009

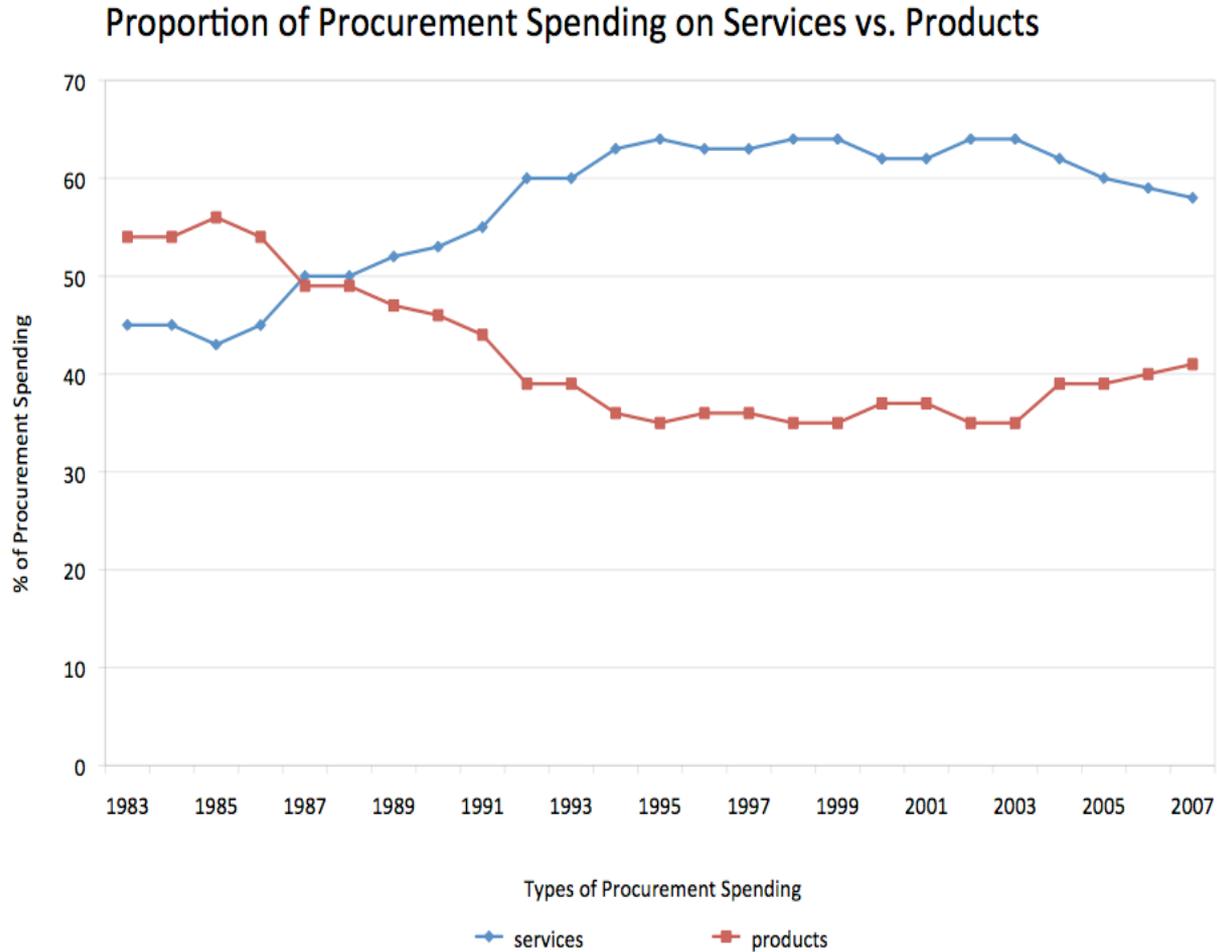


# Spending on Service Contracting

Spending on Service Contracting from 1983 - 2007



# Spending on Services v. Products



# Ethics Restrictions on Government Employees

- **financial influences** on an employee's government work;
- the **use of government position** for non-government purposes;
- an employee's **outside activities**;
- an employee's **post-government** employment; and
- restrictions based on an employee's **pre-government** employment.

# One Size Does Not Fit All

- **Stricter Ethics Rules for Employees in Sensitive Positions**
  - High-Level Officials
  - Procurement Officials & Bank Examiners
- **Looser Rules for Temporary Employees**  
(“Special Government Employees” or SGEs)

# Principles Underlying Government Ethics Restrictions

- (1) Express **fiduciary** nature of public office
- (2) Shore up **public's confidence** in government
- (3) Maintain Congressional and executive branch **control** of federal resources; and
- (4) Ensure that officials devote **adequate attention** to their responsibilities.

# Few Ethics Restrictions on Government Contractor *Personnel*

- A few agencies have narrow regulations re: Contractor Employee Personal Conflicts of Interest (“PCI”)
- Proposed Regulation for PCI in “Meta-contracting” -- Contractors who assist the government in contracting
- Government-Wide Regulations re: Contractors’ *Organizational* Conflicts of Interests (“OCI”)
- Contractors’ Internal Ethics Codes

# Exception: FDIC

- Deems contractor personnel who are supervised by government managers to be government employees
- Has comprehensive ethics regulations for its contractors' personnel
  - *Financial influences* (including interests of close family members)
  - *Misuse of government resources* (including information)
  - *Outside activities*
  - *Post-employment*

# For more information:

*Ethics for an Outsourced Government*

ACUS

*Fiduciary-Based Standards for Bailout Contractors:  
What Treasury Got Right and Wrong in TARP*

Minn. L. Rev.

*Financial Conflicts of Interest In and Out of Government*

Alab. L. Rev.

# ACUS Recommendations:

- (1) Optional FAR clauses for contracts with high risk of:
  - personal conflicts of interest (COIs) or
  - misuse of certain non-public information.
  
- (2) Contractors must:
  - train employees to recognize their own COIs
  - require employees to report COIs internally
  - screen conflicted employees from contract work
  - disclose employee misconduct (& resulting discipline) to government
  
- (3) These clauses will not supplant already existing agency contractor ethics programs
  
- (4) Agencies not covered by the FAR should consider using these clauses

# A continuing discussion . . .

Questions

Comments

kathleen\_clark@mac.com

314-827-4081

**APPLICATION OF 18 U.S.C. § 207 TO FORMER CIA OFFICIALS’  
COMMUNICATIONS WITH CIA EMPLOYEES ON DETAIL  
TO OTHER AGENCIES**

*The prohibition in 18 U.S.C. § 207(c), under which a former high level official, in the year after his departure, may not make “any communication to or appearance before any officer or employee” of his former agency, would apply if former CIA officials make communications to or appearances before CIA employees who are on detail to other agencies.*

October 23, 2007

**MEMORANDUM OPINION FOR THE ACTING GENERAL COUNSEL  
CENTRAL INTELLIGENCE AGENCY**

A provision of the conflict of interest laws, 18 U.S.C. § 207(c) (2000 & Supp. IV 2004), generally forbids a former high level official, in the year after his departure, from making “any communication to or appearance before any officer or employee of the department or agency in which such person served.” You have asked whether section 207(c) would apply if former officials of the Central Intelligence Agency (“CIA”) make communications to or appearances before CIA employees who are on detail to other agencies.<sup>1</sup> We believe that it would.

**I.**

The conflict of interest laws provide for a one-year “cooling off” period when a high level official leaves the Government. During the one-year period after the termination of his service, the former official may not

knowingly make[], with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency.

18 U.S.C. § 207(c)(1).<sup>2</sup>

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<sup>1</sup> Letter for Steven G. Bradbury, Acting Assistant Attorney General, Office of Legal Counsel, from John A. Rizzo, Senior Deputy General Counsel, CIA (Feb. 2, 2006). We also received the views of the Office of Government Ethics (“OGE”). Letter for Steven G. Bradbury, Acting Assistant Attorney General, Office of Legal Counsel, from Marilyn L. Glynn, General Counsel, OGE (Feb. 9, 2006). The CIA later presented some additional views and information. Letter for Daniel Koffsky, Office of Legal Counsel, from Joan P. Walton, Agency Ethics Counsel, CIA (May 18, 2007) (“CIA Supplemental Letter”).

<sup>2</sup> The provision applies to several categories of former high level officials. Of greatest relevance here, the provision reaches former officials whose pay was at least 86.5 percent of the basic pay for Level II of the Executive Schedule. See 18 U.S.C. § 207(c)(2)(A)(ii). The provision also covers, among others, those whose pay is specified in subchapter II of chapter 53 in title 5 or who are in positions of active duty commissioned officers of the

The Office of Government Ethics has taken the view that this provision applies to a former official's communication to or appearance before an officer or employee of his former agency, even if, at the time of the communication or appearance, that officer or employee has been detailed to an agency other than the one in which the former official served. OGE expressed this view in *Letter to a Private Attorney*, OGE Informal Advisory Letter 03 x 9, 2003 WL 23675085 (OGE 2003) ("2003 OGE Advisory Letter"). That opinion relied on 18 U.S.C. § 207(g) (2000), which provides:

For purposes of this section, a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.

OGE concluded that, under section 207(g), "a current employee to whom communications are made is to be considered an employee of both his own agency and the agency to which he has been detailed" and that "[a]ccordingly, in order for the one-year cooling-off period to be triggered, the appearance does not have to be before the former senior employee's agency, but only before an employee of the former senior employee's agency." 2003 OGE Advisory Letter at \*1, \*2.

It could be argued, however, that section 207(c) does not apply to a communication to or appearance before the detailed employee because the detailed employee would be acting on behalf of an agency other than the agency in which the former senior employee worked. Under such circumstances, the former senior employee arguably would not be in a position to influence his former agency or trade on nonpublic information acquired during his government employment. In addition, it could be argued that section 207(g) makes the one-year bar applicable with respect to any agency in which a former official served in his last year with the Government, including any agency to which the employee was detailed, but does not specify the employees to whom communications, or before whom appearances, are forbidden.

## II.

The central issue here is whether a CIA officer or employee, while on detail to another agency, is an "officer or employee of the [CIA]" for purposes of section 207(c)'s prohibition against a former high level official's communications to or appearances before "any officer or employee of the department or agency in which such person served." We believe that section 207(g) resolves this issue. It provides, in unequivocal language, that, "[f]or purposes of this section," i.e., section 207 in its entirety, an employee on detail "from one . . . agency . . . to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of *both* departments, agencies, or such entities." 18 U.S.C.

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uniformed services serving in a grade or rank paid at the O-7 level or above. *See id.* § 207(c)(2)(A)(i), (iv).

*Application of 18 U.S.C. § 207 to Former CIA Officials' Communications with CIA Employees on Detail to Other Agencies*

§ 207(g) (emphasis added). Thus, a CIA employee on detail is deemed an employee of the CIA, as well as an employee of the agency to which he is detailed. Nothing in the language of section 207(g) limits the circumstances in which a detailed employee has this dual status for purposes of section 207. Therefore, a prohibition that applies to a “communication to or appearance before an officer or employee of the department or agency in which [a former CIA official] served” covers an officer or employee who has been detailed from the CIA to another agency or entity.<sup>3</sup>

We recognize that the language of section 207(g), together with section 207(c), arguably goes beyond the precise purposes that Congress intended to achieve. The legislative history suggests that section 207(c) was originally intended to deny former officials any “improper or unfair advantage in subsequent dealings with that department or agency” in which they served. *See* S. Rep. No. 95-170, at 33 (1977). As noted above, the ability of former officials to take unfair advantage of their prior service is arguably reduced or eliminated when they communicate with employees of their former agencies who have been detailed elsewhere. But “we do not resort to legislative history to cloud a statutory text that is clear.” *Ratzlaf v. United States*, 510 U.S. 135, 147-48 (1994). Moreover, the implications of the legislative history here are far from clear: a former CIA official might still be able to influence a detailee by virtue of a past association. *See* 135 Cong. Rec. 29,668 (1989) (statement of Sen. Levin) (“[T]he offense is committed if the former employee seeks official action by an agency or department employee.”); *cf.* S. Rep. No. 95-170, at 33 (1977) (the cooling off period is aimed at preventing the use of “information, influence, and access acquired during government service at public expense, for improper and unfair advantage in subsequent dealings with that department or agency”). Even if the language of the statute does cover instances beyond the abuses at which it was aimed, “Congress appropriately enacts prophylactic rules that are intended to prevent even the appearance of wrongdoing and that may apply to conduct that has caused no actual injury to the United States.” *Crandon v. United States*, 494 U.S. 152, 164 (1990). By providing in section 207(g) that a detailee is deemed an officer or employee of the agencies from which and to which

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<sup>3</sup> Because the language of the statute is clear, the rule of lenity, calling for an ambiguous penal statute to be construed in favor of a defendant, does not apply. *See Chapman v. United States*, 500 U.S. 453, 463 (1991). Moreover, we do not believe that any particular weight should be placed on the fact that OGE had not addressed this specific issue in its regulations and informal publications. As noted above, OGE did address the issue in the 2003 OGE Advisory Letter.

Section 207(I)(1) states that the “officer or employee” to whom a communication may not be made “includes] . . . (A) in subsections (a), (c), and (d), the President and the Vice President; and (B) in subsection (f), the President, the Vice President, and Members of Congress.” 18 U.S.C. § 207(I)(1) (2000). The section addresses some of the officers to whom prohibited communications may not be made. We do not believe that any inference can be drawn from the silence in this section about the treatment of detailees. First, section 207(g) deals with detailees specifically, “[f]or purposes of this section.” Any further treatment of detailees would have been superfluous. Second, section 207(i) concerns the status of elected officials, and its declaration that the statute “includes]” them for some purposes hardly suggests that the provision is intended to exclude other “officers] or employees]” from the category of persons whom a former official is forbidden to contact.

he is detailed, Congress laid down a clear rule designed to prevent undue influence. Even assuming that the statute might be “applied in situations not expressly anticipated by Congress,” that fact “does not demonstrate ambiguity. It demonstrates breadth.” *National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249, 262 (1994).

We do not believe that the terms under which CIA officers and employees are detailed, as you have explained them to us, are so unusual that such an officer or employee is not “a person who is detailed from one department, agency, or other entity to another department, agency, or other entity” under 18 U.S.C. § 207(g). No general statutory definition of the term “detail” exists, but the *Federal Personnel Manual* defined a detail as “the temporary assignment of an employee to a different position for a specified period, with the employee returning to his regular duties at the end of the detail.” See Letter for Hon. William D. Ford, Chairman, Committee on Post Office and Civil Service, 1987 WL 101529, at \*2 (Comp. Gen. Jan. 30, 1987); 64 Comp. Gen. 370 (1985). Even after the *Federal Personnel Manual* was abolished, we have continued to use this definition, which reflects the common understanding of the term. See, e.g., *Applicability of 3 U.S.C. § 112 to Detailees Supporting the President’s Initiative on Race*, 21 Op. O.L.C. 119, 120 (1997). Neither the extended length of CIA details nor the removal of employees from the CIA chain of command is contrary to this usual understanding. Although a “detail” may generally be short-term, there are other instances in which details, though “temporary,” last for years. Under 5 U.S.C. § 3343(b) (2000), for example, an agency may “detail” an employee to an international organization for up to five years, and, upon a finding by the President, this period may be extended for three more years. See also 22 U.S.C. § 3983 (2000 & Supp. IV 2004) (details to American Institute in Taiwan for up to six years). The Environmental Protection Agency and the Department of the Interior detail employees to the Office of Agricultural Environmental Quality in the Department of Agriculture for up to three years. See 7 U.S.C. § 5402(c)(2) (2000); see also 22 U.S.C. § 2685(a) (2000) (reimbursement to Department of State when details exceed two years).

We understand that CIA personnel often serve particularly long details at other agencies, but we do not believe that the arrangements are so unusual in this respect as to fall outside the term “detail” as generally understood. Indeed, when CIA employees are assigned to other agencies under specific statutes that exempt the assignments from the usual limits on duration, those statutes use the term “detail.” See 10 U.S.C. § 444(c) (2000 & Supp. V 2005) (“details” to the National Geospatial-Intelligence Agency); 50 U.S.C. § 403v (2000) (“detail” to the National Reconnaissance Office). Similarly, “an assignment to a different position” necessarily entails some loss of control by the detailing agency, and it is doubtful that an agency detailing an

*Application of 18 U.S.C. § 207 to Former CIA Officials' Communications with CIA Employees on Detail to Other Agencies*

employee to, for example, the National Security Council continues in any practical sense to include the employee within its own chain of command. Once again, the terms of CIA details are not so unusual as to make the term “detail” in section 207(g) inapplicable.

That the CIA detailees do not encumber the positions from which they are detailed presents a somewhat more complicated issue. The definition derived from the *Federal Personnel Manual* includes that the detailed “employee return[s] to his regular duties at the end of the detail.” If detailees do not continue to encumber the positions they previously occupied, they may, upon their return to the agency, have different responsibilities from those previously assigned to them, *see* CIA Supplemental Letter at 4 (a detailee from the CIA “routinely returns to different duties from those she left”), and arguably that fact takes these detailees outside the usual understanding of a “detail.” We would not, however, read the reference in the *Federal Personnel Manual* to “his regular duties” so narrowly. If a detailee were told that he would be promoted upon his return to the detailing agency, he would not thus lose the status of a detailee. The “regular duties” to which a detailee returns must mean something broader, such as full-time duties at the agency from which he came. We do not, moreover, understand the CIA to contend that the employment relationship between the agency and its employees is lost or changed during details to other federal agencies. Detailees may not return to the same positions at the agency, but they do generally return. We therefore do not believe that the fact that the employee does not encumber the position from which he was detailed would change the analysis.

We understand that construing section 207(c) to apply to communications by a former high level official to employees of his former agency, even if they are on detail to another agency, may present practical difficulties. For example, you have suggested that such a reading would require former senior agency officials to poll meeting participants to determine whether he is communicating with a detailee from his former agency. Section 207(c) applies, however, only when the former official “knowingly makes . . . any communication to or appearance before any officer or employee” of his former agency. 18 U.S.C. § 207(c)(1). By its terms, the statute appears to require, as an element of the offense, that the former official know he is speaking to an employee of his former agency. The 1989 amendments to the statute, it is true, did remove a provision under which an element of the offense had been the former employee’s knowledge that his former agency had an interest in the matter or that the matter was pending before the agency.<sup>4</sup>

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<sup>4</sup> Before 1989, section 207(c) extended to communications to “the department or agency in which [the former official] served as an officer or employee, or any officer or employee thereof,” provided the matter was “pending before such department or agency” or the department or agency had “a direct and substantial interest.” 18 U.S.C. § 207(c) (1982). In *United States v. Nofziger*, 878 F.2d 442, 444 (D.C. Cir. 1989), the District of Columbia Circuit held that the statute required knowledge that the former agency was considering the matter or had an interest in it. The Ethics Reform Act of 1989, Pub. L. No. 101-194, 103 Stat. 1716, amended the statute to remove this knowledge requirement. Senator Levin explained:

In the recently decided case involving former Presidential aide Lyn Nofziger, the court of appeals

*Opinions of the Office of Legal Counsel in Volume 31*

But even if, under the current version of section 207, that particular element has been deleted, the statute on its face seems to impose liability only if the former official knows at least that the employee with whom he is communicating is from his former agency.

/s/

STEVEN G. BRADBURY  
Principal Deputy Assistant Attorney General

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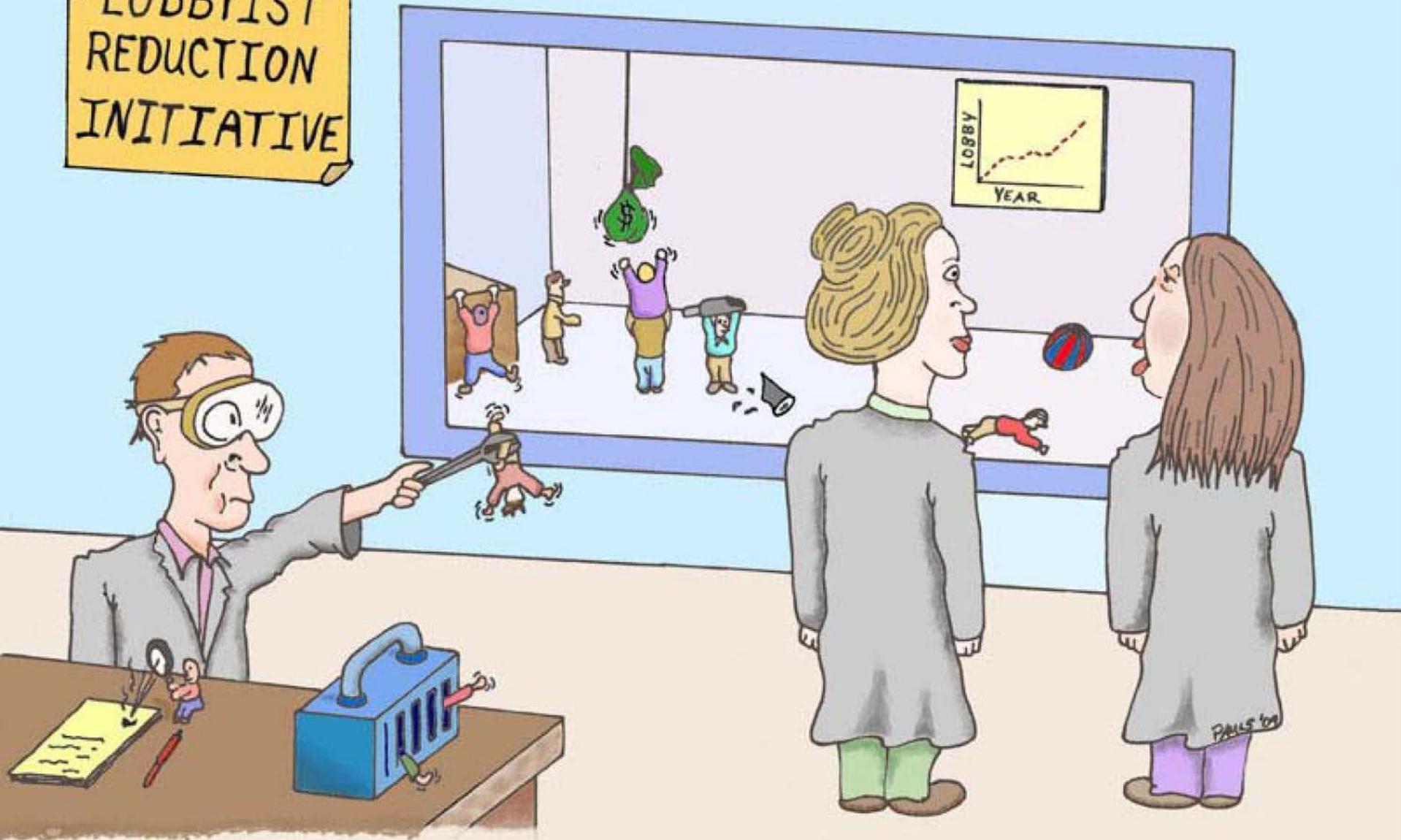
held that under the current law, the word “knowing” modified all the elements of the offense including the provision that the particular matter was pending before the subject department or agency or that the agency had a direct and substantial interest in the particular matter. That judicial interpretation does not reflect congressional intent. We correct that misinterpretation in this bill by including a knowing standard only for the act of making the communication with the intent to influence and state that the offense is committed if the former employee seeks official action by an agency or department employee. There is no requirement, here, that the former employee know that the particular matter on which he or she is lobbying was a matter of interest or was pending before the subject agency or department. Thus, we are able to set the record straight on this matter.

135 Cong. Rec. 29,668 (1989).

# Post-Employment Lobbying

Under the Pledge

LOBBYIST  
REDUCTION  
INITIATIVE



"We have been able to reduce their size, but not their numbers."

“In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration.”

**Pledge paragraph 5**

## **Definition of “lobby”:**

“‘Lobby’ . . . shall mean to act . . . as a registered lobbyist.”

**E.O. 13490, § 2(f)**

## In a nutshell:

“if a former appointee is a registered lobbyist for a particular client, he or she is prohibited by paragraph 5 of the Pledge from making any lobbying contact with a covered official on behalf of that client [during this Administration].”

**DAEOgram DO-10-004**

## My Counseling Checklist

- See if any procurement responsibilities: PIA
- Recuse while seeking employment: 208/SOC/PIA
- Party matters on which she worked: 207(a)(1)
- Party matters under responsibility: 207(a)(2)
- Treaties: 207(b)
- ~~• One year cooling-off from agency: 207(c)~~
- ~~• Two year cooling-off from agency: Pledge par. 4~~
- ~~• Two year cooling-off from agency/all EL: 207(d)~~
- ~~• Assisting foreign entities: 207(f)~~
- Sharing in representational fees: 18 USC 203
- Working as a registered lobbyist: Pledge par. 5

Help them understand Paragraph 5

but

Don't give definitive advice about LDA  
registration and reporting obligations

If the **employer** is not registered . . .

the **employee** is not listed as lobbyist

**No registration—No lobbyist listed**

## Criteria for Employer Registration:

1. Employ at least **one lobbyist**
2. Expect to meet **quarterly monetary threshold**:
  - lobbying firm--\$2,500 lobbying income from client
  - organization lobbying for self--\$10,000 lobbying expenses

**2 USC 1603(a)**

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319170119	PATTON BOGGS LLP	UST, INC.	2001	<input type="text" value="SAMOLIS, FRANK R."/>

Top Earning Lobbying Firm: Patton Boggs

Earnings: \$352,012,000—since 1998  
\$39,980,000—2009

Revolving door: 86 former gov't officials

Source: [opensecrets.org](http://opensecrets.org)

## What makes someone a lobbyist?

For each client (employer, if in-house):

1. Expect at least **two lobbying contacts**
2. Expect **20% time** for client in a quarter on lobbying activity (both contacts and behind the scenes)

**2 USC 1602(10)**

**LDA:** covers lobbying contact with either

- covered legislative, or
- covered executive

**Par. 5:** bans only executive branch contact

**LDA vs. Pledge Paragraph 5**

## “Lobbying Contact”:

- **Communication** to covered official
- On behalf of lobbying **client**
- Re: **broad** range of subjects
  - Legislation
  - Govt program/policy/position (e.g., rules, contracts)
  - PAS nomination/confirmation

**2 USC 1602(8)(A)**

## But 19 Categories of Exceptions!

Exceptions include:

- Routine administrative requests
- Responses to Federal Register
- Communications required by gov't contract
- Communications re: court case or investigation

**2 USC 1602(8)(B)**

- *President*
- *VP*
- *EOP employees*
- *Executive Schedule officials*
- *Non-career SES (from EO, not LDA)*
- *Schedule Cs*
- *Uniformed officers at 0-7 and above*

**Off-limits under Paragraph 5**

- Paragraph 4: Former Agency
- Paragraph 5: **Executive Branch**

All LDA Registration is

Client-Specific

Paragraph 5 Restriction also is

Client-Specific

If not registered for that client . . .

then not acting as a registered lobbyist

# Maybe . . .

- the firm doesn't meet the lobbying income threshold for XYZ (\$2500 per quarter)  
or
- Joan isn't a "lobbyist" for XYZ: <20% of her time for XYZ spent on lobbying activity  
or
- Joan isn't a "lobbyist" for XYZ: <2 lobbying contacts expected for XYZ

“The term ‘lobbyist’ means any individual who is employed or retained by a client for financial or other compensation . . .”

2 USC 1602(10)

Under the LDA & Pledge Par. 5

There's no such thing

as a

free lobbyist!

## EXERCISE HANDOUT—FOREIGN ENTITY BAN

George Wilson was a career SES appointee at the Agency for Technology Promotion (ATP). His salary level made him a senior employee for purposes of 18 USC 207(c). He left his government position six months ago. After taking some time off to pursue other interests, he is now starting his own consulting business. He anticipates that his clients will include US and foreign private businesses, as well as, possibly, certain foreign governments.

Assume you are the ethics official for ATP. Think about how you would advise George concerning some of his post-employment plans below. Note that George's questions fall within 3 general categories: How is 207(f) broader than the other post-employment restrictions? What is a foreign entity? What is aiding or advising with intent to influence the US?

### How is 207(f) broader than other post-employment bars?

1. (a) May George advise a private US company about whom it should contact and what it should say to resolve a pending disagreement with ATP over certain policies?

(b) May George engage in the same conduct on behalf of a client that is a foreign government?

2. (a) May George represent a private telecommunications company in connection with a decision before the Federal Communications Commission?

(b) May he engage in the same conduct for a foreign government client?

3. (a) May George represent a private company in a meeting with a Member of the House of Representatives concerning a pending matter at your agency?

(b) May George participate in the same Congressional meeting on behalf of a foreign government?

(c) If George does not attend the meeting with the Member of Congress, can he advise officials of the foreign government about what points they should make when they meet with the Member?

(d) May George meet with Congressional staffers on behalf of a foreign government, as long as no Members of Congress are present?

(e) Extra Credit: Could George appear as an attorney in Federal Court on behalf of a foreign government that is suing a private US company?

4. (a) George serves as President of nonprofit organization devoted to international affairs, and he writes a Washington Post op-ed piece on behalf of the organization advocating that ATP adopt some new policy. May he do this?

(b) What if George is paid by a foreign government to write the same op-ed piece?

#### What is a Foreign Entity?

5. (a) May George represent a privately-owned foreign company as it navigates the FDA pre-market approval process for a new drug?

(b) What if the company is owned by a foreign government?

(c) What if the government-owned manufacturer that has been given a monopoly by the foreign government for a particular commercial product or service?

6. (a) An international monetary organization, whose membership is comprised of a number of countries, wants to retain George to influence US financial regulatory policies. May George engage in this activity on behalf of the international organization?

(b) Turning the tables a little, a foreign government wants George's help in influencing an international organization. Officials of the foreign government are preparing for a meeting with an international environmental organization. Current US officials participate in this organization, including some serving on details from the EPA under 5 U.S.C. § 3343. May George assist the foreign government officials in preparing for these meetings?

What is Aiding or Advising With the Intent to Influence the US?

7. (a) One of George's clients is a US import company that is interested in easing certain trade barriers on goods from a certain foreign country. The client seeks George's advice on how to persuade various US trade officials. The government of the foreign country also is interested in easing the same trade barriers and is making its own pitch to some of the same US trade officials. May George provide the advice his client has requested?

(b) What if George's client asks George to meet with representatives of the foreign government to share ideas about how to approach US officials on this issue. May George do this?

8. George also wants to work for a law firm that has certain foreign government clients. The firm in particular wants him to help write a "White Paper" for one foreign government. The White Paper will describe all the legal requirements that a foreign government would have to satisfy in order to set up a nonprofit corporation in the US, including a review of all applicable federal requirements and procedural hurdles. The foreign government has not yet decided whether to set up the nonprofit but is evaluating its options. May George do this?

# STATUTORY HANDOUT—FOREIGN ENTITY BAN

## 18 U.S.C. § 207 (f) Restrictions relating to foreign entities.

(1) Restrictions. Any person who is subject to the restrictions contained in subsection (c), (d), or (e) and who knowingly, within 1 year after leaving the position, office, or employment referred to in such subsection--

(A) represents a foreign entity before any officer or employee of any department or agency of the United States with the intent to influence a decision of such officer or employee in carrying out his or her official duties, or

(B) aids or advises a foreign entity with the intent to influence a decision of any officer or employee of any department or agency of the United States, in carrying out his or her official duties, shall be punished as provided in section 216 of this title.

(2) Special rule for Trade Representative. With respect to a person who is the United States Trade Representative or Deputy United States Trade Representative, the restrictions described in paragraph (1) shall apply to representing, aiding, or advising foreign entities at any time after the termination of that person's service as the United States Trade Representative.

(3) Definition. For purposes of this subsection, the term "foreign entity" means the government of a foreign country as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended [22 USC § 611(e)], or a foreign political party as defined in section 1(f) of that Act [22 USC § 611(f)].

## 18 U.S.C. § 202. Definitions

\* \* \*

(c) Except as otherwise provided in such sections, the terms "officer" and "employee" in sections 203, 205, 207 through 209, and 218 of this title shall not include the President, the Vice President, a Member of Congress, or a Federal judge.

## 18 U.S.C. § 207(i) Definitions.

For purposes of this section [18 USC § 207]--

(1) the term "officer or employee", when used to describe the person to whom a communication is made or before whom an appearance is made, with the intent to influence, shall include . . .

(B) in subsection (f), the President, the Vice President, and Members of Congress . . . .

## 22 U.S.C. § 611 [Foreign Agents Registration Act]. Definitions

\* \* \* \* \*

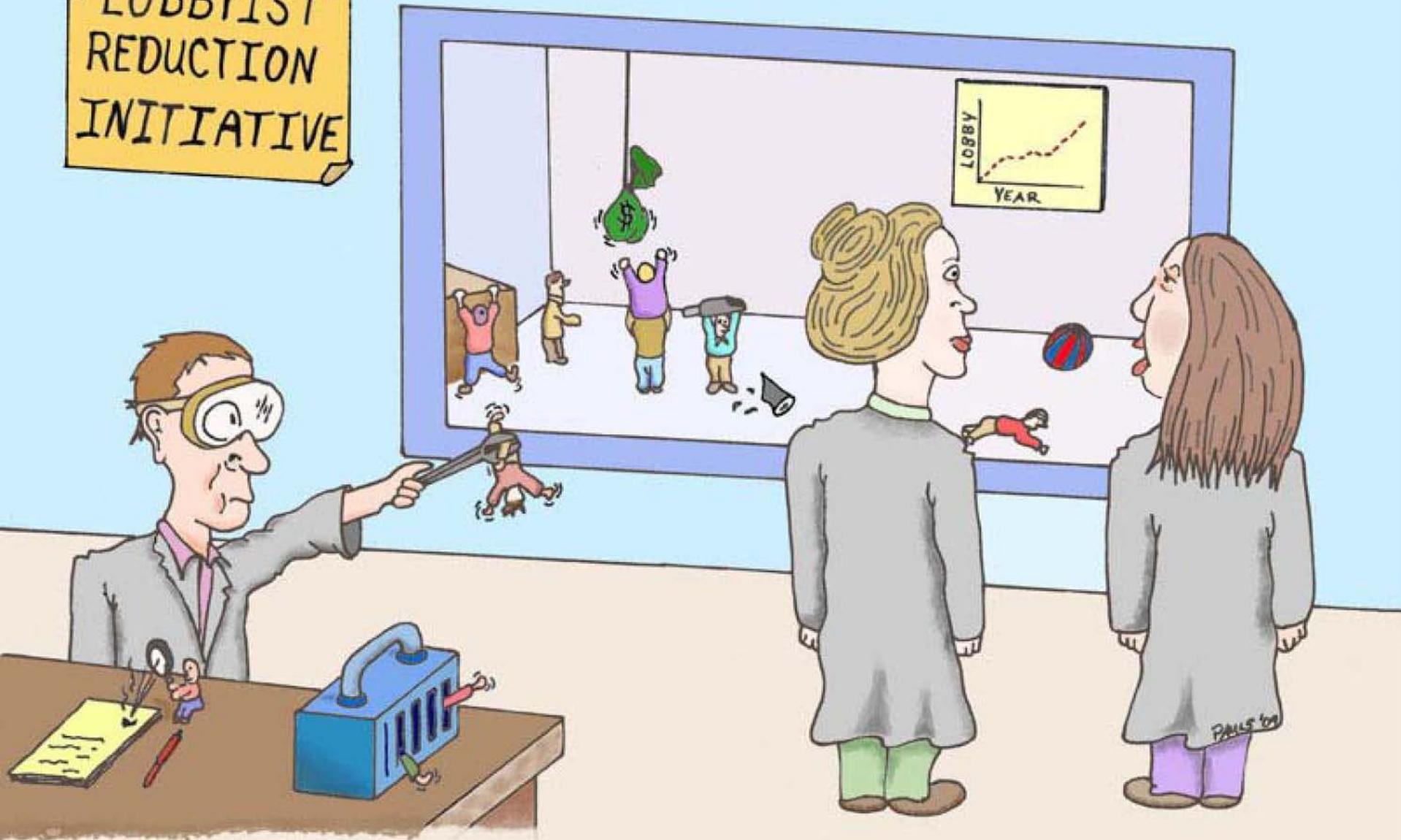
(e) The term "government of a foreign country" includes any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States;

(f) The term "foreign political party" includes any organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or a subdivision thereof, or the furtherance or influencing of the political or public interests, policies, or relations of a government of a foreign country or a subdivision thereof . . . .

# Post-Employment Lobbying

Under the Pledge

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INITIATIVE



"We have been able to reduce their size, but not their numbers."

“In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration.”

## **Pledge paragraph 5**

## **Definition of “lobby”:**

“‘Lobby’ . . . shall mean to act . . . as a registered lobbyist.”

**E.O. 13490, § 2(f)**

## In a nutshell:

“if a former appointee is a registered lobbyist for a particular client, he or she is prohibited by paragraph 5 of the Pledge from making any lobbying contact with a covered official on behalf of that client [during this Administration].”

**DAEOgram DO-10-004**

## My Counseling Checklist

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- Recuse while seeking employment: 208/SOC/PIA
- Party matters on which she worked: 207(a)(1)
- Party matters under responsibility: 207(a)(2)
- Treaties: 207(b)
- ~~• One year cooling-off from agency: 207(c)~~
- ~~• Two year cooling-off from agency: Pledge par. 4~~
- ~~• Two year cooling-off from agency/all EL: 207(d)~~
- ~~• Assisting foreign entities: 207(f)~~
- Sharing in representational fees: 18 USC 203
- Working as a registered lobbyist: Pledge par. 5

Help them understand Paragraph 5

but

Don't give definitive advice about LDA  
registration and reporting obligations

If the **employer** is not registered . . .

the **employee** is not listed as lobbyist

**No registration—No lobbyist listed**

## Criteria for Employer Registration:

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  - organization lobbying for self--\$10,000 lobbying expenses

**2 USC 1603(a)**

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Registrant Name <input type="text"/>	Patton Boggs	Search Field <input type="text"/>	
Search Field <input type="text"/>		Search Field <input type="text"/>	
Search Field <input type="text"/>		Search Field <input type="text"/>	

Filing Type to search:  Paper  Electronic  All

Sort

Primary Sort  Secondary Sort

Download Format:  XML  CSV

Page 1 of 326 Total 6503

<< < > >>

\*\*\* Query returned more than 5000 records. Sort not applied \*\*\*

House ID	Registrant Name	Client Name	Filing Year	Lobbyist Full Name
319170442	PATTON BOGGS LLP	JEROME STEVENS PHARMACEUTICALS	2001	<input type="text" value="KRACOV, DANIEL"/>
319170047	PATTON BOGGS LLP	GREAT AMERICAN LINES, INC.	2001	<input type="text" value="BOGGS, THOMAS H."/>
319170119	PATTON BOGGS LLP	UST, INC.	2001	<input type="text" value="SAMOLIS, FRANK R."/>

Top Earning Lobbying Firm: Patton Boggs

Earnings: \$352,012,000—since 1998  
\$39,980,000—2009

Revolving door: 86 former gov't officials

Source: [opensecrets.org](http://opensecrets.org)

## What makes someone a lobbyist?

For each client (employer, if in-house):

1. Expect at least **two lobbying contacts**
2. Expect **20% time** for client in a quarter on lobbying activity (both contacts and behind the scenes)

**2 USC 1602(10)**

**LDA:** covers lobbying contact with either

- covered legislative, or
- covered executive

**Par. 5:** bans only executive branch contact

**LDA vs. Pledge Paragraph 5**

## “Lobbying Contact”:

- **Communication** to covered official
- On behalf of lobbying **client**
- Re: **broad** range of subjects
  - Legislation
  - Govt program/policy/position (e.g., rules, contracts)
  - PAS nomination/confirmation

**2 USC 1602(8)(A)**

## But 19 Categories of Exceptions!

Exceptions include:

- Routine administrative requests
- Responses to Federal Register
- Communications required by gov't contract
- Communications re: court case or investigation

**2 USC 1602(8)(B)**

- *President*
- *VP*
- *EOP employees*
- *Executive Schedule officials*
- *Non-career SES (from EO, not LDA)*
- *Schedule Cs*
- *Uniformed officers at 0-7 and above*

**Off-limits under Paragraph 5**

- Paragraph 4: Former Agency
- Paragraph 5: **Executive Branch**

All LDA Registration is

Client-Specific

Paragraph 5 Restriction also is

Client-Specific

If not registered for that client . . .

then not acting as a registered lobbyist

# Maybe . . .

- the firm doesn't meet the lobbying income threshold for XYZ (\$2500 per quarter)  
or
- Joan isn't a "lobbyist" for XYZ: <20% of her time for XYZ spent on lobbying activity  
or
- Joan isn't a "lobbyist" for XYZ: <2 lobbying contacts expected for XYZ

“The term ‘lobbyist’ means any individual who is employed or retained by a client for financial or other compensation . . .”

2 USC 1602(10)

Under the LDA & Pledge Par. 5

There's no such thing

as a

free lobbyist!

# **COMPLIANCE AND ETHICS PROGRAMS FOR GOVERNMENT ORGANIZATIONS**

## **Lessons From the Private Sector**

Office of Government Ethics Annual Conference  
September 13 – 15, 2011



Emil Moschella,  
Executive Director,  
Rutgers Center for Government Compliance and Ethics  
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# Organizational Integrity

## Legal Compliance

- Our major premise is that compliance with the law is a baseline expectation flowing from our national commitment to **the rule of law** and to the principle that that **public office is a public trust**.
- A program to prevent and detect organizational non-compliance with the law is a core element of modern corporate governance.
- The Rutgers Center for Government Compliance and Ethics was established to advance the application of effective corporate ethics and compliance program principles as an element of public governance at the federal, state and local levels.
- The session will provide an overview of the development of corporate compliance programs, the business case and the benefits of the adoption of such programs in a government environment.

# Topic Areas

- A few Examples
- What laws?
- The Center's Mission
- The Federal Sentencing Guidelines for Organizations / Program Elements
- Private Side motivation
- Public Side motivation / Benefits
- Possible Objections

# A Few Examples

# Federal Mine Safety and Health Administration

- In March 2010, the Department of Labor's Office of Inspector General (OIG), issued a report, captioned Journeyman Mine Inspectors [in the Mine Safety and Health Administration] Do Not Receive Required Periodic Retraining, in violation of the Federal Mine Safety and Health Act of 1977 (Section 505).
- <http://www.oig.dol.gov/public/reports/oa/2010/05-10-001-06-001.pdf>



# DOL OIG Conclusion

- “This [non-compliance] increases the possibility that hazardous conditions may not be identified and corrected during inspections which, in turn, could increase the risk of accidents, injuries, fatalities, and adverse health conditions for miners.”
- Begs the question: What else is out there?

# West Virginia Upper Big Branch Coal Mine Explosion



29 of 31 men working at this site died April 5, 2010.



# National Security Letter - Issue in brief March 2007

- What are they?
  - FBI issued letters to obtain information from telephone companies, financial institutions, internet service providers and consumer credit agencies.
- The Authority - 5 provisions contained in 4 statutes.
- <http://www.justice.gov/oig/special/s0703b/final.pdf>

# DOJ OIG Findings

- Faulty recordkeeping understated the total number of NSLs issued – by about 20%. Those numbers were reported to Congress.
- Failure to self-report non-compliance to the President's Intelligence Oversight Board.
- 46 of 77 files contained one or more errors –  
– 60 % error rate.

# Reasons

- No clear guidance, leading to:
  - Confusion amongst those administering the program.

# Motivation

- “Moreover it is important to recognize that in most cases the FBI was seeking to obtain information it could have obtained if it had followed applicable statutes, guidelines and internal policies.” (OIG report at p. xlvii)

# Reaction

- Congressional hearings / criticism
- Adverse news editorials
- Internal reviews / responses to the OIG
- Internal question – what else is out there?

# Reaction

- “If a private company reflected the same disregard for technical and legal compliance as did the FBI, the FBI and Justice would be all over them.”
  - » Washingtonian Magazine, Sept. 2008, p. 119 quoting Alan Raul, Vice Chair of the President’s Privacy and Civil Liberties Oversight Board.

# Some Other Examples

- **Center for Medicare and Medicaid Services:**  
Deficiencies In Contract Management Controls Are Pervasive: <http://www.gao.gov/products/GAO-10-60>.
- **State and Municipal Bonds:**  
<http://www.sec.gov/litigation/admin/2010/33-9135.pdf> (New Jersey negligent misrepresentation)  
<http://www.sec.gov/litigation/admin/2006/33-8751.pdf> (San Diego intentional misrepresentation)
- **Minerals Management Services:**  
<http://www.doi.oig.gov/images/stories/reports/doc//RIKinvestigation.txt> (Cultural issues – ethics rules do not apply)
- **Local compliance with HUD rules:**  
Generally: <http://www.hud.gov/offices/oig/reports/oigstate.cfm>
- **Atlanta school system cheating scandal:**  
[http://gov.georgia.gov/00/press/detail/0,2668,165937316\\_165937374\\_173112104,00.html](http://gov.georgia.gov/00/press/detail/0,2668,165937316_165937374_173112104,00.html)

# Sample of Laws With Which the Federal Agencies Must Comply

Non-exhaustive list of laws governing Agency operations / in addition to your own authorization law

- The U.S. Constitution
- Federal Statutes
  - Title 5 - Government Organization and Employees
  - Title 28 Judiciary and Judicial Procedure
  - Title 31 Money and Finance
  - Title 40 Public Buildings, Property, and Works
  - Title 41 Public Contracts

Other:

- Presidential & OMB Directives / Congressional Prerogatives - demands
- Inter-agency agreements / memoranda of understanding
- Other agency regulations: e.g. federal travel regulations
- Internal Rules / Policies / Directives

# The Center's Mission

- Advance the application of effective ethics and compliance **program principles** as an element of public governance at the federal, state and local levels in the United States and internationally through a variety of activities including research, education, networking and thought leadership.
- Where do we find those program principles?
  - Federal Sentencing Guidelines for Organizations
  - Industry Best Practice

# Federal Sentencing Guidelines for Organizations

- FSGO - Around since 1991.
- Amended 2004 and 2010.
- Standard for evaluating organizational due diligence in preventing and detecting organizational non-compliance.
- Requires risk analysis.
- Affects “charging” decisions and sentencing.

– See United States Sentencing Guidelines, Chapter 8 et seq., particularly USSG § 8B2.1, for the elements of an effective compliance and ethics program: [http://www.ussc.gov/guidelines/2010\\_guidelines/Manual\\_HTML/Chapter\\_8.htm](http://www.ussc.gov/guidelines/2010_guidelines/Manual_HTML/Chapter_8.htm)

# FSGO Compliance Program Elements

- Legal and ethical risk analysis/mitigation.
- Oversight from a knowledgeable governing body.
- A high-level manager with overall responsibility.
- Incentives / discipline to promote and enforce the program.
- Mechanisms to raise compliance concerns / non-reprisal policy.
- Applying compliance controls – policies / training / monitoring / auditing
- Communications and training.
- Periodic evaluation of the effectiveness of the program.

# Best Practice Element

- Compliance is the Business of the Business.
  - This concept defines the roles and responsibilities of the compliance and ethics function and the rest of the agency.

# Role of the Compliance Officer

- Underlying notion – “Compliance is the Business of the Business.”
  - Facilitate risk identification / mitigation.
  - Set the agendas for compliance committee.
  - Train on the compliance program.
  - Monitor Help line.
  - Recommend compliance control solutions.
  - Develop and implement compliance policies.
  - Measure effectiveness.

# Why Did the Private Sector Adopt Compliance Programs?

To avoid this →



# Seriously

To mitigate against the possibility of:

- Fines
- Civil liability
- Loss of Reputation
- Administrative action - debarment

# Why Should the Public Sector Adopt this methodology?

- Just good public policy:
  - Upholds the rule of law / public office is a public trust.
  - Government entities are “organizations” within the meaning of the federal criminal law.(18 U.S.C. §18)
  - Affect on ethics:
    - How we do things as important as what we do.
    - FSGO: “The prevention and detection of criminal conduct, as facilitated by an effective compliance and ethics program, will assist an organization in encouraging ethical conduct and in complying fully with all applicable laws.”

# GAO / OMB Standards for Internal Controls

- **Internal Control**

- An integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved:

- effectiveness and efficiency of operations,
    - reliability of financial reporting, and
    - **compliance with applicable laws and regulations.**

- **Compliance Program** – is a methodology for achieving internal control over compliance with the law.

- [GAO: http://www.gao.gov/special.pubs/ai00021p.pdf](http://www.gao.gov/special.pubs/ai00021p.pdf)
- OMB: [http://www.whitehouse.gov/omb/circulars\\_a123\\_rev](http://www.whitehouse.gov/omb/circulars_a123_rev)

# Benefits

- Address issues before they reach critical mass.
- Credibility with oversight partners and encourage employee ethical behavior through organizational leadership.
- “Regulating agencies” better regulate corporate compliance through the agency experience.
- Analyze cause of non-compliance – Systemic problem? Employee problem?

# Benefits (Cont'd)

- Detect internal management control weaknesses.
- Give life to often stated agency values of individual and organizational integrity.
- Agencies forced to solve problems across functional lines and gain effectiveness and efficiency in doing so.
- Cost effective by getting the job done right the first time and avoid costly fixes.

# Differences Between Government and Private Sector

- No Board of Directors
  - Need high level involvement
- Risks much different

## Private

- Criminal Liability
- Civil Liability
- Administrative Finding
- Reputation

## Government

- Public trust
- Privacy and civil rights
- Constitutional rights
- Reputation
- Abridgment of authority
- Confidence in our institutions

# Possible Objections



# Possible Objections

- There are significant oversight mechanisms in place.
- We already have too much on our plates – you tell us where the risks are and we will advise you on the solution.
- We already have an Ethics program.
- There is no requirement that we do this.

# Initial Decision Points

- Scope of program – mission only or all rules.
- Infrastructure to manage the program.
- Senior leadership involvement.
- To whom should the compliance officer report?
- Size and role of the compliance office.
- Incorporating existing structure – Ethics office / internal audit .

# Employer - Employee Obligations

- Duty of government:
  - To its citizens: assure that it is carrying out its mission in compliance with the law.
  - To employees: provide proper guidance, training monitoring, and auditing.
- Duty of Employees:
  - Know the rules.
  - Comply with the rules.
  - Report non-compliance and shortcomings in the policies, training, and monitoring.

# James Madison, Federalist Paper No. 51 (1788)

- *If men were angels, no government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; **and in the next place oblige it to control itself.***



# Conclusion

- Agency compliance with the law is at the heart of organizational integrity and is a shared responsibility.
- A program to prevent and detect organizational non-compliance is a core element of modern corporate governance.
- The RCGCE was established to advance the application of effective ethics and compliance program principles as an element of public governance at the federal, state and local levels.
- Hopefully this session has provided you with an overview of compliance programs in the private sector and a rationale based on guiding principles and actual benefits for adoption of such programs by government agencies.

# Federal Travel and Ethics

---

*Lennard Loewentritt*

*Deputy General Counsel*

*General Services Administration*



# *Use of Frequent Flyer Benefits*

---

Section 1116 of Public Law 107-107 (the National Defense Authorization Act of 2002) permits personal use of promotional items earned on official travel.



# Promotional Items –cont'd

- Includes frequent flyer miles, upgrades, access to airline clubs or facilities.
- Applies to employees, family members and dependents who receive promotional items while traveling for the Government.
- Includes all promotional items received before, on or after enactment of the new law.

# Promotional Items- cont'd

---

- Applicable to promotional items obtained whether travel is at the expense of the Government or accepted from a non-Federal source.
- Applies to all promotional items obtained while on official travel- including airlines, hotels and car rental companies.

# *Other Than Coach-Class Travel*

---

First Class and Business Class Airline Accommodations can only be used in specified, limited circumstances. Travelers are expected to act prudently.



# *First Class Travel*

---

- A. No coach class are reasonably available within 24 hrs.
  
- B. Accommodate a disability or special need.
  - Medical certifications required (includes necessity, duration, and recommendation)
  - Attendant services

# *First Class Travel*

---

- C. Exceptional security requirements
  - Life or Government property endangered
  - Protective details
  - Accompanying controlled packages
- D. Required for agency mission

# *Business Class Travel*



- A. Accommodate a disability or special need
- B. Exceptional security requirements
- C. Inadequate sanitation or health standards in coach on foreign carrier
- D. Regularly scheduled flights provide only other than coach-class accommodations

# *Premium Class Travel (cont)*

---

E. Non-federal source pays costs

F. When OCONUS Flight time > 14  
hours

G. Results in overall cost savings

H. No coach space available in time to  
accomplish mission

I. Required for agency mission

# *Denied Boarding Compensation*

---

- a) Involuntary Bumping
- b) Voluntarily Vacating an Airline Seat



# *Payment of Travel From Non-Federal Sources*



- a) 31 U.S.C. § 1353 authorizes Federal agencies to accept payment of travel expenses for employees to attend meetings and similar functions.
  
- b) Federal Travel Regulation Part 304-1 implements this authority.

# *Mandatory use of the Travel Charge Card*

---

- a) Public Law 105-264, January 27, 1998 mandates the use of a government furnished travel charge card.
- b) Implementing regulations are published in the Federal Register July 16, 1999.
- c) FTR Part 301-52, Effective May 1, 2000

# *Mandatory use of the Travel Charge Card*

---

- a) Official use, not local travel
- b) Incidental Expenses
- c) Exemptions
- d) Penalties
- e) Why is use mandatory?

# *Prompt Reimbursement of Travel Expenses*

---

Public Law 105-264 mandates reimbursement of travel expenses by agencies to employees within 30 days.



# *Employees Who Fail To Pay Charge Card Bills*

---

Public Law 105-264 permits your agency to offset amounts owed to the travel card company from employees' salaries.



# Conferences

## FTR Part 301-74

Increased Per Diem Rates for attendance at conferences

## Light Refreshments

Training conferences

Attendees in a travel status

Formal conferences

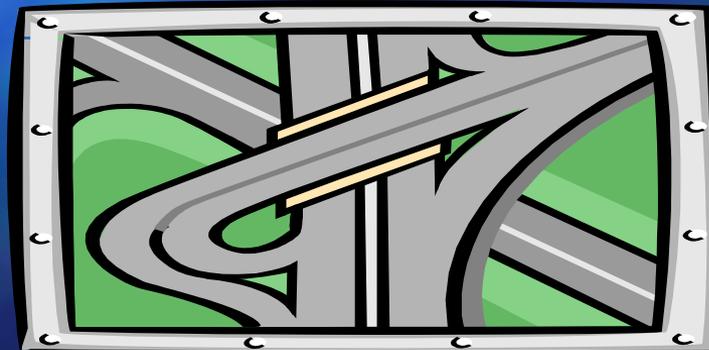
(Comptroller General decision  
B-300826, March 3, 2005)



# Routing of Travel

FTR section 301-10.7

Travel by the usually traveled route unless your agency authorizes a different route as officially necessary.



# Use of Airline City-Pair Contracts

---

- a) Seat not available in time to accomplish mission or would require additional per diem.
- b) Agency policy to travel during normal working hours.
- c) Lower fare on non-contract carrier available to the general public. (TMC/CTO must still be used to book travel arrangements).
- d) Use of Amtrak
- e) Smoking flight

# Car Rental While On Official Travel

---

- Liability and Vehicle Damage
- Personal Use
- Passengers in Rental Vehicles



# Contact Information

---

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# Ethics, Investigations, and the Digital Frontier: A choose your own adventure in new-media land

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Nancy Eyl, Assistant Counsel to  
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Epin Christensen, Counsel to  
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Smithsonian Institution

Sabrina M. Segal, Counsel to  
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International Trade Commission



Smithsonian  
Institution

Reference in this presentation to any specific commercial products, processes, or services, or the use of any trade, firm, or corporation name is not intended to express endorsement, recommendation, or favoring by the United States Government or of any views expressed, or commercial products or services offered by the commercial providers.





Choose your  
own  
Adventure!



## Ethics in the Age of New Media



facebook

YouTube

Broadcast Yourself™

twitter

myspace.com™  
a place for friends

LinkedIn®



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# Before we begin, some ground rules for our adventure....



1. We can't come up with all of the possible scenarios so please suspend disbelief for one hour and play along
2. There are lots of things like the Hatch Act and suitability determinations we won't be able to cover
3. We understand the scale of seriousness of the story is not monumental, but it is important nonetheless
4. Your agency has a policy against employees using their .gov email address for anything other than official business
5. Your agency has a *de minimus* use policy for IT equipment allowing for some personal use
6. Your agency has suitable notices and requires employees to sign acknowledgements that any IT equipment issued to them and used by them is property of the USG

**7. You have a FANTASTIC  
relationship with your IG!**

*And one more thing....*



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# You have a fantastic relationship with your OIG and you would never forget to contact them!

For the purposes of our adventure, we will assume that you immediately went to the OIG with the information you are given and the OIG declined the matter.



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*Flip to the next slide to  
begin your adventure....*





# *It was a dark and stormy night...* *well, not really*



You are an ethics officer in the Government Effectiveness and Efficiency Commission (GEEC) and there is a knock on your door....

Who?

Jack, the time and attendance keeper from the GEEC contracting office, has come to see you.

What?

Jack tells you that he thinks there is a potential ethics problem with Jill, a Contracting Officer, who works in his office.

When?

Jack says that Jill called in sick on Wednesday of last week but he suspects she wasn't sick.

Where?

Jack's friend is "friends" with Jill on Facebook and said that he saw photos of Jill at the Nat's game the same day she was "sick." His friend also thinks that the President of MegaCorp, a vendor bidding on a large GEEC contract, was in the pictures with Jill.



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# What do you do?

- A) Create a fake Facebook account, “friend” Jill, and see if you can see the pictures for yourself
- B) Use your real Facebook account and “friend” Jill
- C) Send Jack back to talk to his friend and see if he can get more information
- D) Log into Facebook and see if Jill’s pictures are public



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***And, of course, you're not going  
to forget the OIG!***





# What do you do?

- A) Create a fake Facebook account, “friend” Jill, and see if you can see the pictures for yourself
- B) Use your real Facebook account and “friend” Jill
- C) Send Jack back to talk to his friend and see if he can get more information
- D) Log into Facebook and see if Jill’s pictures are public



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***Final Answer?***





# Answer A – Fake Facebook Account



## Undercover Operations: Things to Consider

- Who's Leading the Investigation?
- Social media provider issues
- What if it's criminal?



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# Answer A – Fake Facebook Account



## Social Media Provider Issues

- Terms of service
  - Most social media ToS require real identities
  - Cybercrime laws
- Voluntary disclosure
  - Law enforcement has authority to request information about user accounts
  - User may be notified





# Answer A – Fake Facebook Account



## Who's Leading the Investigation?

- Agency has inherent authority to investigate certain violations, but beware:
  - Agency policy
  - Referral and notification issues
  - Evidence: collection and preservation
- OGE authorized to investigate ethics violations
  - Usually based on agency report of investigation
  - OGE usually recommends that OIG investigate
- OIG authorized to investigate *all* violations involving agency programs and operations





# Answer A – Fake Facebook Account



## What If It's Criminal?

- Need authorizing statute to conduct criminal investigations
- Undercover operations must follow special procedures
  - *Attorney General's Guidelines on FBI Undercover Operations*
- 28 U.S.C. 535 – Duty to Report
- Evidence – collection and preservation
- Privacy considerations





# Answer A – Fake Facebook Account



## Why Supervisors Should Refer to the OIG or DAEO

- Follow agency policy and the law
- “Deconfliction”
  - The OIG might not investigate, but referral will assure deconfliction
- Worst case scenario if you do not refer allegation
  - *You may be subject to disciplinary action.*
  - *You may blow the case.*
  - *You may be personally liable in tort.*

*Don't Circumvent Legal Process!*



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*Return home to try  
another option.*





# Answer B – Real Facebook Account



## Timing is important – Part 1

Timing may be key in determining whether an employee has a reasonable expectation of privacy. If the employer and employee are already friends, the employee has consented to sharing this information and therefore it would be difficult to argue a reasonable expectation of privacy.

Let's have a quick 4<sup>th</sup> Amendment refresher...



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# Answer B – Real Facebook Account



## 4<sup>th</sup> Amendment

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”



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# Answer B – Real Facebook Account



## When does it apply?

- Extends beyond criminal investigations
- Applies when Government acts as an employer
- Government employees do not lose their Fourth Amendment rights merely because they work for the government (*O'Connor v. Ortega*, 480 U.S. 709, 717 (1987)).
- Two-step analysis:
  1. Operational realities
  2. If legitimate privacy expectation, reasonableness standard





# Answer B – Real Facebook Account



## REP and Social Media

- There are 4th Amendment considerations with respect to an employee's virtual life
- Public new media account (no privacy settings) - 4th Amendment is not implicated
- If privacy settings, may have REP
- Employees generally have REP in their personal items in the workplace (such as purses, luggage, and briefcases)
- Same rationale may apply to new media accounts, even if the employee accesses the accounts at the workplace





# Answer B – Real Facebook Account



## Timing is important – Part 2

If the employer friended the employee after learning about the incident, the employee may have a reasonable expectation of privacy. Also, we may have entered the undercover (UC) realm and the employer should follow the agency's UC rules.



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*Return home to try  
another option.*





# Answer C – Get more information



## Agency?

- If an employer directs complainant to take such actions (such as print a snapshot or allow employer to use complainant's FB account), then complaint may be considered an agent of the employer and could be violating federal law enforcement UC rules.



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*Return home to try  
another option.*





# Answer D – Public Information



Yes, you can continue your investigation!

- Agencies can discipline for work related violations
- In this case, we have a Time and Attendance violation and a potential conflict of interest

*But, what if you saw more...*

- *Jill has comments on her “Wall” about future GEEC contracts*
- *Jill has other photos of her attendance at MegaCorp events*
- *Jill has comments on her “Wall” about corruption in her office*



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# Answer D – Public Information



## 1st Amendment: Freedom of Speech

- “Congress shall make no law...abridging the freedom of speech.”
- Public employers are allowed to discipline speech, including speech via social media platforms
- Balancing Test: Employee’s interests in commenting on “matters of public concern” vs. Employer’s interest in promoting efficiency of public services





# Answer D – Public Information



## 1<sup>st</sup> Amendment - 3 ?'s to Ask:

1. Was the public employee speaking on a matter of public concern?
2. Was the employee speaking as a citizen or as a public employee?
3. Do the interests of the government in promoting efficient operations outweigh the interests of the employee in commenting on matters of public concern?





# Answer D – Public Information

## NLRB vs. American Medical Response (AMR)

- Facts
  - Supervisor denied request for union rep.
  - Employee criticized supervisor on Facebook & co-workers posted supportive comments
  - Employee was fired for Facebook posts
- NLRB alleged AMR violated employee's right to engage in protected concerted activities (act together to improve working conditions)





# Answer D – Public Information



## NLRB vs. AMR: Impact

- Case does not represent current law
- NLRA doesn't apply to feds
- NLRB's general position is still that employers are permitted to regulate employee behavior, including speech on social media websites
- “Generally, employee grievances, personality conflicts, etc. are not a matter of public concern





# Answer D – Public Information



## Public Info: Final Thoughts

- Speech made pursuant to official duties or on matters not deemed to be of “public concern” is not protected
  - Be aware of other issues: discrimination, whistleblower, etc.
- Discipline is not prohibited if the impact on the employer outweighs employee’s interest in making the speech and the public’s interest in hearing it



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*Return home to try  
another option.*





# So what's the answer?!?!



*Well, as you can see, it depends....*

1. Don't try to use law enforcement techniques , such as undercover operations, if you don't have the proper authority
2. Be sure to deconflict with other offices that may have an interest in the matter
3. Understand the scope of your investigation
4. Be sensitive to creating an "agent" relationship
5. Be aware of potential REP triggers
6. If information is public you can use it, but make sure it is public
7. Be aware of 1<sup>st</sup> amendment speech rules for federal employees
8. Understand that this is still a developing area of the law and there will be more questions than answers

AND ALWAYS.....



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**Don't forget the OIG!**





Thank you for your time  
and attention!

Questions?



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# Contact us....

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Smithsonian  
Institution



# And the Award Goes to...



**HOLLI BECKERMAN JAFFE, NIH/OD**  
**TRACI MELVIN, NIH/NIDDK**  
**SANDIE DUNHAM, NIH/NCI**



# Awards from Outside Organizations



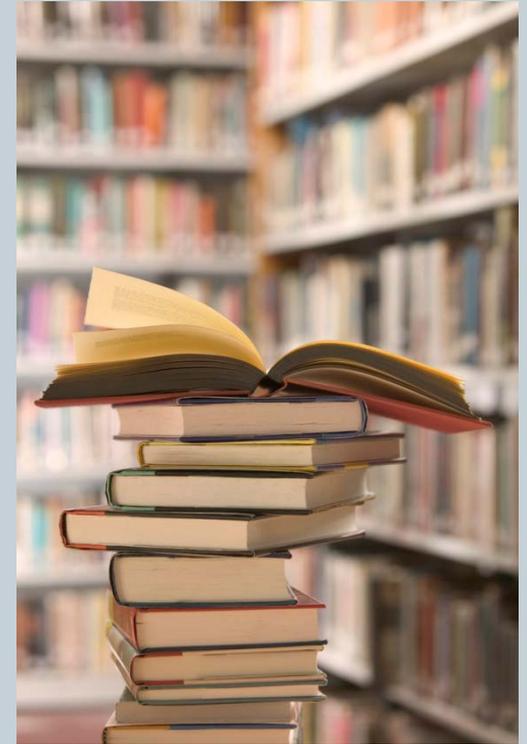
- Regulatory framework
- How to analyze awards
- Special considerations



# Resources



- 5 CFR § 2635.204(d)
- Any agency supplemental regulations
- The granting organization's website



# A Quick Review - Definition of a Gift



- A gift is a gratuity, favor, discount, entertainment, hospitality, loan, forbearance or other item having monetary value.
- It also includes services as well as gifts of training, transportation, local travel, lodging and meals.

# General Prohibitions



**An employee must not, directly or indirectly, solicit or accept a gift:**

- **From a prohibited source; or**
- **Given because of the employee's official position.**

# Exceptions to the Gift Rules



- The general prohibitions do not apply to a gift accepted under certain circumstances.
- Acceptance of a gift under an exception is considered not to violate the general principles of ethical conduct, including appearances.
- Award exception: 5 CFR 2635.204(d)



# Take the Easy Way Out

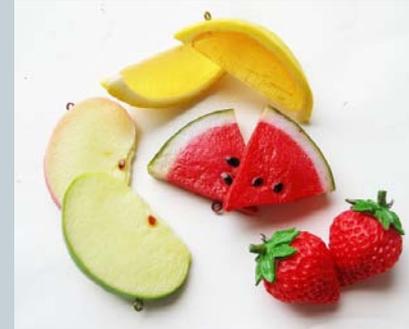


- **If Cash Prize, Must Use 2535.204(d)(1)**
  
- **If No Cash, “Slice and Dice”**
  - Gift of “little intrinsic value . . . which are intended solely for presentation.” 5 CFR § 2635.203(b)(2).
  - Awards gala could be a widely attended gathering. 5 CFR 2635.204(g)(1) or (2)
    - ✦ Note: if you conclude that awards meet “bona fide” criteria under 5 CFR § 2635.204(d)(1), then use 2635.204(d)(3)’s authority to accept “meals and entertainment given to him and to members of his family at the event at which the presentation takes place.”

# The Easy Way



## More Slicing and Dicing



- Gifts Accepted Under Specific Statutory Authority, 5 CFR § 2635.204(L), such as:
  - ✦ Foreign Gifts and Decorations Act for gifts from foreign governments with a value of less than \$350
  - ✦ 31 USC § 1353; 41 CFR § 304-2.1 for “travel” awards
  
- Agency Gift Acceptance Authority, if you have it
  - ✦ Research money

# The Harder Way Out: 204(d)



- Written determination by Agency Ethics Official (NIH uses an award form: <http://ethics.od.nih.gov/forms/nih-2854-Award.pdf>) that:
- Award is part of an established program of recognition, and the program must:
  - regularly gives out awards (such a program does not necessarily have to include the award being offered to the employee (because it is a new award)); ***or***
  - be funded, wholly or in part, to ensure the program's continuation on a regular basis (e.g., funds available to give out award annually or bi-annually);
    - ✦ Endowment letter
    - ✦ Board of Directors' meeting minutes; ***and***
  - selects award recipients based on written standards



# The Harder Way



- **Section 2635.204(d)(1) does not apply if:**
  - Offered by a particular type of “prohibited source,” i.e., a person who has interests that may be substantially affected by the employee’s duties (or an association or organization in which the majority of members have such interests)
  - Determine who is offering the gift and analyze whether that person can be affected by the employee’s official duties
  - The more senior the official, the harder it may be to find no affect. But note: need at least likely (“may”) involvement, not just pending under senior employee’s official responsibilities. See DAEOgram 04-011a.

# Nomination Criteria vs. Selection Criteria



- Often, website posts nomination criteria, e.g.,:
  - Three Letters of Recommendations
  - Resume or CV
  - List of Publications
- Nomination criteria could be selection criteria, but may not. Confirm with organization.
- Presence of a selection committee does not necessarily mean the organization has written selection criteria.
  - Committee uses a rating and ranking form? If yes, request a copy.

# Nomination vs. Selection



- **Selection criteria is the basis for the award, i.e., how did the organization select the employee over the other candidates.**
  - Produced high impact research, perhaps defined by where it was published
  - Holds leadership position in the community
  - Received other prestigious awards
- **May be helpful to give the organization examples of criteria from other awards that have met the regulatory standard.**

# Awards Involving Lectures



Is it really an award?

- Ensure the employee is not being compensated to provide services as a speaker.



- See OGE DAEOgram 04-011 (5/27/2004)

# “Lecture Awards”



## 4 Factors to analyze:

- 1) How Is the event characterized? An award or lecture series?
- 2) How is the event promoted? Opportunity to hear the particular speaker?
- 3) Is a lecture a condition of receiving the honor? Posthumous.
- 4) What is the topic of the lecture? Employee’s current research or an overview of employee’s career work?

# “Lecture Awards”



- **Amount of the Cash Prize**

- \$2,000 vs. \$50,000
- Are Other Speakers Being Paid?



- **How Are Other Speakers Being Treated?**

- Special introduction or advertisement
- Reception in employee's honor
- Other gifts given to just the awardees such as plaques and annual membership fees

# Honorary Degrees



- From an institution of higher learning
- Based on a written determination by agency ethics official that:
  - The timing of the award of the degree would not cause “a reasonable person to question the employee’s impartiality in a matter affecting the institution.”

# Honorary Degrees: Gifts



- 5 CFR § 2635.204(d)(3) allows the employee to accept meals and entertainment given to him and to members of his family at the event at which the presentation takes place.
- Academic Regalia may not fall under gifts of little intrinsic value given solely for presentation. Thus, employee may have to pay for these gifts.

# Example - The Obesity Society



## Albert Mickey Stunkard Lifetime Achievement Award

- One-time award to the recipient
- \$1,000 cash and plaque
- Presented during the society's annual meeting
- Recipient asked to give a short speech following acceptance of the award
- Reimbursement of travel expenses to annual meeting

**How would you handle this scenario?**

# Example - The Royal Chemistry Society



## The Centenary Prize

- Awarded annually since 1949
- Written standards and selection committee
- Cash prize of £ 5,000, a medal, and travel expenses
- Presented at awards ceremony (along with other awards)
- Winner is asked to present 4 lectures at various events

**How would you handle this scenario?**



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# **Financial Disclosure ... And Beyond! A Play In Three Acts**

Featuring the EPA Ethics Performers  
Justina Fugh, Jennie Keith and Dan Fort  
September, 2011

# The Life of an Ethics Official



Ethics officials need certain skills to succeed

- Working knowledge of financial instruments
- Ability to communicate 360 degrees
- Knowledge of ethics statutes and regulations
- Ability to multi-task
- Time management skills
- Know when you can't do it all

Also key: ***MANAGEMENT SUPPORT***

## EPA Order 1000.28A: Our Ethics “Constitution”



EPA's ethics program is decentralized:

- ✓ Core team in Office of General Counsel (OGC) provides oversight for entire program
- ✓ Over 100 Deputy Ethics Officials (DEOs) with certain delegated authority
- ✓ DEOs may redelegate some of their authority to Assistant DEOs
- ✓ DEOs sign 450's, core team signs 278's

## Financial Disclosure: Only the Beginning



- ❖ Technical review is only part of the task
- ❖ Conflict review is harder, but even more important
- ❖ Be curious and probe deeper for information
- ❖ Reviewing forms is an opportunity, not a chore

What does a typical day look like for us?

Financial Disclosure ... and Beyond!  
A Play In Three Acts



# The Inner Workings of Review

- Technical Review
  - Anything missing?
  - Any discrepancies with last filing?
- Conflicts Review
  - Private interests conflicting with public duties?
  - Watch for nuances: private vs. public stock, outside organizations made up primarily of federal employees
  - Ask for more information when needed
  - Ultimately, the filer is responsible for disclosure



# Where We Look For Information

## The form itself:

- Assets
- Agreements/Arrangements
- Outside positions

## Internet and Intranet:

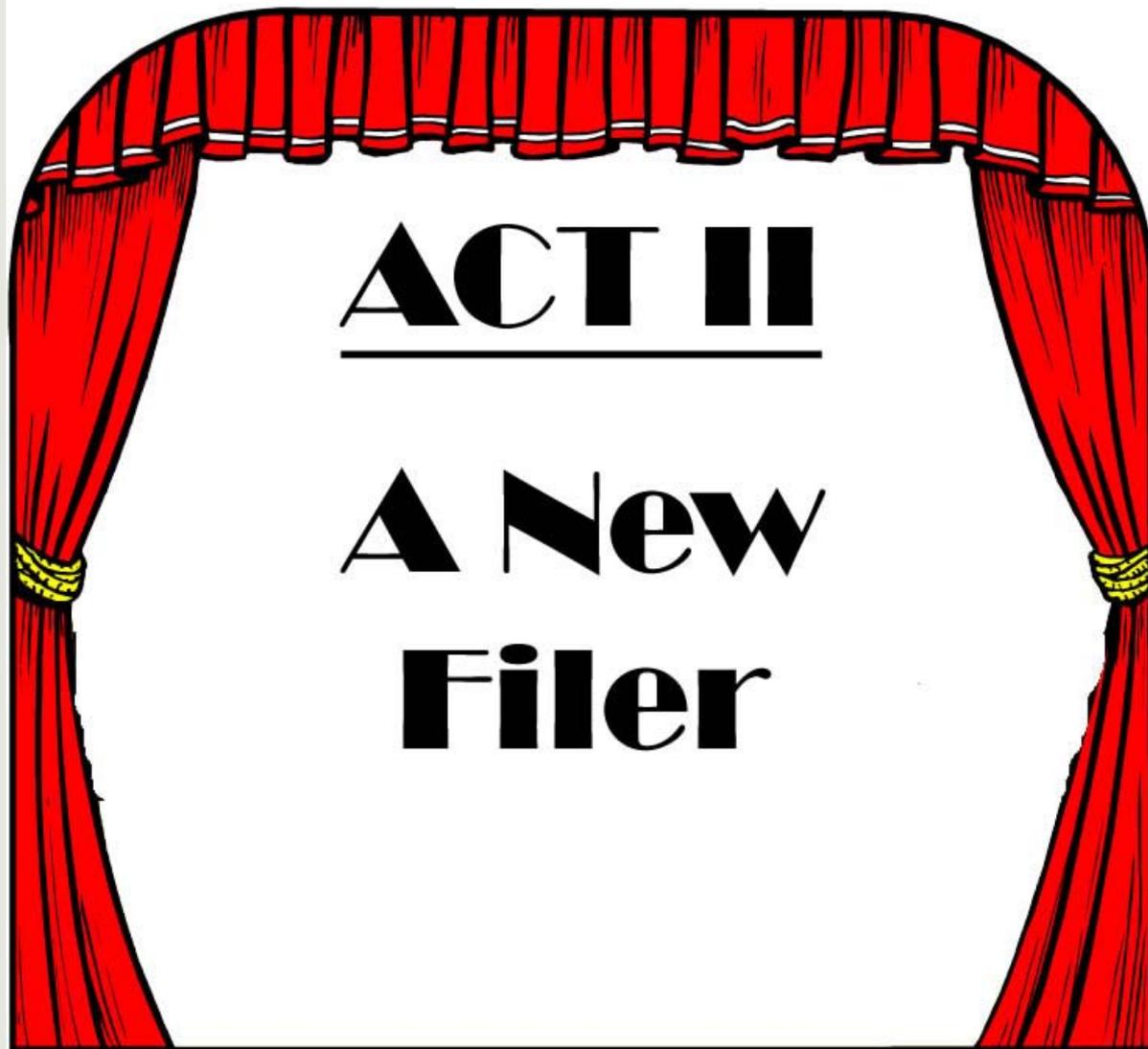
- Internet search engines
- Internal databases

## Ask filer's supervisor

But, sometimes there's no substitute to talking with the filer...



Financial Disclosure ... and Beyond!  
A Play In Three Acts



**ACT II**

**A New  
Filer**

## Tips For Talking With Your Filer



- May not be as focused as you on ethics
- Look below the surface for underlying issues
- Build relationship with your filer
- Ask questions, try to be pleasant
- You are not an accountant (unless you really are)

## Dealing With Ethics Issues



- Keep focused on your mission
- Ethics nuances (e.g, private vs. public stock)
- The filer may not see the issues the same way you do
- Remember: YOU are the ethics official
- Some examples we've seen

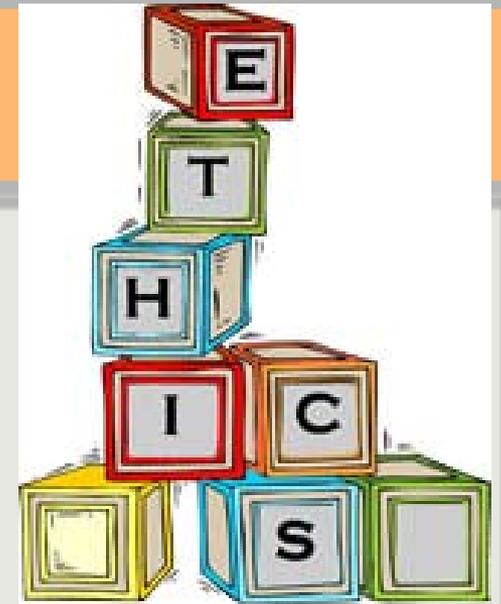
But, you have to go beyond financial disclosure and build a culture of ethics

Financial Disclosure ... and Beyond!  
A Play In Three Acts



## Building A Culture of Ethics

- No person is an island
- Work within your structure
- Don't need to know everything
- Prevent problems from happening
- Set achievable goals
- Cultural change can take years



## You Set The Standard



- It's not just what's legal, it's what's right
- You can do everything to letter of law, but still lose in the court of public opinion
- Have to go beyond compliance and create a culture of ethics
- Just have fun!

# That's All, Folks!



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# **Navigating Ethics Rules as They Apply to Employee Associations and Unions**

**Dan Shaver, Chief Counsel, United States Mint**

**Greg Weinman, Senior Counsel, United States Mint**



Toos

**"Make sure everything is done ethically. Within reason, of course."**

# Basic Principles

## 5 CFR § 2635.101(a)

“Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain.”

# Basic Principles

5 CFR § 2635.101(b)(5)

“Employees shall put forth honest effort in the performance of their duties.”

# Basic Principles

5 CFR § 2635.101(b)(7)

“Employees shall not use public office for private gain.”

# Basic Principles

## 5 CFR § 2635.101(b)(8)

“Employees shall act impartially and not give preferential treatment to any private organization or individual.”

# Basic Principles

## 5 C.F.R. § 2635.101(b)(9)

“Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.”

# Basic Principles

**5 C.F.R. § 2635.101(b)(10)**

**“Employees shall not engage in outside . . . activities . . . that conflict with official Government duties and responsibilities.”**

# Employee Associations

## Definition for This Seminar:

A self-sustaining, private organization—

- operated on Federal property by Federal employees of an agency acting exclusively outside the scope of any official capacity; and
- whose purpose is primarily to benefit the agency's employees by promoting their morale, improving their welfare, or providing recreation or social opportunities.

# Is an Employee Association a “Prohibited Source”?

5 CFR § 2635.203(d)—*Prohibited source* means any person who:

- (1) Is seeking official action by the employee's agency;
- (2) Does business or seeks to do business with the employee's agency;
- (3) Conducts activities regulated by the employee's agency;
- (4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or
- (5) Is an organization a majority of whose members are described in paragraphs (d)(1) through (4) of this section.

# Employee Associations ARE NOT:

- Federal instrumentalities, so they are not entitled to the Government's immunities and privileges
- Entitled to, and may not receive, official endorsement—not even by virtue of their contributions to the welfare of the agency's employees

# Employee Associations CANNOT:

- Improperly use the name or seal of a Federal agency
- Impose a financial obligation on a Federal agency
- Use Government property except with the Federal agency's approval
- Discriminate



Search ID: mban2899

“I can’t believe you’d accuse us of age discrimination. At your age, you ought to know better.”

# Employee Associations—Issues

- Using an employee association to circumvent gift rules
- Using an employee association to perform unauthorized or unfunded agency activities, programs, or operations
- Financial conflicts of interest between employee association officers and their official duties

# Employee Associations—Issues

- Using official time for employee association business or activities
- Using Government resources for employee association business or activities

# Employee Associations—Example

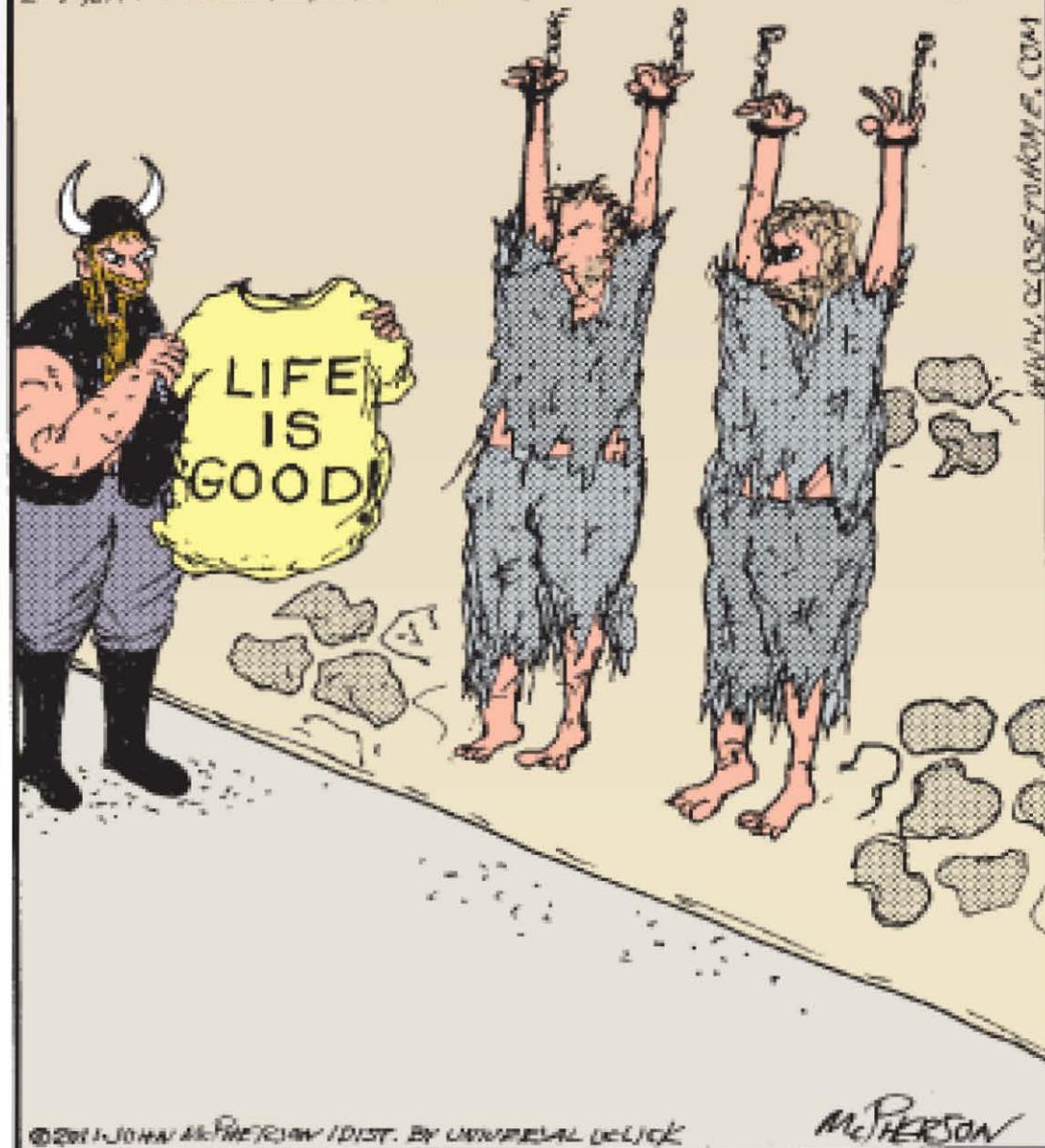
Joe is Director of the Office of Occupational Management and Professional Health (OOMPH). The OOMPH Employee Association has paid to obtain a half-off discount for OOMPH employees on \$50 tickets for seats at Wizards games. May Joe pay \$25 to obtain one of these \$50 tickets?

# Employee Associations—Example

Jane is a manager with the American Agency for Research of Government History (AARGH). The AARGH Employee Association is raising funds for the annual employee picnic. May Jane direct one of her employees to be her office's keyworker for this fundraiser?

# Employee Associations—Example

**Bob is President of the Large Industry Financial Enforcement (LIFE) Agency Employee Association. Bob has asked a LIFE Contracting Officer if she could procure LIFE logo T-shirts that the LIFE Employee Association can sell to LIFE employees. Any problems?**



“Great news, boys! Free T-shirts!”

# Employee Associations—Example

Because of budget constraints, the United Banking Ethics and Character Administration (UBETCHA) has cancelled a procurement for new computers. The UBETCHA Employee Association has decided to give a gift of a new computer to each UBETCHA executive. Any problems?

# Employee Associations—Example

The Department for Improving Vocational and Occupational Training (DIVOT) Employee Association is having a golf outing at a local country club. Participants decided not to take leave because they will conduct DIVOT official business and “networking” on the links. Any problems?

# Employee Associations—Example

Ed is running for President of his agency's Division of Research and Knowledge (DORK) Employee Association. Ed's wife Pam is a DORK manager. The DORK Employee Association is requesting to hold a bake sale to raise funds. Can Pam be the approving official?

# Employee Associations—Example

The United States Mint has a policy that prohibits its employees from purchasing and reselling numismatic products for profit . . . .



# Employee Associations—Example

. . . . so, can a United States Mint employee association purchase and resell numismatic products as a fundraising program?

# Employee Associations—Example

For ten years, Snooze Halon has had the fire extinguisher contract for the Federal Land Area Management Office (FLAMO). Snooze wants to show FLAMO its appreciation by throwing a \$21-per-head holiday party for FLAMO employees. Knowing the gift rules, the FLAMO Director declines, but informs Snooze that it could throw the shindig for the FLAMO Employee Association instead. Any problems?

# **Employee Associations Acting as an Agent**

**18 U.S.C. § 205 bars a Federal employee from acting as an agent or attorney before any “agency . . . in connection with any covered matter in which the U.S. is a party or has a direct and substantial interest”**

# Employee Associations

## Acting as an Agent

**1994 OGE Opinion: § 205 would bar an employee from representing an employee organization before the Government unless the representation was part of the employee's official duties, or otherwise met one of the exceptions in the statute, or was undertaken in accordance with a statute that explicitly exempted the activity from the proscription of § 205. There is no indication that Congress intended to generally exempt employees from the prohibition of § 205 when representing employee interest groups.**

# **Employee Associations Acting as an Agent**

**DOJ: “[A]ccordingly, communications between a current federal employee acting as a representative of [the National Association of Assistant United States Attorneys] and the Department [of Justice] on those matters would violate the statute.”**

# Employee Associations

## Acting as an Agent

### Congressional Response:

- Congress amended section 205 to make the basic prohibition inapplicable to an employee who acts as an uncompensated agent or attorney for an employee association when a majority of the association's members are Federal employees (or the spouses or dependent children of such employees).
- This exception, however, does not cover claims or, judicial or administration proceedings, in which the organization is a party, nor does it cover a grant or contract that provides Federal funds to the organization.

# **Employee Associations**

## **Gambling Is Still Gambling**

- **Q: An employee association can solicit among its own members for contributions to benefit all members of the association. However, can it raise money by holding raffles for tangible items or money?**
- **A: No. A raffle is still a gambling activity prohibited by OPM regulations on any federal facility.**



**“We need to speed things up here, Mr. Neebler, so I can go on my break.”**

# Employee Unions

**5 U.S.C. § 7103(a)(4): “an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment . . . .”**

# Employee Unions: Role

**5 U.S.C. § 7103(a)(12): “to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees . . . .”**

# Employee Unions: Role

5 U.S.C. § 7103(a)(14): “` *conditions of employment* `” means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions . . . .”

# Is an Employee Union a “Prohibited Source”?

5 CFR § 2635.203(d)—*Prohibited source* means any person who:

- (1) Is seeking official action by the employee's agency;
- (2) Does business or seeks to do business with the employee's agency;
- (3) Conducts activities regulated by the employee's agency;
- (4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or
- (5) Is an organization a majority of whose members are described in paragraphs (d)(1) through (4) of this section.

# Employee Unions—Issues

- Using an employee union to circumvent gift rules
- Using an employee union to perform unauthorized or unfunded agency activities, programs, or operations
- Conflicts of interest between official duties and union duties.

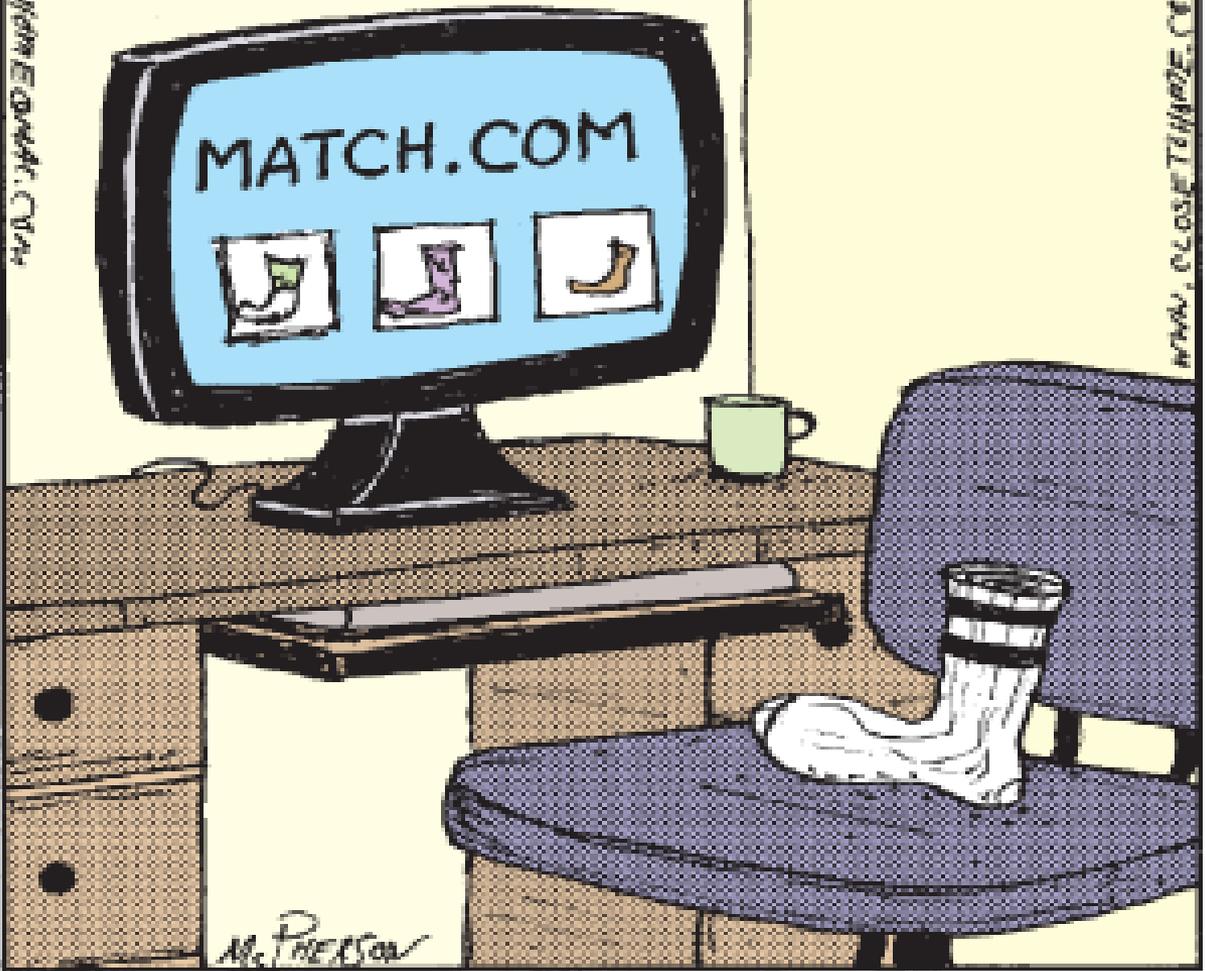
# Employee Unions—Example

Roy is Union President at the Special Office for Check-Kiting Suppression (SOCKS). Roy is proud because he just negotiated an agreement with SOCKS under which the Union gets the largest office in any building leased by SOCKS. A SOCKS contracting officer has asked Roy to be on evaluation panel to select a new building for SOCKS. Any problems?

**Special Office for  
Check-Kiting  
Suppression**

WWW.CLOSETIME.COM

WWW.CLOSETIME.COM



McPHERSON

# Employee Unions—Example

Ethel is Union President at her agency. Ethel and Fred, the agency's management representative, just completed arduous negotiations on a new labor agreement. As a gesture of future cooperation, Ethel has invited Fred to dinner at the Union's expense. Can Fred accept?

# Employee Unions—Example

Kim, an agency head, is concerned about low morale. She thinks having free pizza parties for all employees would help but knows she cannot use agency funds. So Kim tells David, management's representative to the labor union, to see if he can cut a deal under which the union pays for pizza parties if the agency gives the union additional official time for representational activities. Any problems?



Bob was eventually arrested and charged with outsider trading.

# Employee Unions—Example

Cliff is President of the United Treasury Union for Bargaining-unit Employees (U-TUBE). After years of leading U-TUBE, Cliff just got an internal promotion to agency management. To reward him for his service as U-TUBE President, U-TUBE gave Cliff a \$500 gift card. A new labor agreement is being negotiated and now the agency head thinks that Cliff would be the perfect management representative for the negotiating team. Any problems?

# Employee Unions—Example

Brenda was recently hired as a manager at the U.S. Office of Utility Company Holdings (OUCH). Her husband Tom is a bargaining unit employee at OUCH. OUCH's collective bargaining agreement with its union is about to expire, so labor and management are headed for the negotiating table. Can Brenda be a representative on OUCH's management negotiation team?

# Employee Unions

## The Hatch Act Is Still the Hatch Act

### Voter Registration Drives:

- In 2004, a Union wanted to conduct a voter registration drive at a Federal facility
- The Union had not endorsed any candidate
- OSC determined that, because the Union had endorsed candidates from one party in the past, it was unable to conduct a truly nonpartisan voter registration drive.

# Employee Unions

## The Hatch Act Is Still the Hatch Act

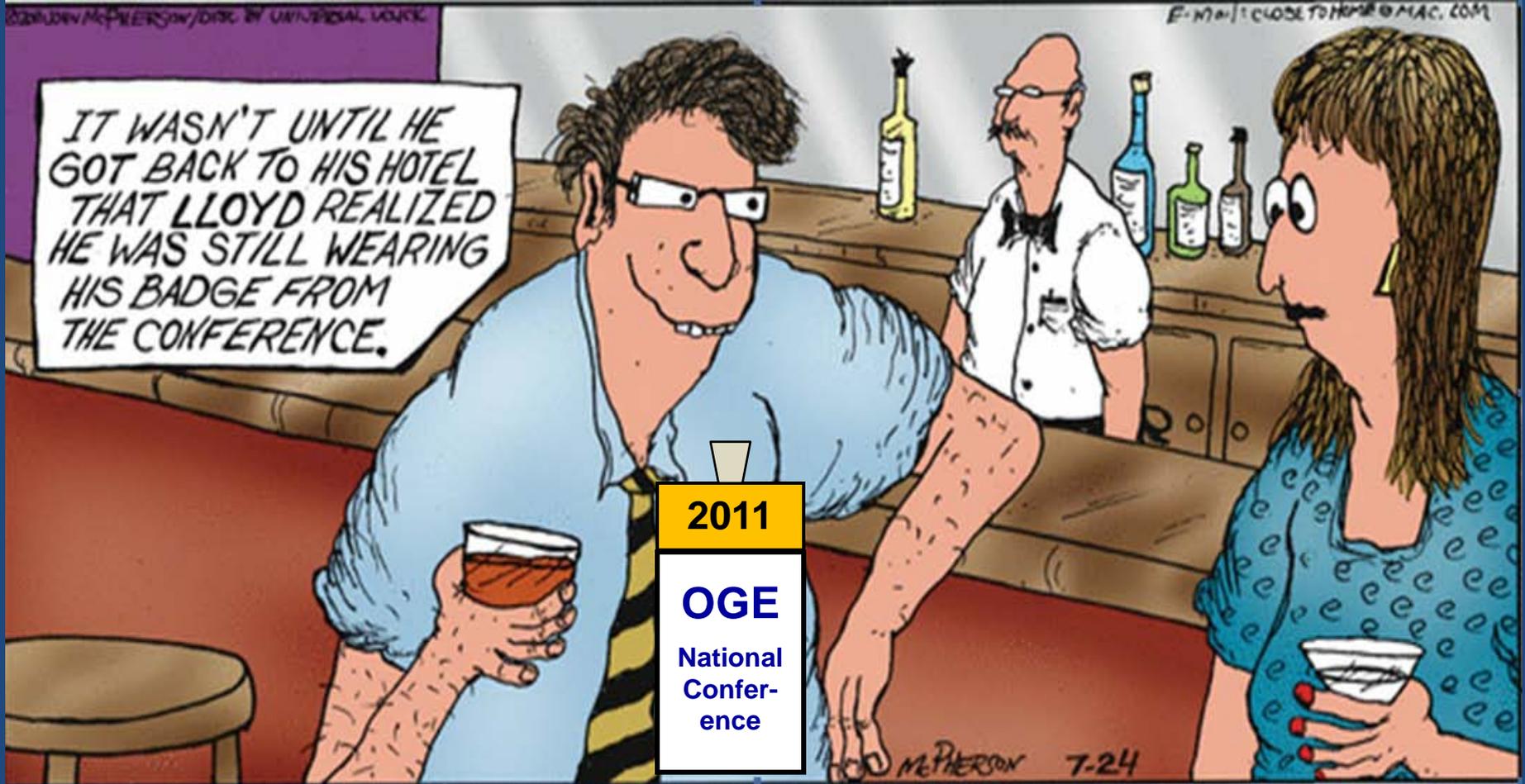
### Union Bulletin Boards:

- In 2000, a Postal Union wanted to post its list of endorsed candidates on its own bulletin board, in its Union space in a federal facility.
- OSC advised that this would subject Union officials to a Hatch Act violation, even though the board was not in a public space.

**Navigating Ethics Rules  
as They Apply to  
Employee Associations  
and Unions**

**Questions?**

# Have a Great Day!



## Rule Template: Standards of Ethical Conduct Restrictions on Serving as an Expert Witness

In the absence of specific authorization, an employee shall not represent anyone other than the United States as an expert witness in any proceeding before a court or agency of the United States if the United States is a party or has a direct and substantial interest. 5 C.F.R. § 2635.805(a). The restriction applies even though no compensation is received. A less restrictive standard applies to special Government employees. 5 C.F.R. § 2635.805(b).

Authorization by the Designated Agency Ethics Official (DAEO) is possible when (1) after consultation with the agency representing the Government, the DAEO determines that the employee's service as an expert witness is in the interest of the Government; or (2) the DAEO determines that the subject matter of the testimony does not relate to the employee's official duties. 5 C.F.R. § 2635.805(c). For this purpose, official duties are defined in 5 C.F.R. § 2635.807(a)(2)(i).

An activity can relate to an employee's official duties even though it is undertaken in an employee's personal capacity. First, testifying as an expert relates to an employee's official duties if the invitation to testify is extended because of the employee's position rather than his expertise on the subject matter or by a person or entity substantially affected by the performance of the employee's official duties. Second, testifying as an expert is part of his official duties if the employee's testimony is based substantially on nonpublic information or the activity deals in significant part with any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period, or any ongoing policy or announced policy, program or operation of the employee's agency. 5 C.F.R. § 2635.807(a)(2)(i).



# Writing Workshop

Arlene McCarthy  
Senior Ethics Program Specialist  
U.S. Department of Agriculture  
Office of Ethics

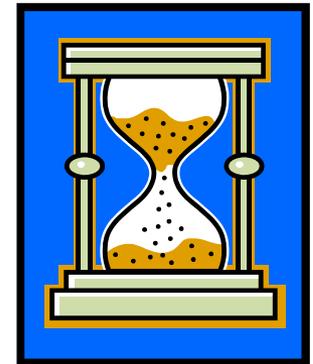
# Fundamentals of the Writing Process: Four Phases

- Pre-Writing and Drafting
- Revising
  - Editing
  - Proofreading



# Timeline

- Time Pressured
- Create mini-deadlines for each phase of the process
- Seventy percent or more of your time should be spent in the first two phases of the writing process



# The legal method of providing written ethics advice.

- Issue
- Rule
- Analysis
- Conclusion

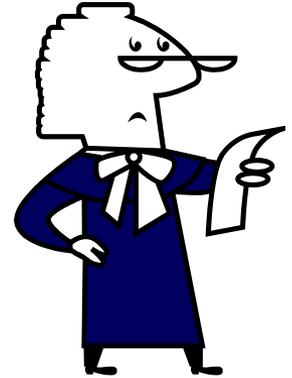


# Issue Spotting

- The **legal question** is often not what the client is asking.
- Determining the issue is a recursive process.
- You must isolate the **relevant facts** and the **applicable rule** to determine the legal question.
- Components may be presented as Under/Does/When in your issue statement.



# Rule



- The rule is the controlling authority.
- The elements of the rule are those parts that must be proved or disproved.
- The underlying reasoning or policy of the rule is known as the rule's "intent."

# Helpful tips for creating useful templates.

- Plain language



- Contains the rule and the elements

# Client Interview

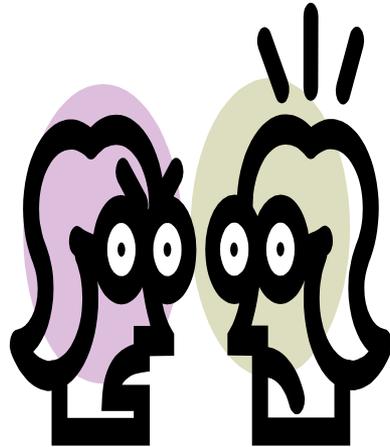
- Have I provided you with all the relevant facts to analyze my problem?



# Disputed Elements

Is Gary's service in the interest of USDA?

Will Gary's testimony relate to his official duties?





# Analysis

- Apply each element of the rule to the relevant facts.
- Is there an appropriate order to consider each element?
- This will become the discussion section of your memorandum.

# Conclusion



- A declarative sentence that answers the issue.
- You will be led to your conclusion by identifying facts that prove or disprove each element of the rule.
- It should be the mirror image of your issue statement.

# Using deductive reasoning

- All humans are mortal
- Socrates is human.
- Therefore, Socrates is mortal.



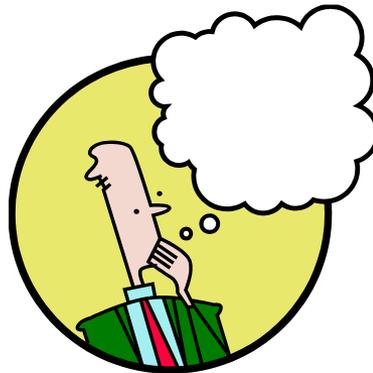
# Does Sir Bedevere's reasoning move from a rule to a conclusion?

- Sir Bedevere: There are ways of telling whether she is a witch. What do you do with witches?  
Peasant 1: Burn them.  
Sir Bedevere: And what do you burn, apart from witches?  
Peasant 2: Wood.  
Sir Bedevere: Good. Now, why do witches burn?  
Peasant 3: ...because they're made of... wood?  
Sir Bedevere: Good. So how do you tell whether she is made of wood?  
Peasant 1: Build a bridge out of her.  
Sir Bedevere: But can you not also build bridges out of stone?  
Peasant 1: Oh yeah.  
Sir Bedevere: Does wood sink in water?  
Peasant 1: No, no, it floats!... It floats! Throw her into the pond!  
Sir Bedevere: No, no. What else floats in water?  
Peasant 1: Bread.  
Peasant 2: Apples.  
Peasant 3: Very small rocks.  
King Arthur: A Duck.  
Sir Bedevere: ...Exactly. So, logically...  
Peasant 1: If she weighed the same as a duck... she's made of wood.  
Sir Bedevere: And therefore...  
Peasant 2: ...A witch!



# Pre-Writing

- Moving from thought to writing
- How do you get your ideas on the page?



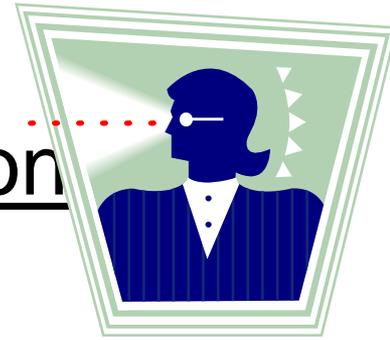
# Creating Roadmaps

- How would you write a roadmap to take me from my issue to your conclusion? What techniques would you use to keep me oriented?



# Revising a Draft

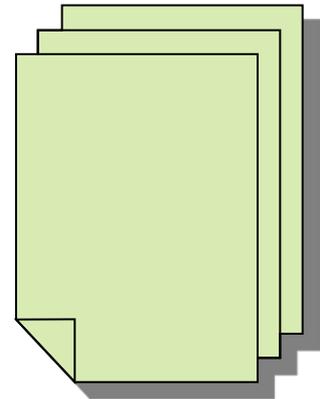
Focus: Large Scale Organization



- Does your memorandum begin with a roadmap?
- Are your paragraphs structured so that your reasoning is transparent?
- Are you using writing techniques such as transitions between sentences and words and phrases to keep the reader oriented?

# Revision (large scale organization)

- Is there an interrelationship between the parts of your memorandum?
- Is the organization of your discussion dictated by the elements of the rule?
- Avoid over-simplification!



# Editing and Proofreading

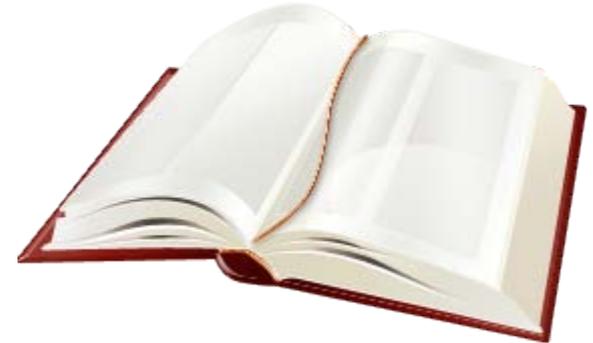
## Focus: Small Scale Organization

- Read each sentence for grammatical correctness
- Examine language to determine if there is a better word choice
- Read out of order to find errors
- Begin with what was written last or written when you were most tired



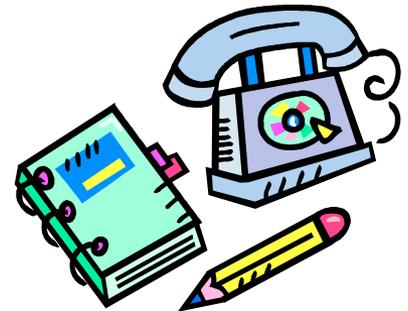
# Editing and Proofreading (small scale organization)

- Avoid over-writing
- Use the [www.plainlanguage.gov](http://www.plainlanguage.gov) website
- plain language is defined by results—it is easy to read, understand, and use.
- Use your style book



# Contact Information:

Arlene T. McCarthy  
Senior Ethics Program Specialist  
USDA Office of Ethics  
Voice-202-720-1087  
[Arlene.McCarthy@dm.usda.gov](mailto:Arlene.McCarthy@dm.usda.gov)



## *Notes from Client Interview*

- *Gary Geek, Director of Telecommunications Services & Operations, DCIO, USDA*
- *Wants to testify as an expert witness in an EEO case brought by an IT employee of BLM, DOI grieving denial of his promotion*
- *not being subpoenaed*
- *asked by the complainant's attorney, a personal friend of Gary Geek, to provide expert testimony on the complainant's qualifications for a promotion relative to the selectee*
- *will support his proffered testimony by relying upon his official title and responsibilities, his 31 years in the Federal IT field, and his participation in the Federal selection process*
- *As Director of Telecommunications Services & Operations, Gary is responsible for supervision and coordination within the Department of the design, acquisition, maintenance, use and disposal of information technology by USDA agencies*
- *Gary is willing to testify without compensation*

# 18 U.S.C. § 209: Intent Matters

## *Can the employee get paid... again?*

\* \* \* \* \*

### 18 U.S.C. § 209(a) Salary of Government officials and employees payable only by United States –

(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or Whoever, whether an individual, partnership, association, corporation, or other organization pays, makes any contribution to, or in any way supplements, the salary of any such officer or employee under circumstances which would make its receipt a violation of this subsection... Shall be subject to the penalties set forth in section 216 of this title.

\* \* \* \* \*

### SCENARIO 1

The following hypothetical is not associated with or presented by the Walt Disney Company. Also, this is a *different* Octomom. We are, however, hoping to inspire a new reality TV show...

#### Snow Octomom and the Seven or Eight Octuplets

Two months ago, the Senate confirmed Snow Octomom to the position of Assistant Administrator for Notorious Publicity at the Child Safety Products Administration (CSPA). Upon confirmation, Snow Octomom (“Soco” as her friends call her) quit her job as a highly paid executive at Magical Republic, Inc., and listed her lavish fantasy castle in Wisneyglobe Park for sale. She only recently bought this castle with a jumbo mortgage and, as a down payment, the proceeds from selling the exclusive rights to her story to several cable networks. Unfortunately, the market for lavish fantasy castles has been depressed lately, and Soco’s estate may remain on the market longer than she expected. The expense of maintaining two residences in Washington and Florida is putting a strain on Soco’s budget, especially while on a frozen federal salary. Fortunately, Soco has a benevolent and generous Fairy Godmother (of sorts): Cinderblockella, a fantastically wealthy baroness who owns a baby car seat company but is unemployed and has more than enough time and gold on her hands to make a project of Soco. Soco and Cinderblockella met six years ago at a ball that Soco crashed with both the octuplets and a sizeable reality show film crew in tow. Soco and Cinderblockella soon discovered that they shared a passion for reality TV shows. She and Cinderblockella have dined together three times since then. On two of those occasions, Cinderblockella picked up the tab so they could dine in the pricier “reality TV celebrity” restaurants of the always elegant Theme District of Orlando. They have exchanged holiday cards, and Cinderblockella once gave Soco a T-Shirt with the logo of her favorite show: **I heart “Cooking with America’s Next Millionaire Ice Roadhouse Apprentice of love –Desperate Bachelor Makeover Edition.”** When Cinderblockella learned of Soco’s plight, she offered to purchase the mortgage on Soco’s castle and carry Soco interest-free until a buyer is found. When asked why she is offering Soco this interest-free loan, Cinderblockella expressed sympathy for Soco’s financial difficulty, adding that she fears Soco will suffer a financial loss from selling at current market prices.

1. What facts are relevant to each of the following factors for analyzing intent with regard to the interest-free loan? Also, are there any additional facts that you would like to know?

a. Express Intent

e. Employee Payor

b. Ability to Influence

f. Similar Payments to Others

c. Pattern of Dealings

g. Payor Motivated by Sympathy

d. Official Position

h. *Bona Fide* Public Service Award

Variation (additional facts on PowerPoint screen)

2. Do both of Cinderblockella's statements express the same intent regarding this loan? If so, what is the intent that underlies both statements? If not, which intent "trumps" the other?

\* \* \* \* \*

## SCENARIO 2

### Magical Republic

As you know, Soco was an executive at Magical Republic, Inc. Magical is a very small child safety product manufacturer. Its sole product line is a popular line of rubber baby buggy bumpers. Last week, Magical's board voted to exempt Soco from its written policy of paying bonuses only to employees who still work for the company on October 31, the date on which bonuses are paid.

3. Are there any additional facts that you would like to know?

### Variation (additional facts on PowerPoint screen)

4. What is the significance of the written policy?

5. What facts are relevant to each of the following factors for analyzing intent with regard to the bonus?

a. Express Intent

e. Employee Payor

b. Ability to Influence

f. Similar Payments to Others

c. Pattern of Dealings

g. Payor Motivated by Sympathy

d. Official Position

h. *Bona Fide* Public Service Award

\* \* \* \* \*

## REFERENCES

- DAEOgram DO-02-016 (Jul. 1, 2002)
- United States v. Project on Gov't Oversight, 616 F.3d 544 (DC Cir. 2010)
- 5 C.F.R. § 2634.204(b)<sup>1</sup>

\* \* \* \* \*

## EIGHT FACTORS FOR ANALYZING INTENT UNDER 18 U.S.C. § 209

a. Express Intent

e. Employee Payor

b. Ability to Influence

f. Similar Payments to Others

c. Pattern of Dealings

g. Payor Motivated by Sympathy

d. Official Position

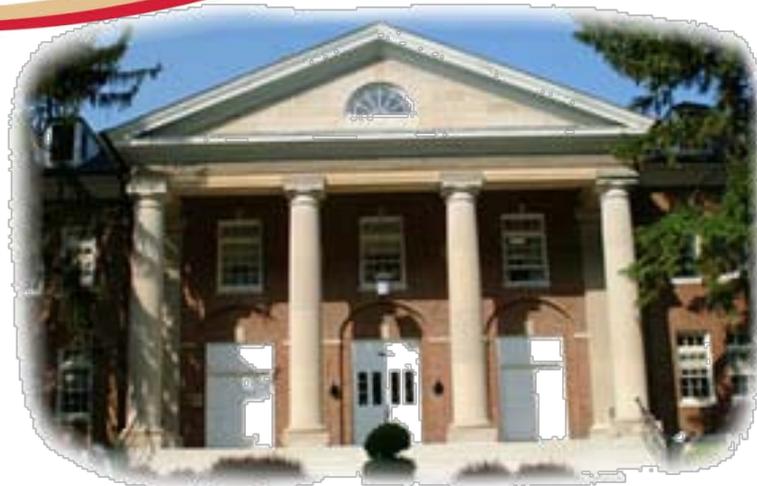
h. *Bona Fide* Public Service Award

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<sup>1</sup> “Gifts based on a personal relationship. An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.”



Defense Acquisition University



# Organizational Conflicts of Interest

Presented by:  
Richard Fowler (703)805-5809

# Agenda

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- What is an Organizational Conflict of Interest
- Potential Problem
- Policy
- Proposed Rule
- FAR v. DFARS

# What is it?

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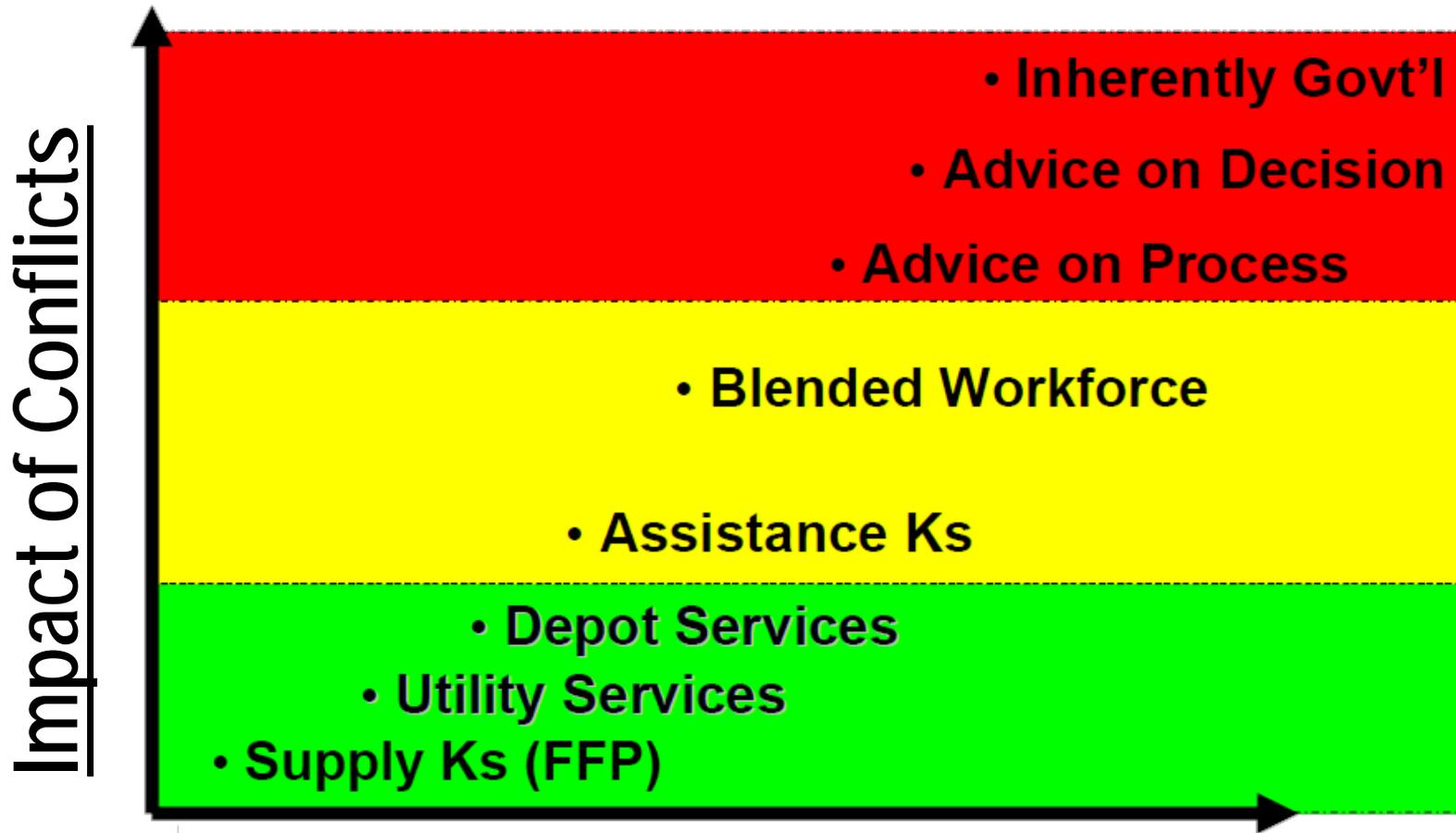
FAR Sub part 9.505 general rules. ...Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and ... the development of an appropriate means for resolving it.

# What is it?

- FAR sub parts 9.505-1 through 9.505-4 prescribe limitations on contracting as the means of avoiding, neutralizing, or mitigating organizational conflicts of interest
- 9.505-1 Providing systems engineering and technical direction
- 9.505-2 Preparing specifications or work statements
- 9.505-3 Providing evaluation services
- 9.505-4 Obtaining access to proprietary information

# Why is Conflict of Interest Important?

## Contractor/Employee Conflict Risk



# Potential Problem?

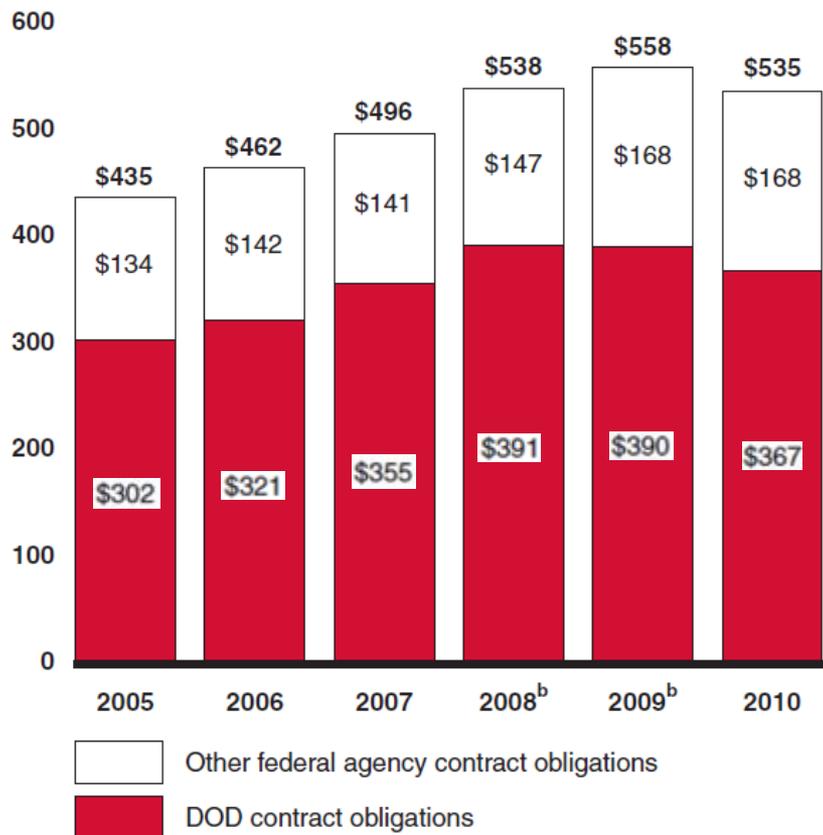
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- The FY 2012 DoD budget requests a total of \$670.9 billion
- The total FY 2012 budget for the federal government is \$3.729 trillion

# Prime Award Spending Data – Contracts

**Figure 2: DOD and Other Federal Agency Contract Obligations Related to Actions over \$25,000 for Fiscal Years 2005 through 2010<sup>a</sup>**

Dollars in billions



**GAO-11-331T, February 1, 2011**

**CONTRACT AUDITS  
 Role in Helping Ensure Effective Oversight  
 and Reducing Improper Payments**

Source: GAO analysis of unaudited obligations data from the Federal Procurement Data System.

<sup>a</sup>Contract obligations are adjusted for inflation using the fiscal year 2010 Gross Domestic Price Index.

<sup>b</sup>DOD's reported obligations in fiscal year 2008 and 2009 reflected an approximately \$13.9 billion adjustment to correct an error made in fiscal year 2008.

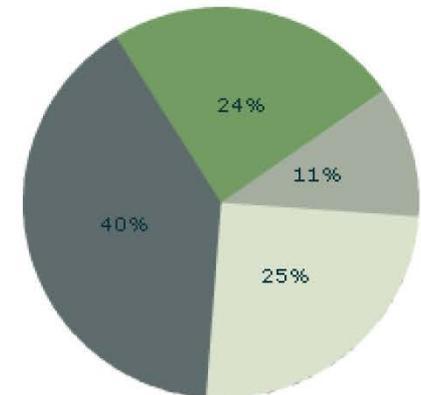


# Prime Award Spending Data – Contracts

Agency	Total Dollars ▼
Department of Defense	\$366.7B
Department of Energy	\$25.7B
Department of Health and Human Services	\$19.0B
General Services Administration	\$16.9B
National Aeronautics and Space Administration	\$16.0B
Department of Veterans Affairs	\$16.0B
Department of Homeland Security	\$13.5B
Department of State	\$8.1B
United States Agency for International Development	\$6.4B
Department of Justice	\$6.4B

## Federal Spending FY 2010

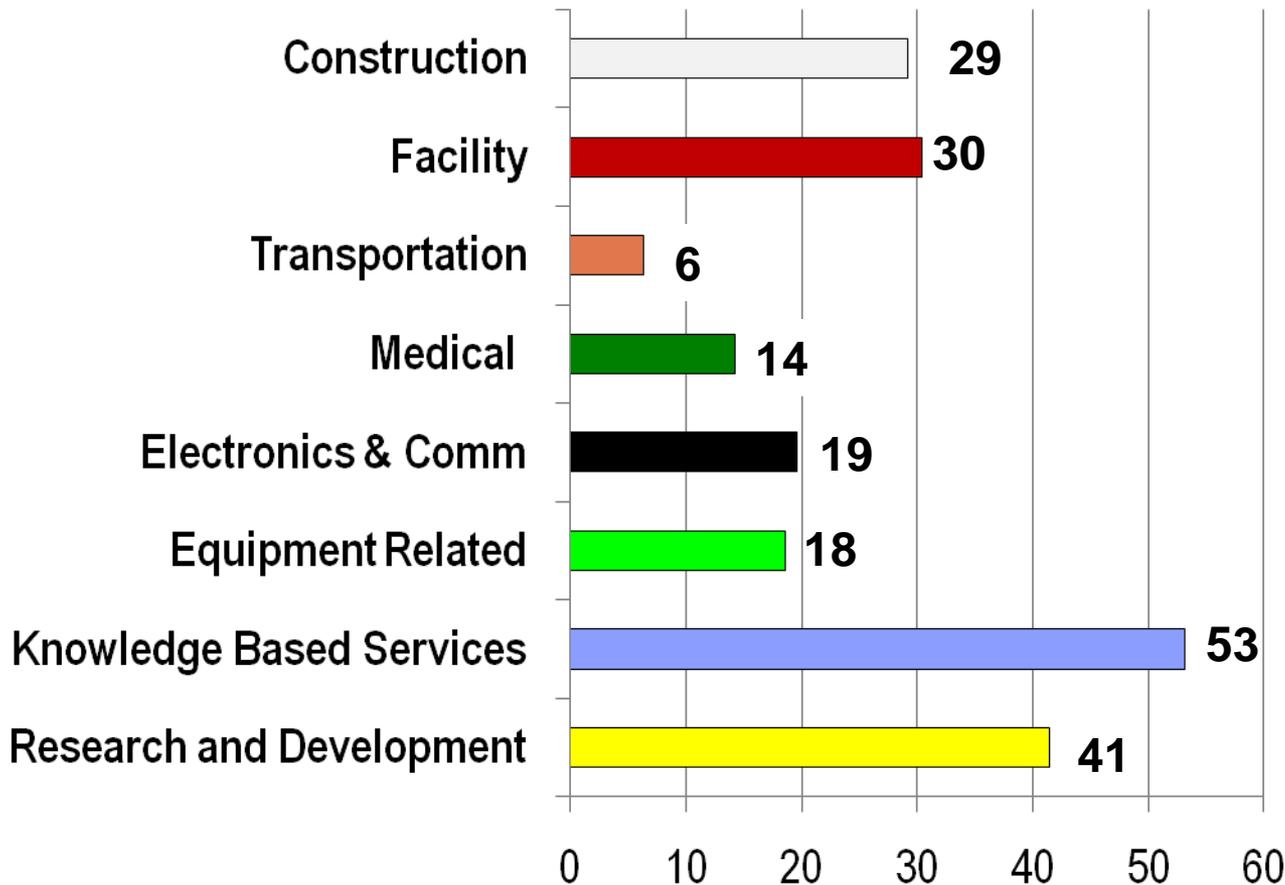
Contracts	\$534.8B
Grants	\$554.5B
Direct Payments	\$880.9B
Insurance	\$237.8B
Loans and Guarantees	\$346.0M
Others	\$2.1B



# DOD FY 09 Dollars Spent

DoD Total Contract Spend: \$ 370 Billion

## DOD Service Categories Spend in Dollars



Equipment Contracts:  
\$158 Billion 43%

Service Contracts  
\$ 212 Billion 57%

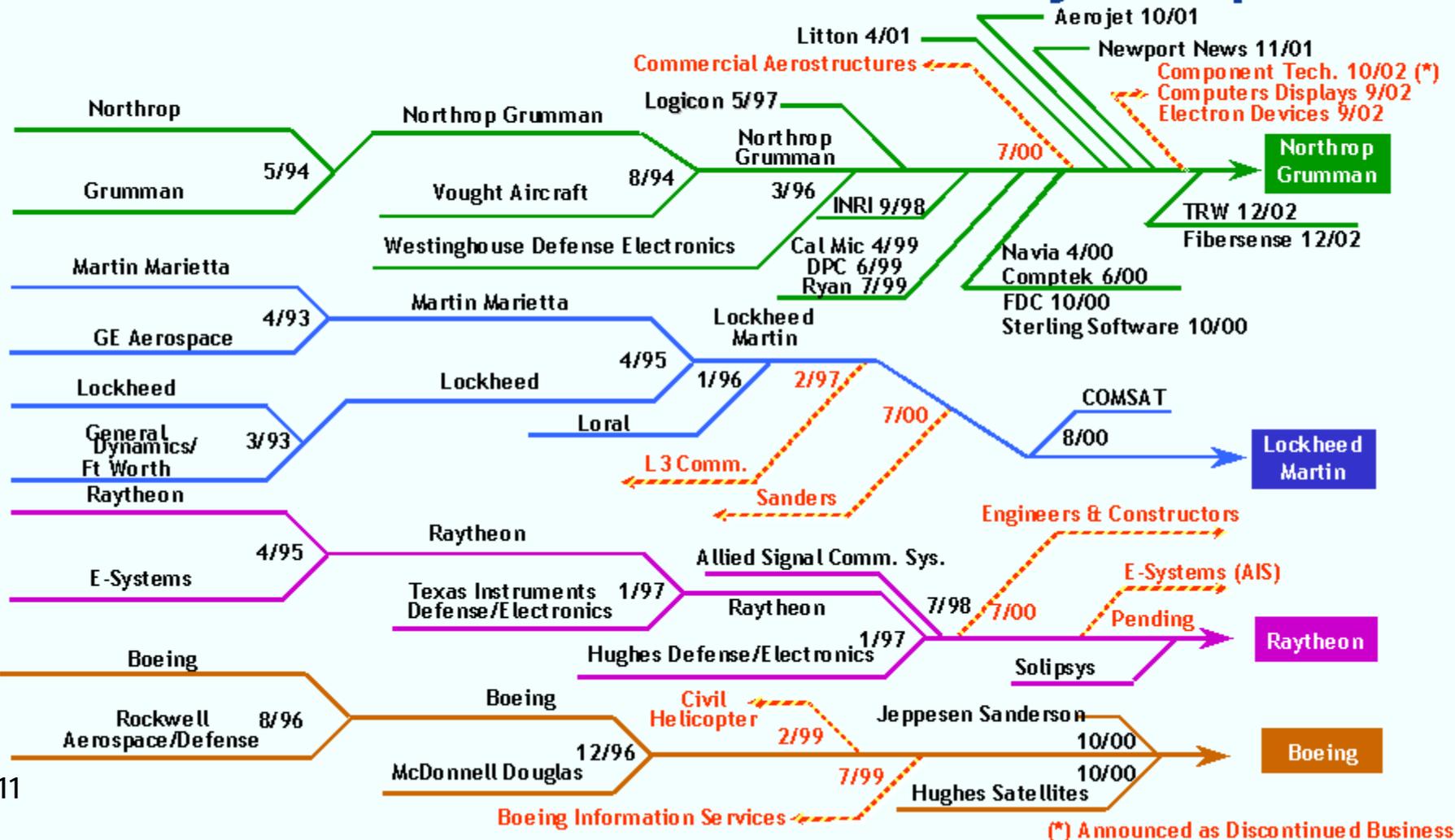
# Changes in Government and Industry

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- Industry consolidation
- Agencies' growing reliance on contractors for services, especially where the contractor is tasked with providing advice to the Government
- The use of multiple-award task- and delivery-order contracts, which permit large amounts of work to be awarded among a limited pool of contractors

# Why is Conflict of Interest Important?

## Consolidation at Tier I Level Nearly Complete



# Policy

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- Prevent harm to the Integrity of the Competitive Acquisition Process
- Prevent harm to the Government's Business Interests

# Organizational Conflicts of Interest

## Proposed rule

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DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to provide revised regulatory coverage on organizational conflicts of interest (OCIs), provide additional coverage regarding contractor access to nonpublic information, and add related provisions and clauses.

# Types of Conflicts of Interest

## Current

- Biased Ground Rules
- Unequal Access to Information
- Impaired Objectivity

## Proposed

- Conflicts that arise out of judgmental work performed by a contractor
- Unequal access to competitively sensitive information

# Personal Conflicts of Interest—Government

## Executive Order 12674

- Section 101. Principles of Ethical Conduct.
  - (b) Financial conflicts of interests
  - (c) Engaging in financial transactions using nonpublic Government information
  - (d) Soliciting or accepting gifts from outside sources
  - (f) Making unauthorized commitments or promises
  - (g) Not use public office for private gain.

# Personal Conflicts of Interest—Government

## Executive Order 12674

- (h) Act impartially and not give preferential treatment to any private organization or individual.
- (i) Protect and conserve Federal property and not use it for other than authorized activities.
- (j) Not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
- (k) Disclose waste, fraud, abuse, and corruption to appropriate authorities.

# Proposed Rule

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- The proposed rule separates OCIs into two categories:
- Conflicts that arise out of judgmental work performed by a contractor and
- Unequal access to competitively sensitive information

# Placement of Coverage in the FAR

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- Councils propose to relocate the FAR coverage on OCIs from FAR subpart 9.5 to a new FAR subpart 3.12
- Access to Nonpublic Information placed in FAR Part 4

# New Definitions

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- *Organizational Conflict of Interest*: refined to reflect the two types of situations that give rise to OCI concerns
- *Address*: to provide a summary term for the various approaches for dealing with the risks and preventing the harms that may be caused by OCIs
- *Marketing consultant*: removed as unnecessary because the proposed coverage is expanded beyond contracts for these entities

# Consolidated Discussion of Contracting Officer Responsibilities

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- Proposed FAR 3.1206 provides a consolidated discussion of contracting officer responsibilities
- Proposed FAR 3.1206–2 addresses OCI-related responsibilities associated with presolicitation activities

# Consolidated Discussion of Contracting Officer Responsibilities

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- Proposed FAR section 3.1206–3 provides guidance related to evaluating information from the offeror and other sources
- FAR section 3.1206–4 addresses OCI-related responsibilities associated with contract award
- FAR section 3.1206–5 addresses task- and delivery-order contracts

# Other Remarks

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- This rule continues to apply to contracts with both profit and non-profit organizations
- This rule does not exclude the acquisition of commercial items
- This rule applies to contract modifications that add additional work
- This rule adds a requirement at FAR 7.105(b)(18) to consider OCIs when preparing acquisition plans

# FAR 52.203–XX, Notice of Potential Organizational Conflict of Interest

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- Contracting officer determined that the OCIs may result from contract performance
- Offeror to disclose all relevant information regarding any OCI (including active limitations on future contracting), and to represent, to the best of its knowledge and belief, that it has disclosed all relevant information regarding any OCI

# FAR 52.203–XX, Notice of Potential Organizational Conflict of Interest

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- Requires an offeror to explain the actions it intends to use to address any OCI, *e.g., submit a mitigation plan if it believes an OCI may exist or agree to a limitation on future contracting*
- Identifies the clauses that may be included in the resultant contract, depending upon the manner in which the OCI is addressed

# FAR 52.203–ZZ, Disclosure of Organizational Conflict of Interest After Contract Award

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- Requires the contractor to make a prompt and full disclosure of any new or newly discovered OCI

# FAR 52.203–YY, Mitigation of Organizational Conflicts of Interest

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- Incorporates the mitigation plan in the contract
- Addresses changes to the mitigation plan
- Addresses noncompliance with the clause or with the mitigation plan
- Requires flow down of the clause

# FAR 52.203–YZ, Limitation of Future Contracting

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- Used when the contracting officer decides to address a potential conflict of interest through a limitation on future contracting.
- The contracting officer must fill in the nature of the limitation on future contractor activities and the length of any such limitation

# Access to Nonpublic Information — FAR Part 4

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- A definition of “nonpublic information” to clearly identify the scope of information covered
- Coverage of contractor access to nonpublic information during the course of contract performance
- Specific coverage for situations involving unfair competitive advantage based on unequal access to nonpublic information
- Appropriate solicitation provisions and contract clauses

# Access to Nonpublic Information

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- “Nonpublic information” includes information belonging to either the Government or a third party that is not generally made publicly available
- Contractors **should** be contractually obligated to protect all nonpublic information to which they obtain access by means of contract performance

# Unequal Access to Nonpublic Information

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- *Policy:* contracting officers must take action to resolve situations where one or more offerors hold an unfair competitive advantage
- *General Principles:* FAR subsection 4.402–3 contains general principles for determining when access to nonpublic information requires resolution

# Unequal Access to Nonpublic Information

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- *Contracting Officer Responsibilities FAR* subsection 4.402– 4 contains details covering contracting officer responsibilities to collect information regarding unequal access to nonpublic information. If aware that an offeror may have unequal access to nonpublic information, the rule requires that the contracting officer conduct an analysis and to determine whether resolution is required

# FAR 52.204–XX, Access to Nonpublic Information

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- Requires that contractors receiving access to nonpublic information must limit the use of such nonpublic information to the purposes specified in the contract

# Alternate I to the Access Clause

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- Requires the contractor, if requested by the contracting officer, to negotiate and sign an agreement identical, in all material respects, to the restrictions on use and disclosure of nonpublic information in the Access clause, with each entity that has provided the Government nonpublic information

# Alternate II to the Access Clause

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- Requires the contractor, if requested by the contracting officer, to execute a Government-approved agreement with any party to whose facilities or nonpublic information it is given access, restricting the contractor's use of the nonpublic information to performance of the contract

# FAR 52.204–YY, Release of Nonpublic Information

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- Contractor is to obtain the consent of the original owners of third-party nonpublic information for the Government to release such information to those contractors who need access to it for purposes of contract performance and who have signed up to the conditions of the Access clause.

# Differences Between Proposed FAR Rule and Proposed DFARS Rule

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- Providing an analysis of the risks posed by OCIs, and the two types of harm that can come from them
  - 1) Harm to the integrity of the competitive acquisition system and
  - 2) Harm to the Government's business interests
- Recognizing that harm to the integrity of the competitive acquisition system affects not only the Government, but also other vendors

# Differences Between Proposed FAR Rule and Proposed DFARS Rule

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The Proposed FAR Rule would require contractors to disclose relevant information regarding OCIs only if the KO makes an initial determination that an OCI may occur and the KO has included required clauses in the solicitation

# Differences Between Proposed FAR Rule and Proposed DFARS Rule

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The proposed DFARS Rule would require contractors to disclose information related to OCIs to include:

- 1) Informing the KO of any “potential conflicts of interest” even before preparing its offer and
- 2) Describing any work performed on contracts or subcontracts within the past five years that is associated with the offer it plans to submit

# Similarities of Proposed FAR Rule to Proposed DFARS Rule

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- Reorganizing and move OCI coverage to FAR part 3
- Clarifying key terms and provide more detailed guidance regarding how contracting officers should identify and address OCIs
- Providing standard OCI clauses
- Addressing unique policy issues and contracting officer responsibilities associated with OCIs

# What does case law say?

- Alion Sci. & Tech. Corp., B-297342, Jan. 9, 2006, 2006 CPD ¶ \_\_ (protest is sustained where record does not support the agency's conclusion that awardee's conflicts of interest will be minimal, with limited impact on quality of contract performance, where awardee, a manufacturer of spectrum-dependent products, will perform analysis and evaluation and exercise subjective judgment regarding formulation of policies and regulations that may affect the sale or use of spectrum-dependent products manufactured by the awardee or the awardee's competitors, and those deployed by the awardee's customers).
- Alion Sci. & Tech. Corp., B-297022.3, Jan. 9, 2006, 2006 CPD ¶ \_\_ (protest is sustained where record does not support the agency's assessment regarding the "maximum potential" for organizational conflicts of interest to occur during awardee's contract performance where awardee, a manufacturer of spectrum-dependent products, will perform various activities requiring subjective judgments that may affect the sales or use of spectrum-dependent products of the awardee, the awardee's competitors, and the awardee's customers).

# What does case law say?

- Greenleaf Constr. Co., Inc., B-293105.18, B-293105.19, Jan. 17, 2006, 2006 CPD ¶ \_\_ (protest is sustained where Department of Housing and Urban Development failed to reasonably consider or evaluate potential organizational conflict of interest arising due to the fact that the owner of the management and marketing (M&M) services contractor in Ohio will be receiving payments from the owner of the closing agent contractor for Ohio, the activities of which the M&M contractor will oversee).
- PURVIS Sys., Inc., B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 (protest is sustained where agency failed to reasonably consider or evaluate potential conflicts of interest that would be created by awardee's involvement in evaluating the performance of undersea warfare systems that had been manufactured by the awardee or by the awardee's competitors, even if such evaluations were not "part of of the procurement process").

# What does case law say?

- Science Applications Int'l Corp., B-293601 et al., May 3, 2004, 2004 CPD ¶ 96 (where agency acknowledges that awardee's substantial involvement in activities subject to environmental regulations could create conflicts of interest in performing certain tasks contemplated by the solicitation's scope of work, and where agency gave no consideration to the impact of such potential conflicts in making award, agency failed to comply with Federal Acquisition Regulation requirement that it "identify and evaluate potential organizational conflicts of interest").
- Science Applications Int'l Corp., B-293601.5, Sept. 21, 2004, 2004 CPD ¶ 201 (where agency previously failed to give any consideration to potential conflicts of interest between awardee's performance of contract requirements and awardee's involvement in environmentally-regulated activities, agency's corrective actions adequately remedy prior procurement flaws where agency has reviewed additional information regarding the ongoing, environmentally-regulated activities of the awardee, has considered that information in the context of the scope of work reasonably contemplated under the contract, and has procedures in place for the agency's independent assessment of potential conflicts between each task order's requirements and the awardee's ongoing activities).

# What does case law say?

- Deutsche Bank, B-289111, Dec. 12, 2001, 2001 CPD ¶ 210 (protest is denied where, in a procurement for loan support services, record showed that the agency reasonably determined that the awardee's proposal adequately mitigated any conflict of interest through the use of a subcontractor to perform loan servicing on those properties where awardee had previously been involved in handling administrative matters for the agency related to the same properties).
- Ktech Corp., B-285330, B-285330.2, Aug. 17, 2002, 2002 CPD ¶ 77 (conflict was found where the record showed that the awardee's subcontractor may have obtained and used information obtained from the protester as a result of the subcontractor's oversight role on the protester's predecessor contract; protest sustained where the agency did not consider or mitigate this conflict).

# What does case law say?

- Lucent Tech. World Servs. Inc., B-295462, Mar. 2, 2005, 2005 CPD ¶ 55 (protest challenging protester's exclusion from participation in a procurement denied where the contracting officer reasonably determined that the protester had an organizational conflict of interest arising from its preparation of technical specification used by the agency in the solicitation).
- LEADS Corp., B-292465, Sept. 26, 2003, 2003 CPD ¶ 197 (agency reasonably determined not to reject the quotation from the vendor selected to receive an order for augmentation of the agency's procurement staff on the basis of organizational conflicts of interest where any potential conflict can be avoided by the careful assignment of work under the contract to ensure that the vendor's contracting specialists do not handle matters (procurements or contracts) in which the vendor has an interest).
- Decisions are available on GAO's Website: [www.gao.gov](http://www.gao.gov).

**WHAT YOU DON'T KNOW CAN HURT YOU:  
CONSIDERATIONS BEFORE SELECTING AN  
E-FILING SYSTEM  
OGE CONFERENCE – ORLANDO, FL**



# *Electronic Filing at USDA and DOI*

**Presenters:**

**Stuart Bender—Director,  
Office of Ethics, USDA**

**Mike Edwards—Deputy Director,  
Office of Ethics**

**Craig Clark – Deputy Ethics  
Counselor, Bureau of Reclamation,  
DOI**

**Pam Miller – Ethics Analyst, Ethics  
Office, DOI**



“Could you spare a few minutes to help me file disclosure reports?”

# E-Filing: By the Numbers

## USDA:

700 OGE-278 Filers

16,000 OGE-450 Filers

## DOI:

300 OGE-278 Filers

10,000 OGE-450 Filers

... All across the country and  
the globe.



# The Problems

- All USDA and DOI filers submitted hard copies of their annual reports.
  - Expensive
  - Lack of consistency in agency
  - Challenge to provide good customer service
  - Lost reports
  - Filer frustration

# The Solution

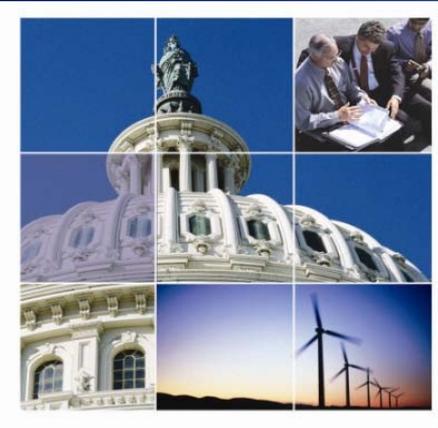
## Electronic Filing or “E-Filing”

- Filers gain flexibility, save time, save paper, and reduce expensive shipping costs.
- Reviewers provide better customer service and consistency increases throughout agency.

# The Solution

- **Starting January 1, 2011 USDA and DOI introduced E-Filing for OGE-278 and OGE-450 Filers**

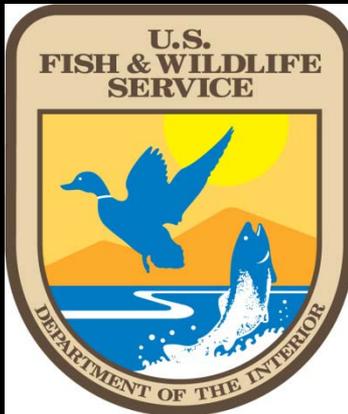
# E-Filing: It Takes Teamwork!



**FDonline**<sup>TM</sup>



# E-Filing: It Takes Teamwork!



## Tangible Benefits to E-Filing: Eliminate Expensive Delivery Costs

With Paper Filing Hundreds of filers use UPS, DHL, or FedEx to ship their reports to us.

E-Filing will save thousands of dollars in delivery costs for the Government, plus there would be no delay in receipt.



## Environmentally-Friendly “Eco-Filing” “Green” Operations

**E-Filing** will eliminate the need for hard copy financial disclosure reports for virtually all USDA and DOI filers.

When fully implemented USDA and DOI will save approximately 125,000 pieces of paper every year!

Additional paper savings occur because employees would not need to keep or request paper copies of their forms.

## World-Wide Reach

Filers can use E-Filing from overseas locations via a secure site. This will assist filers across the nation and around the globe to efficiently and securely transmit their reports.



# E-Filing Plan of Action

- Step 1: Get Buy-In
- Step 2: Evaluate Software Options
- Step 3: Funding/Contracting Process
- Step 4: Train Top Level Ethics Staff
- Step 5: Train All Ethics Staff
- Step 6: Increase Agency Buy-In
- Step 7: Set Up Support Infrastructure
- Step 8: Execution
- Step 9: Lessons Learned

# Step 1: Get Ethics Staff Buy-In

- Create Ethics Staff Stakeholders
- Create Ethics Staff Cheerleaders
- Set Expectations
- Start Agency Buy-In Process
- Express Benefits
  - Better Customer Service
  - Teleworking
  - Consistency
  - Efficiency



## Step 2: Evaluate Software Options

- **Talk to Other Agencies Ethics Programs, see what they use, conduct site visits and demos**



# Government E-Filing Systems

	Agency	SF 278	OGE Form 450	Contact(s)	Telephone	E-mail
1	Department of the Army (FDM)	X	X	George Hancock	(703) 696-5512	<a href="mailto:George.Hancock2@hqda.army.mil">George.Hancock2@hqda.army.mil</a>
2	Federal Deposit & Insurance Corporation (NEETS II)	X	X	Robert Fagin	(202) 898-6808	<a href="mailto:rfagan@fdic.gov">rfagan@fdic.gov</a>
3	National Aeronautics & Space Administration	X	X	Adam Greenstone	(202) 358-1775	<a href="mailto:adam.f.greenstone@nasa.gov">adam.f.greenstone@nasa.gov</a>
4	National Science Foundation		X	Robin Fritsch	(703) 292-7854	<a href="mailto:rfritsch@nsf.gov">rfritsch@nsf.gov</a>
5	Office of the Director of National Intelligence	X	X	Claudia Nadig	(703) 275-2502	<a href="mailto:claudia.nadig@ugov.gov">claudia.nadig@ugov.gov</a>
6	Nuclear Regulatory Commission	X	X	John Szabo	(301) 415-1610	<a href="mailto:jls.nrc.gov">jls.nrc.gov</a>
7	Central Intelligence Agency	X	X	Karla Anthony	(703) 482-4066	<a href="mailto:karlala@ucia.gov">karlala@ucia.gov</a>
8	DHHS/Center for Medicare and Medicaid Services	X	X	Joseph Dion	(410) 786-8022	<a href="mailto:Joseph.Dion@CMS.hhs.gov">Joseph.Dion@CMS.hhs.gov</a>
9	DHHS/National Institutes of Health	X	X	Traci Melvin	(301) 402-6628	<a href="mailto:melvint@mail.nih.gov">melvint@mail.nih.gov</a>
10	National Security Agency	X	X	Kimberly Ann Proctor	(443) 479-0728	<a href="mailto:kaproctor8@verizon.net">kaproctor8@verizon.net</a>
11	U.S. Postal Service		X	Helen Grant	(202) 268-3077	<a href="mailto:helen.r.grant@usps.gov">helen.r.grant@usps.gov</a>
12	DOJ/EOUSA	X		Lucy Hurley	(202) 616-1227	<a href="mailto:Lucy.Hurley@usdoj.gov">Lucy.Hurley@usdoj.gov</a>
13	NTIS/Department of Commerce (FDOnline)	X	X	Patricia Gresham	(703) 605-6123	<a href="mailto:pgresham@ntis.gov">pgresham@ntis.gov</a>

and there are probably more. . .

# Step 2: Evaluate Software Options

- Data Secure and accessible
- Filer-Friendly
- Allows importing data from previous report
- Delivered over the web
- Reviewer-friendly
- Affordable
- Leads to 450s and 278s that meet regulatory criteria (e.g. allows asset “collections” on Schedule A)
- Provides necessary reports for your office and OGE
- Automated password resets



# Step 3: Funding/Contracting Process

- Presenting Proposal to Agency Decision Makers
- In a time of tight budgets, you will need to show that E-Filing:
  - Is a time saver for your filers – hours of time saved
  - Is a time saver for your reviewers to more quickly identify potential conflicts of interest
  - Will reduce express shipping / delivery costs



# Step 4: Train Top Level Staff

- Continue to Get Ethics Staff Buy-In
- Continue to Make Ethics Staff Stakeholders
- Ensure Consistency
- Log In
- Get Feedback



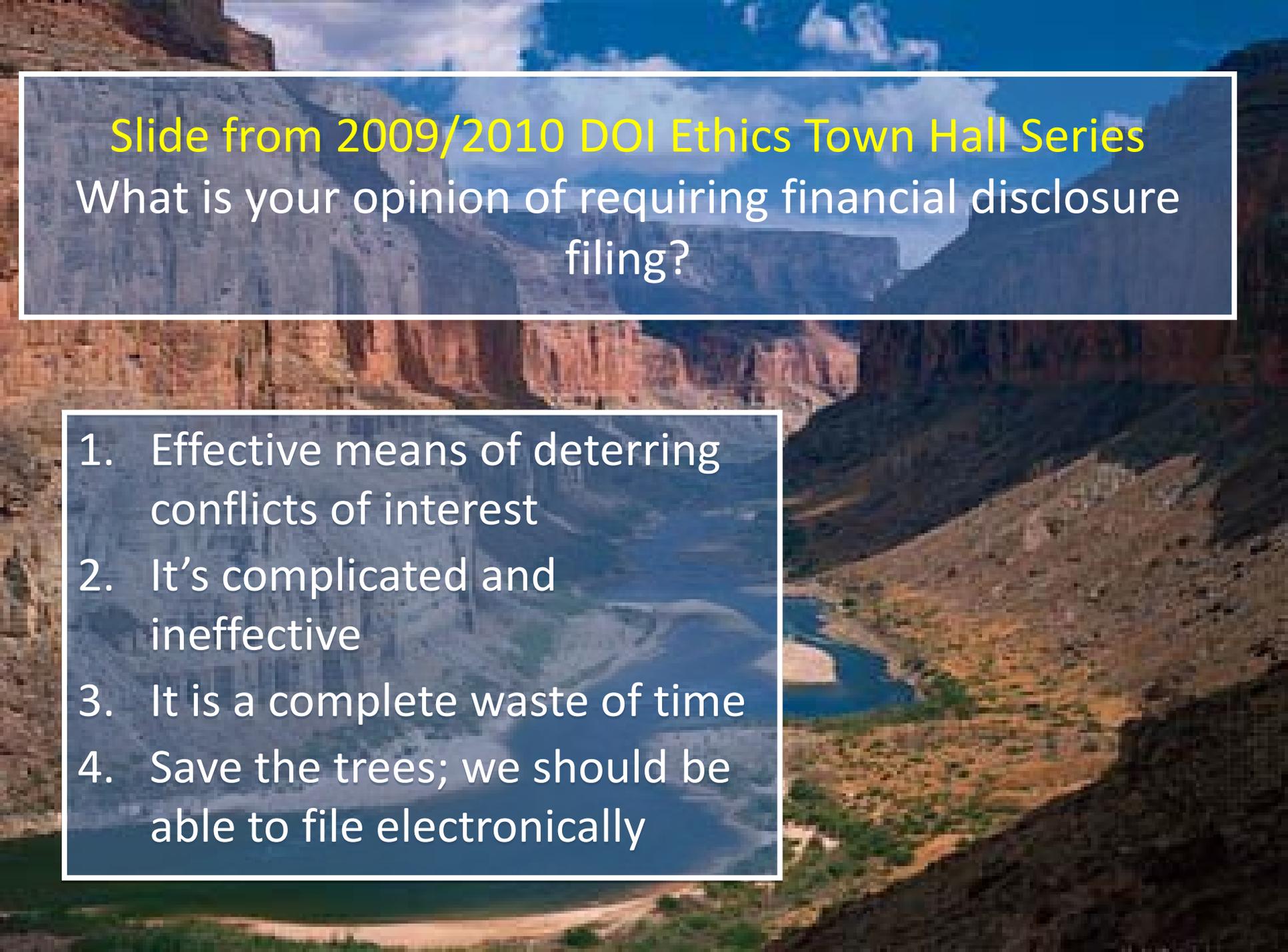
# Step 5: Train All Ethics Staff

- Ensure Competency Throughout Agency
- Involve Software Partner
- Start Early



# Step 6: Increase Agency Buy-In

- Start Early
- Part of Annual Ethics Training
- Benefits Talking Points
  - Telework Flexibility
  - Time Saver
- Set Reasonable Expectations
- Invite Feedback/Empower Stakeholders
- Address Security Concerns



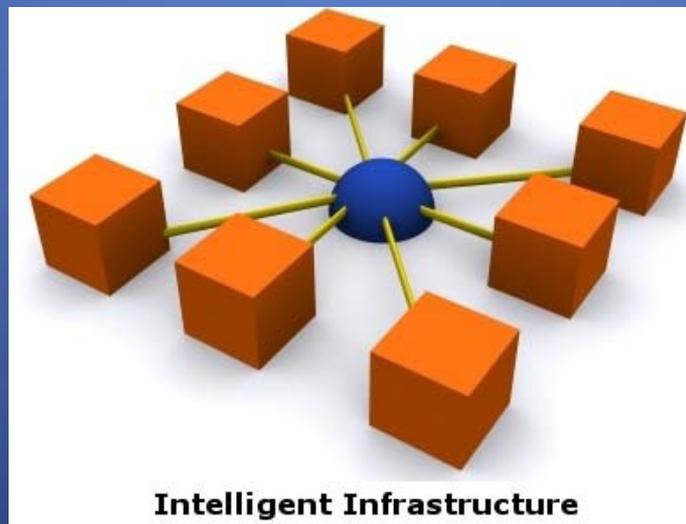
Slide from 2009/2010 DOI Ethics Town Hall Series

What is your opinion of requiring financial disclosure filing?

1. Effective means of deterring conflicts of interest
2. It's complicated and ineffective
3. It is a complete waste of time
4. Save the trees; we should be able to file electronically

# Step 7: Set Up Support Infrastructure

- Announce E-Filing on Ethics Website
- Create FAQs for Filers and Reviewers
- Develop Customer Service Procedures
- Create a Clear Chain of Command



# Step 8: Execution

- Be Prepared for the Onslaught
- Have Patience
- Set Up Regular Agency Support Calls for Ethics Staff
- Involve Software Partner
- Kill Them With Kindness
- Invite Feedback



# Step 9: Lessons Learned

- Implement User Suggestions
- Create Focus Groups
- Create Reviewer User Group
- Revise Business Plan
- Work With Vendor



# Major Benefit: Decrease Follow Up Questions

E-Filing is an “intelligent system” which prompts filers to properly prepare their reports. This will result in less need for reviewer follow up with filers.



## Major Benefit: Better Management Controls

Supervisors will be able to see statistics on filing, and the productivity and timeliness of report reviews and certification--all from a secure web page. The web page would also allow management to reallocate reports among available ethics specialists to aid timely review.



## Major Benefit: Better Customer Service

Reviewers can more easily access filings and provide real-time support to filers. Ethics Office can respond quickly and efficiently to audit inquiries.



**Major Benefit:**  
**Increased Institutional Integrity**

Filings are pre-screened for conflicts based on agency parameters. Timeliness of review can be better monitored across agency. Contact with filers needing follow-up can be tracked to ensure timely resolution of any possible conflict of interest or filing delay.

# The Filer Perspective



“Just a little nap then I’m sure I’ll find what I need for that disclosure report. When is it due, again?”

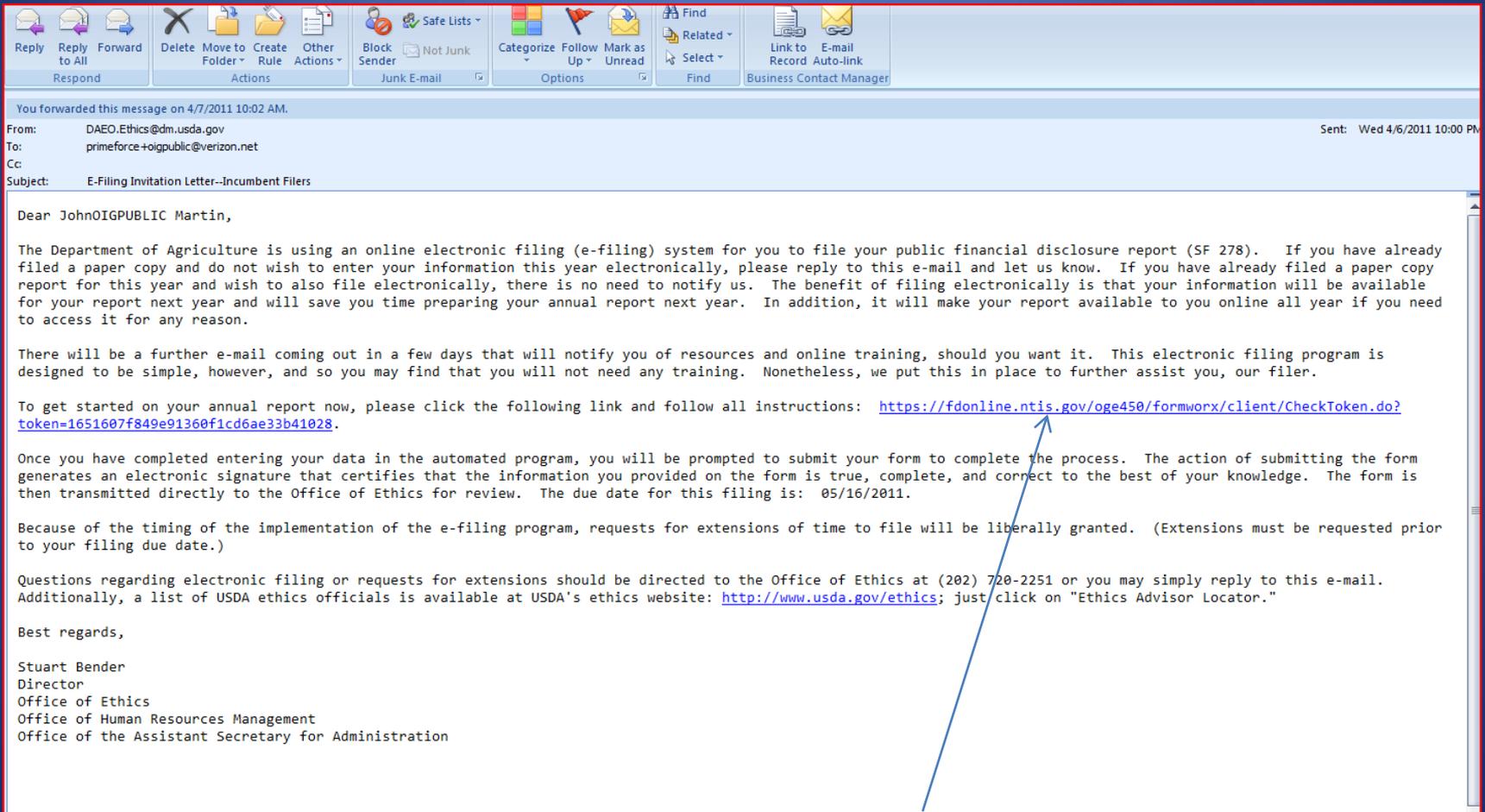
# FDonline Filer Benefits

- “Help Section” and instructions always quickly available.
- Common mistakes avoided, less follow-up questions.
- Intuitive TurboTax<sup>®</sup> like intelligent interview wizard guides the filer through the complex maze of properly completing the financial disclosure paperwork.

# FDonline Filer Benefits

- Drop-down lists of stocks and mutual funds provide easy click and fill data entry.
- Automated notifications and reminders.
- Securely saves information from year to year. No losing or misplacing prior year's form.

# Easy Filer Invitation



You forwarded this message on 4/7/2011 10:02 AM.

From: DAEO.Ethics@dm.usda.gov  
To: primeforce+oigpublic@verizon.net  
Cc:  
Subject: E-Filing Invitation Letter--Incumbent Filers

Sent: Wed 4/6/2011 10:00 PM

Dear JohnOIGPUBLIC Martin,

The Department of Agriculture is using an online electronic filing (e-filing) system for you to file your public financial disclosure report (SF 278). If you have already filed a paper copy and do not wish to enter your information this year electronically, please reply to this e-mail and let us know. If you have already filed a paper copy report for this year and wish to also file electronically, there is no need to notify us. The benefit of filing electronically is that your information will be available for your report next year and will save you time preparing your annual report next year. In addition, it will make your report available to you online all year if you need to access it for any reason.

There will be a further e-mail coming out in a few days that will notify you of resources and online training, should you want it. This electronic filing program is designed to be simple, however, and so you may find that you will not need any training. Nonetheless, we put this in place to further assist you, our filer.

To get started on your annual report now, please click the following link and follow all instructions: <https://fdonline.ntis.gov/oge450/formworx/client/CheckToken.do?token=1651607f849e91360f1cd6ae33b41028>.

Once you have completed entering your data in the automated program, you will be prompted to submit your form to complete the process. The action of submitting the form generates an electronic signature that certifies that the information you provided on the form is true, complete, and correct to the best of your knowledge. The form is then transmitted directly to the Office of Ethics for review. The due date for this filing is: 05/16/2011.

Because of the timing of the implementation of the e-filing program, requests for extensions of time to file will be liberally granted. (Extensions must be requested prior to your filing due date.)

Questions regarding electronic filing or requests for extensions should be directed to the Office of Ethics at (202) 720-2251 or you may simply reply to this e-mail. Additionally, a list of USDA ethics officials is available at USDA's ethics website: <http://www.usda.gov/ethics>; just click on "Ethics Advisor Locator."

Best regards,

Stuart Bender  
Director  
Office of Ethics  
Office of Human Resources Management  
Office of the Assistant Secretary for Administration

Click Here

# Friendly (but Automated) Reminders

Dear Michael Edwards,

If you have received this message, it is because our records indicate that you have not completed your Public Financial Disclosure Report. Your filing is due on 05/16/2011. To access the automated financial disclosure application, please click the following link and follow the instructions:  
<https://fdonline.ntis.gov/oge450/formworx/client/CheckToken.do?token=7f7e61516577f3a1e13b0c75a6591023>

Please direct any questions or requests for an extension of time to file your report to the appropriate ethics official. (Extensions must be requested prior to your filing due date.) Your ethics official is listed in our records as Andrew Tobin and may be contacted at [Andrew.Tobin@dm.usda.gov](mailto:Andrew.Tobin@dm.usda.gov). If you wish, you may also hit "Reply" and respond to this e-mail. Additionally, a list of USDA ethics officials (and lots of other helpful ethics information) is available at: <http://www.usda.gov/ethics>; just click on "Ethics Advisor Locator."

Regards,

USDA Office of Ethics  
Office of Human Resources Management  
Office of the Assistant Secretary for Administration

# Filer Help and Instructions Available

The screenshot shows a Windows Internet Explorer browser window displaying the FdOnline website. The address bar shows the URL: <https://fdonline.nis.gov/oge450/formworx/client/Start.do>. The page features the USDA logo in the top left corner. The main heading is "FdOnline" with a sub-heading "What To Expect". Below this, a paragraph explains the system: "The Electronic Financial Disclosure system will automatically walk you through filling out your Financial Disclosure Form. The system will let you know what you are to report and what is not necessary to report. After all the necessary questions are answered, you will electronically submit the form. You will also be able to save the form for your own records. You are strongly urged to retain a copy for your own records." There are two buttons: "Save & exit" and "Go back Continue". A dropdown menu is open on the right side, listing various help topics. A red arrow points from the main title to the "Help" menu item.

**USDA**

## FdOnline

### What To Expect

The Electronic Financial Disclosure system will automatically walk you through filling out your Financial Disclosure Form. The system will let you know what you are to report and what is not necessary to report. After all the necessary questions are answered, you will electronically submit the form. You will also be able to save the form for your own records. You are strongly urged to retain a copy for your own records.

- Help
- Change password
- OGE-278 Instructions
- OGE 278 Form
- Penalties
- Public Burden Information
- Who Must File?
- When Must I File?
- What is the Reporting Period?
- Frequently Asked Questions

Version 2.20 (20110401-165824)  
Based on Formwork version 2.20 (20110328-230313)  
Copyright © 2004-2011 HHS/DOJ LLC  
All rights reserved.  
[View Data](#)

Start | Microsoft Ex... | Inbo... Micro... | OE Ethics Co... | E-Filing Invit... | RE: E-Filing I... | FW: Travel - ... | E-Filing Invit... | Microsoft Po... | Speaker | FdOnline - ... | 11:00 AM

# Look Ma No Forms!

**USDA**

### FDonline

Personal Information - Work Information

\* = required field.

E-Mail Address \*

Position/Title \*

Grade/Pay Band \*

Agency \*

Branch/Unit/Routing Symbol \*

Work Address Street \*

Work Address Suite

Work Address City \*

Work Address State \* (Select)

Work Address Zip Code \*

Work Address Country \* United States

Work Telephone # \*  (Use 999-999-9999 format.)

Drop-downs and default information .

Required fields clearly shown

Save & exit Start Over Go back Continue

Version 2.20 (20110401-165824)  
Based on FormWork version 2.20 (20110328-230333)  
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All Rights Reserved.  
[View Data](#)

# Many Mistakes Caught Before Filing

FDonline - Windows Internet Explorer

https://fdonline.nbis.gov/oge450/formworx/client/Input.do

File Edit View Favorites Tools Help

USDA

### FDonline

#### Personal Information - Work Information

0%

Position/Title is required.  
Grade/Pay Band is required.  
Agency is required.  
Branch/Unit/Routing Symbol is required.  
Work Address is required.  
City is required.  
State is required.  
Zip is required.  
Work Telephone # is required.

\* = required field.

E-Mail Address \*

Position/Title \*

Grade/Pay Band \*

Agency \*

Branch/Unit/Routing Symbol \*

Work Address Street \*

Work Address Suite

Work Address City \*

Work Address State \*

Work Address Zip Code \*

Work Address Country \*

Work Telephone # \*  (Use 999-999-9999 format.)

Save & exit Start Over

Go back Continue

Version 2.20 (20110401-165824)  
Based on Formwork version 2.20 (20110228-230333)  
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[View Data](#)

Start [Taskbar icons] 1:50 PM

# Easy Lookup for Stocks / Mutual Funds

The image shows a screenshot of the USDA FDonline website. The main page is titled "FDonline" and "OGE278: Executive Branch Personnel Public Financial Disclosure Report - Schedule A". It contains a form for entering stock information. A blue arrow points from the "Stock Symbol" field to a search results window. The search results window shows a list of stocks with columns for "Symbol" and "Company name".

**USDA**

## FDonline

OGE278: Executive Branch Personnel Public Financial Disclosure Report - Schedule A

\* = required field.  
Enter stocks worth more than \$1,000 at the end of the reporting period or that produced income greater than \$200 during the reporting period.  
Enter a specific stock. Indicate the full name of each stock.

Stock Symbol \*  (lookup)

Name \*

Value \*

Income type  Dividends  
 Rent or Royalties  
 Interest  
 Capital Gains  
 Other

Type:

Amount:

(Use XXXXX.XX format. Do not use commas.)

Income amount \*

Still held at the end of current reporting period? \*

Yes  
 No

Held by:  Self only  
 Joint  
 Spouse only  
 Dependent child

**USDA**

## FDonline

### Stocks

Symbol  starts with  Search Show All Close

Symbol  
Company name

8098 records found ; displaying 1 to 25.

First Prev 1 2 3 4 5 6 7 8 9 10 11 Next Last

Symbol	Name
<a href="#">A</a>	Agilent Technologies Inc.
<a href="#">AA</a>	Alcoa Inc.
<a href="#">AA.P</a>	Alcoa Inc.
<a href="#">AAC</a>	Ableauctions.Com Inc
<a href="#">AACCC</a>	Asset Acceptance Capital Corp.
<a href="#">AAI</a>	AirTran Holdings Inc.
<a href="#">AAME</a>	Atlantic American Corporation
<a href="#">AAN</a>	AARON'S INC.
<a href="#">AAN.A</a>	AARON'S INC. CLASS A
<a href="#">AANB</a>	Abigail Adams National Bancorp Inc.
<a href="#">AAPON</a>	AAON Inc.
<a href="#">AAP</a>	Advance Auto Parts Inc
<a href="#">AAPL</a>	Apple Inc.
<a href="#">AAR</a>	AMR Corporation
<a href="#">AATI</a>	Advanced Analogic Technologies Inc.
<a href="#">AAU</a>	Almaden Minerals Ltd.
<a href="#">AAV</a>	ADVANTAGE ENERGY INCOME FUND

# When Complete Print / Submit

https://fdonline.nts.gov/oge450/formworx/client/Form.do?name=us/gov/oge/0GE278&file=Form1-1302 - Windows Internet Explorer

https://fdonline.nts.gov/oge450/formworx/client/Form.do?name=us/gov/oge/0GE278&file=Form1-1302551639054.pdf

File Edit Go To Favorites Help

Favorites Metro Lobbying Yahoo AgLearn Dictionary Dirs GrammarRight Lex MAEAs OE OGE Refs Srch Telephone Time & Attendance USDA Directives Wivi Webs GovTrip Ethics E-Filing Initiative

https://fdonline.nts.gov/oge450/formworx/client/For...

1 / 5 75% Find

OGE Form 278 (Rev. 09/2010)  
5 C.F.R. Part 2636  
U.S. Office of Government Ethics

**Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT**

Form Approved:  
OMB No. 3299-0001

Report of Appointments, Calendar Year, or Termination (Month, Day, Year) Reporting Status (Check Appropriate Item) <input checked="" type="checkbox"/> Incumbent <input type="checkbox"/> Calendar Year Covered by Report: 2010 <input type="checkbox"/> New Entrant, Nominee, or Candidate <input type="checkbox"/> Termination <input type="checkbox"/> Termination (not if Applicable) (Month, Day, Year)	First Name and Middle Initial Michael	Last Name Edwards	Department or Agency (If Applicable) USDA	Telephone No. (Include Area Code) 202-720-2251	Address (Number, Street, City, State, and ZIP Code) 1400 Independence Ave SW Washington DC 20250
Reporting Individual's Name Michael Edwards	Position for Which Filing Deputy Director Office of Ethics				
Location of Present Office (or forwarding address) Washington DC 20250	Reporting Periods Incumbent: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.				
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above) Title of Position(s) and Date(s) Held	Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination, Part II of Schedule D is not applicable.				
Presidential Nominee Subject to Senate Confirmation Name of Congressional Committee Considering Nomination Do You Intend to Create a Qualified Diversified Trust? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Nominees, New Entrants and Candidates for President and Vice President: Schedule A—The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing. Schedule B—Not applicable.				
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual	Date (Month, Day, Year)			
Other Reviewer (If Filled by Agency)	Signature of Other Reviewer	Date (Month, Day, Year)			
Agency Ethics Official's Opinion On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official	Date (Month, Day, Year)			
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)			

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

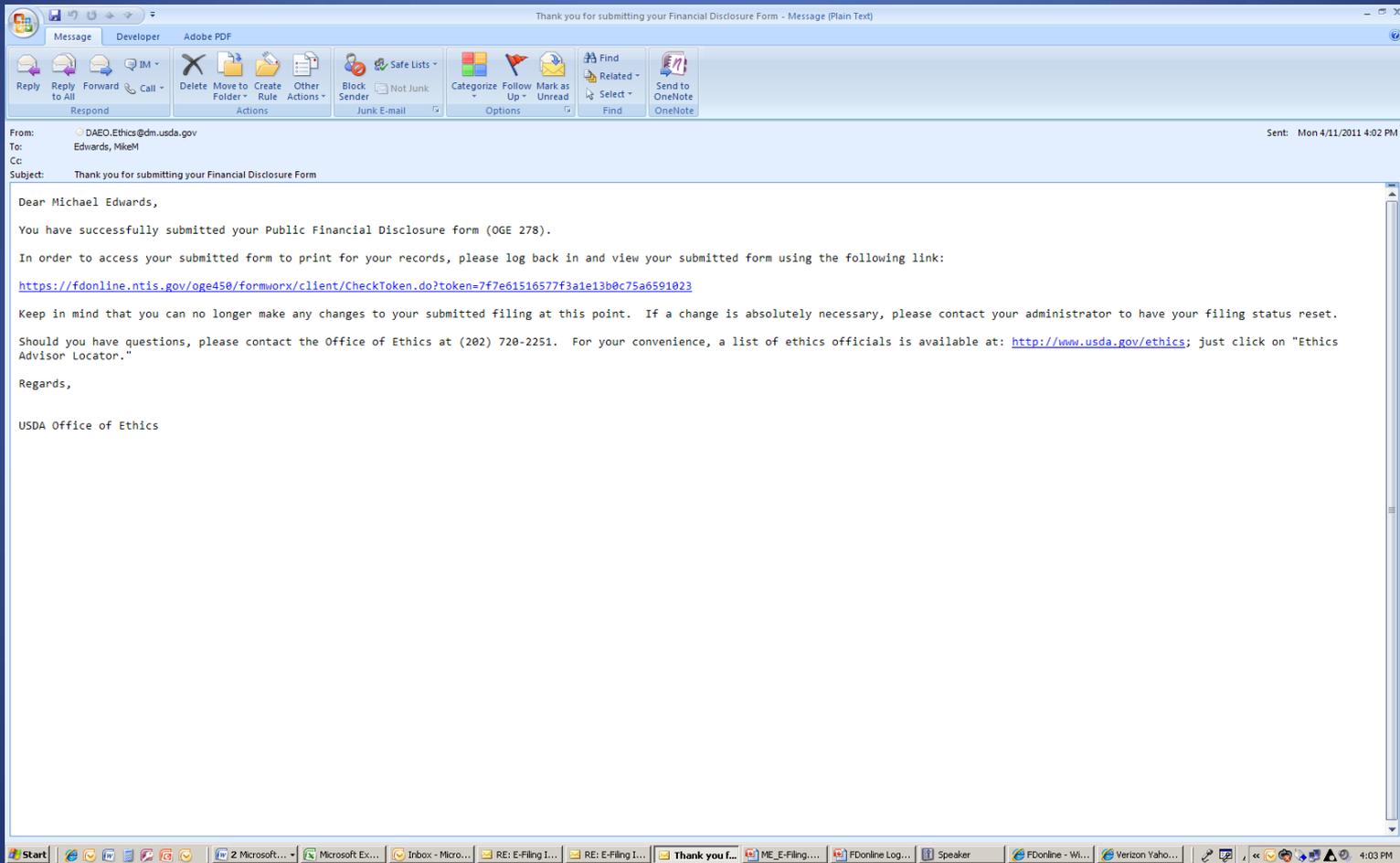
See attached page(s) (Check box if filing extension granted & indicate number of days \_\_\_\_\_)

(Check box if comments are continued on the reverse side)

Supersedes SF 278 Edition:

Start | Inbox - Micro... | Microsoft Ex... | RE: E-Filing I... | RE: E-Filing I... | ME\_E-Filing... | FDonline Log... | Speaker | FDonline - Wi... | Verizon Yaho... | https://fdo... | 3:58 PM

# Confirmation of Filing / Form Locked



# Questions ?



# Enhancing Your Advice and Counsel Skills

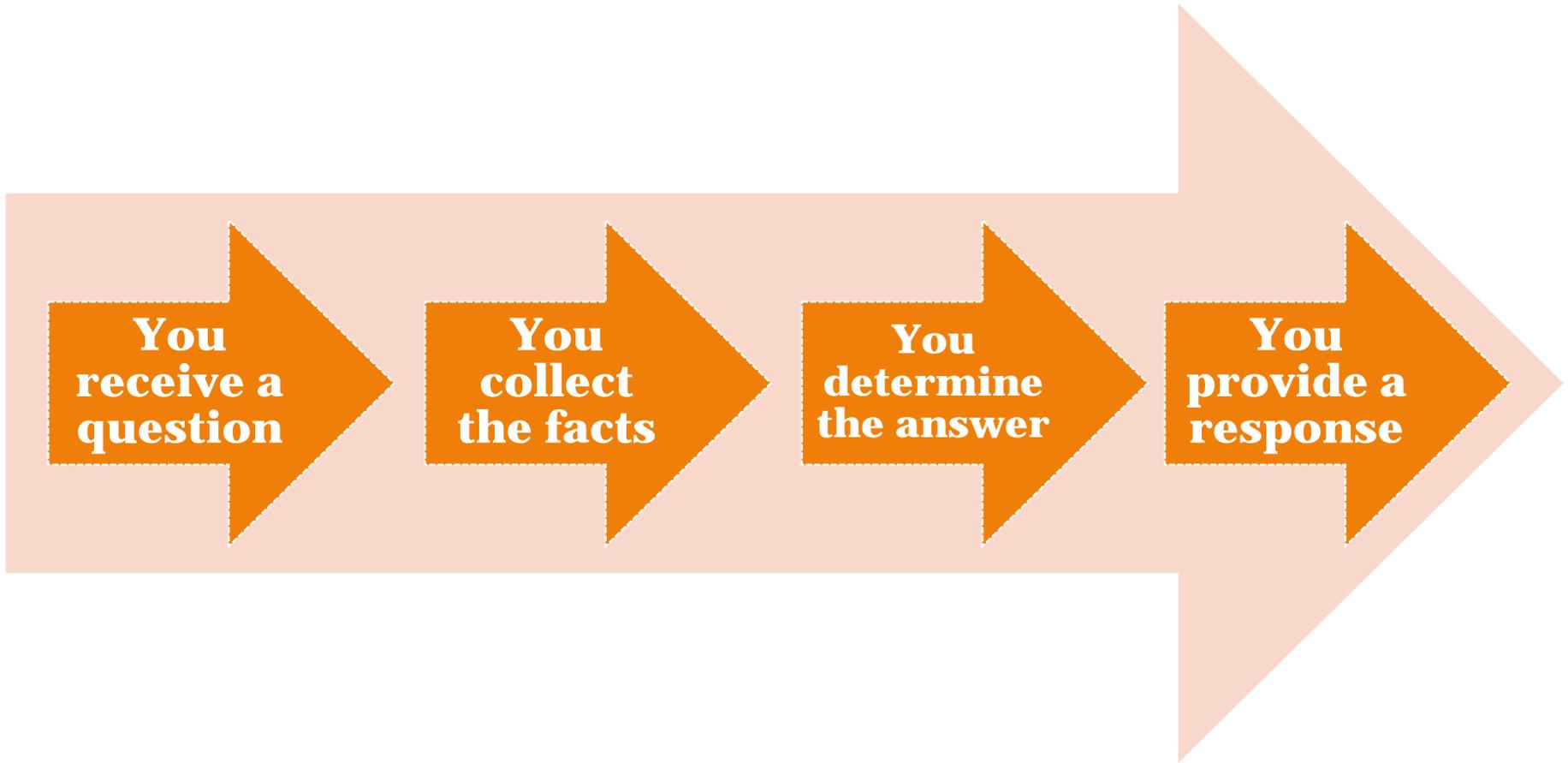


**Stephanie Nonluecha**  
**Senior Desk Officer**  
**U.S. Office Of Government Ethics**

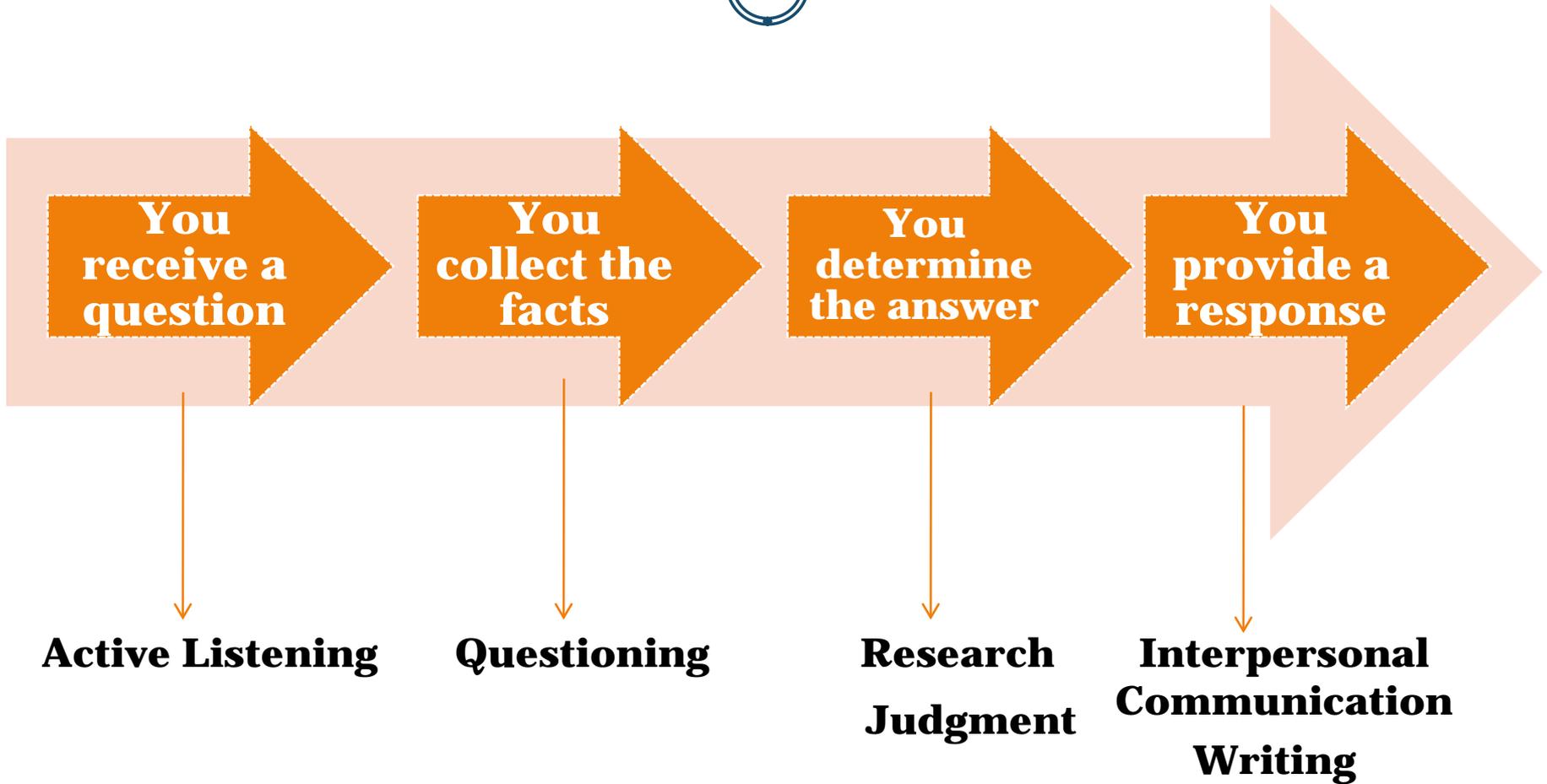
**Nicole Stein**  
**Lead Government Ethics Specialist**  
**U.S. Office Of Government Ethics**

- 
- A corkboard with a white note and a yellow note pinned to it. The white note is pinned with a blue pushpin at the top left and a brown pushpin at the bottom right. The yellow note is pinned with a brown pushpin at the top left and contains a list of five steps.
1. Identify critical skills
  2. WHY
  3. Learn a few facts.
  4. Practice!
  5. Discuss strategies for improvement

# LIFECYCLE OF AN ETHICS QUESTION



# CRITICAL SKILLS







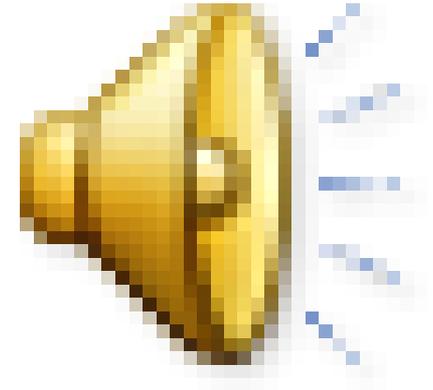


for;  
uch is  
—In

excute, to shake  
excutable, ad — re-cu  
re-search (rē-sūrch', rē-sūrch'  
query in order to gather new  
ready known about a subject  
Also used adjecti  
such a

judgment





Question:

I'm going to lunch next week with the contractor who is working on our website. If he offers to pay for my lunch and it costs \$22, can I accept?



# QUESTIONS

# OFFICIAL DUTIES v. OUTSIDE ACTIVITIES - WHAT HAT ARE YOU WEARING?



**HOLLI BECKERMAN JAFFE, NIH/OD**  
**TRACI MELVIN, NIH/NIDDK**  
**SANDIE DUNHAM, NIH/NCI**



# OFFICIAL DUTY OR OUTSIDE ACTIVITY?



- Things to consider when an employee comes to an ethics official with a proposal to participate in an activity with an outside organization:
  - Mission of agency
  - Employee's official duties



# OFFICIAL DUTY OR OUTSIDE ACTIVITY?



- The prohibitions posed by the criminal statutes
- The Government-wide and agency specific regulations
- The substance of the activity
- The audience or venue of the activity
- Agency's policies and procedures

# OFFICIAL DUTY OR OUTSIDE ACTIVITY?



- **Who should be involved in the decision?**
  - Supervisor
  - Employee should be asked for preference



# OFFICIAL DUTY OR OUTSIDE ACTIVITY?



- What are the issues?
  - Real Conflicts
    - Must deal with the conflict **before** the employee can participate in the matter
    - Is there an appropriate remedy available
  - Appearances of a conflict



# OFFICIAL DUTY OR OUTSIDE ACTIVITY?



- The decision whether a request should be carried out in a personal capacity or as part of the employee's official duties depends on:
  - The reason for the invitation
  - Any official duties which would affect the outside entity
  - Whether the substance of the activity relates to an agency program or policy



# OUTSIDE ACTIVITIES



- **Outside Activities must be permissible by statute, applicable regulations and/or agency policy.**
- **The substance of an outside activity needs to be unrelated to the employee's official duties.**
- **The work must be performed outside of Government time and without the use Government resources may.**

# OUTSIDE ACTIVITIES



- **Ethics review of an outside activity:**
  - Is it permissible?
  - Does it comply with provisions in 5 CFR 2635.801 through 809?
  - Is there an applicable agency requirement such as prior approval?
  - Will employee need to report income and/or position on a financial disclosure report?



# OUTSIDE ACTIVITIES



- Will a remedy be required for employee to participate in the activity?
- Does the supervisor approve of the employee participating in the activity?
- Is the activity with a foreign entity? If so, are there Emoluments issues?
- What counseling is required?

# OFFICIAL DUTY ACTIVITIES



- **Official duty activities are performed by an employee as part of or an extension of regular official responsibilities.**
- **All official work performed with an outside organization must be consistent with the authority and mission of the agency.**



# OFFICIAL DUTY ACTIVITIES



- There should be compelling agency policy reasons for official duty activities with outside organizations.
- An official duty activity may not be advisable if the outside organization engages in lobbying or takes public positions on matters of significant controversy involving the agency.

# OFFICIAL DUTY ACTIVITIES



- Employee may not accept any compensation from the outside organization for the official duty activity.
- Employee may use official time and Government resources when participating in the activity.
- Employee may use official title in connection with the official duty. However, the employee must take care not to imply endorsement of the organization or its products or services.

# OFFICIAL DUTY ACTIVITIES



- **Ethics review of official duty activities:**
  - What is employee's proposed role?
  - Will participation in the matter affect the employee's personal or imputed financial interests?
  - Is there agency interest in the employee's participation in the matter?
  - Does the supervisor approve of the official duty activity?



# OFFICIAL DUTY ACTIVITIES



- Is the employee going to be asked to participate in the business affairs of the outside organization?
- Is the employee's participation better served if the employee serves in the role of federal liaison?
- Are there any issues of liability for the agency?

# OFFICIAL DUTY ACTIVITIES AT THE NIH



- Many NIH employees participate in official duty activities with outside organizations.
- They serve as editors of journals, speak at professional organization's events, serve on advisory boards, collaborate with other researchers, and chair committees of professional organizations.



# OFFICIAL DUTY ACTIVITIES AT THE NIH



- **There are different levels of approval required for the various types of official duty activities.**
- **The level of approval depends on the employee's position and nature of the official duty activity.**
- **See, for example, attached handout – Official Duty Activity Table**

# SCENARIO ONE



- An employee has been asked to serve as an officer of a professional association. He prefers to serve in his personal capacity since he is expected to participate in the business affairs of the association. However, each year he makes a presentation about the accomplishments of his office at the association's annual meeting

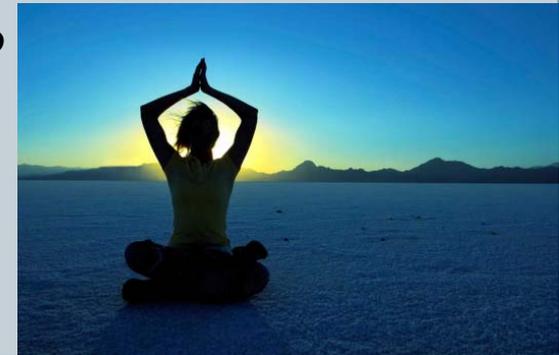
How would you handle this request?



# SCENARIO TWO



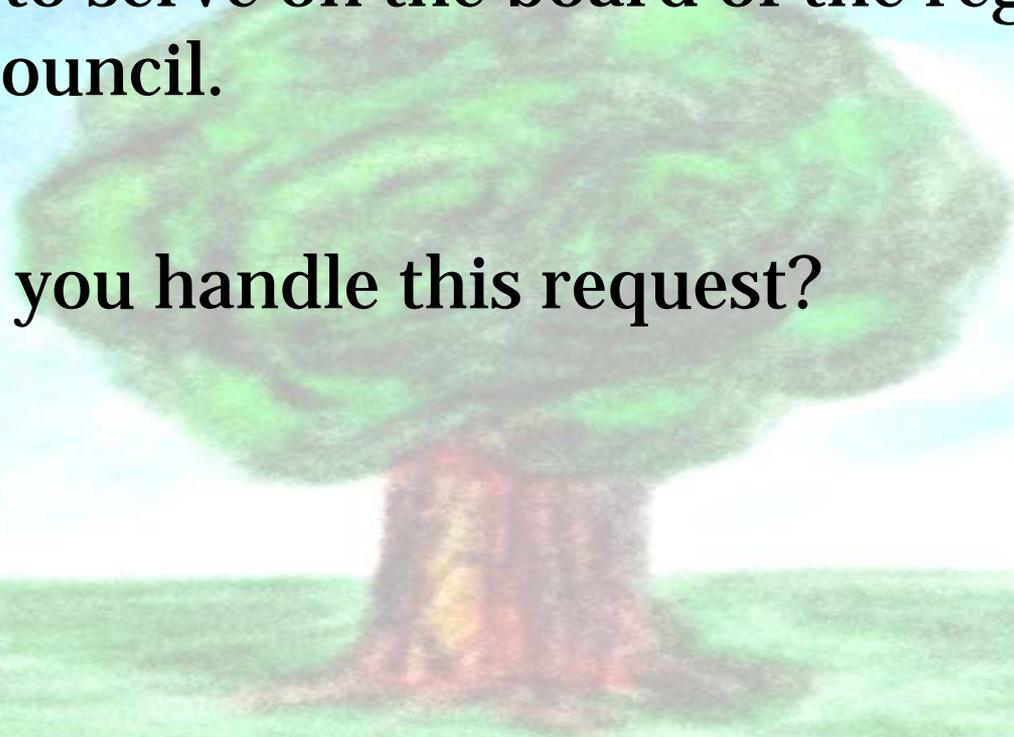
- An employee who works for the NIH is a health enthusiast. Her best friend, an editor for a yoga magazine, asks her to write an article for her publication. The employee plans to write about the health benefits of Vitamin D, summarizing published research.
- How would you handle this request?



# SCENARIO THREE



- An employee who works at the Forest Service has been asked to serve on the board of the regional Boy Scout council.
- How would you handle this request?



# SCENARIO FOUR



- An employee of the Department of State was asked by a university in Germany to give a speech about exporting agricultural products to Africa at its conference on the changing trends of world exports. This employee's official duties include conducting studies on the role of rice exports on Japan's economy.
- How would you handle this request?



## OFFICIAL DUTY ACTIVITIES

**BEFORE REFERRING TO THIS CHART: Consider if you have any personal outside interests or relationships with the outside organization involved in the proposed official duty. If you do, call your Deputy Ethics Counselor.\***

This chart illustrates a variety of professional activities in which NIH extramural and intramural scientists often engage, but which, if considered official duties, may conflict with other official duties. This chart describes whether or not these activities are permitted as official duties, how these activities should be approved, and how any conflicts that might arise should be managed. As noted in the chart, most often these activities can be approved by the supervisor. Thus this chart should be used for guidance to steer the supervisor and employee towards the right decision regarding the approval of official duties and how to set up proper recusals when necessary. While the chart is quite comprehensive, there may be other activities not covered here that the supervisor and employee should manage accordingly.

KEY: E = Extramural Employee; I = Intramural Employee; B = Employees with both Extramural and Intramural Responsibilities

Activity	Not Permitted	No Formal Approval Needed	Supervisory Approval Needed	Other Clearance Needed	Notes
<b>Writing and Editing Activities</b>					
Review of manuscript (book, book chapters, or journal articles) where author is not grantee or collaborator		I	E, B		Consider the likelihood of author becoming a grantee or collaborator, and whether conflict would arise. Use supervisor's discretion on time between grant application and manuscript review but not less than one year.
Review of manuscript (book, book chapters, or journal articles) where author is or likely to be grantee or collaborator		I	E, B		<b>E, B:</b> if author is a grantee, then consider potential conflict if author is within employee's purview. Supervisor's discretion on time between grant application and manuscript review but not less than one year.
Submission of article to journal as author				E, B, I	Clear manuscript before submission to journal pursuant to IC's procedures.
Service on a journal's editorial board or editing a multi-author textbook (duties include publication decisions and scientific policy decisions)	E, I & B if position includes budget, management or personnel responsibilities		E, B, I		<b>E, B:</b> if author is a grantee, then consider potential conflict if author is within employee's purview. Supervisor's discretion on time between grant application and manuscript review but not less than one year.
Press releases and other media contacts				E, B, I	Consult with IC public affairs office after securing supervisory approval.
Materials to be submitted to Congress				E, B, I	Consult with IC legislative contact after securing supervisory approval.
Letters to the Editor/Op Ed articles			E, B, I		If writing in personal capacity (no use of NIH letterhead or title), no approval necessary. Caution not to disclose non-public information.

Activity	Not Permitted	No Formal Approval Needed	Supervisory Approval Needed	Other Clearance Needed	Notes
<b>Clinical Practice</b>					
Clinical Practice (not at NIH CC)			E, B, I		<b>E, B:</b> Disqualify institution from employee's portfolio while employee still in practice and for one year after leaving employment with the institution. When approving this activity, supervisor must balance professional development of employee with programmatic and agency considerations.
<b>Academics Activities</b>					
Adjunct faculty (Clinical, Lecturer or Mentor)			E, B, I		<b>E, B, I:</b> Disqualify institution from employee's portfolio and for one year after leaving employment with the institution. When approving, supervisor must balance professional development of employee with programmatic and agency considerations. Conflict with individual mentee after professional relationship ends for a minimum of three years (but may be much longer - some choose to have a lifetime recusal with former students or mentors)
Membership on thesis committee (not faculty member)		I	E, B		Possible conflict with individual doctoral candidate. Supervisor's discretion on time between thesis and other matter but should be a minimum of three years.
Presenting CME lectures for commercial CME providers	E, B, I				Could seek approval to participate as an outside activity
Presenting CME lectures for not-for-profit CME providers			E, B, I		No recusal necessary.
Presenting Grand Rounds lectures		I	E, B		No recusal necessary.
<b>Speaking</b>					
Programmatic or scientific presentations at grantee or collaborating institutions		I	E, B,	IC Director or Deputy Director	No recusal necessary. Content review or remarks recommended. IC Directors and Deputy Directors should get supervisory and DEC approval.
Speaking at Professional Organization's Events			E, B, I	IC Director or Deputy Director	Content review of remarks recommended. IC Directors and Deputy Directors should get supervisory and DEC approval.
Serving as an expert witness				E, B, I	Seek OGC advice and if permissible, get supervisory approval as well.
Responding to media inquiries				E, B, I	Consult with IC public affairs office, and if permissible get supervisory approval as well.
Responding to congressional inquiries				E, B, I	Consult with IC legislative contact, and if permissible, get supervisory approval as well

Activity	Not Permitted	No Formal Approval Needed	Supervisory Approval Needed	Other Clearance Needed	Notes
<b>Advisory Activities</b>					
Grant review for other government agencies (foreign, U.S. or state) or not-for-profit organizations		I	E, B		Scientific advice on whether the organization should fund or continue to fund an application; no NIH funds involved. Service could be ad hoc or as a committee member. No recusal necessary. Additional approval needed for travel and formal contracts or agreements.
Service on NIH Review Panels including Study Sections			E,B,I		<b>E, B:</b> Service on staff administrative review panels and non-R&D contract panels is permitted with supervisor's approval. <b>For I:</b> NIH study sections also permitted
Seeking or providing advice from Intramural Scientist to Extramural Program Official re: program direction		I, E, B			
Service on scientific review or advisory boards for educational institutions or not-for-profit organizations WHEN PROJECT IS <b>NOT</b> DHHS FUNDED			E, B, I		This activity could include scientific review of a specific program or department, or help with preparation for accreditation. Not-for-profits include patient advocacy groups. Lobbying activities prohibited. Recusal necessary for employees with extramural responsibilities for grants/applications within employees portfolio while on the board and for one year after leaving the board.
Service on scientific review or advisory boards for educational institutions or not-for-profit organizations for DHHS funded project	E, B			I	<b>I:</b> must receive prior approval from supervisory and DEC. This activity could include scientific review of a specific program or department, or help with preparation for accreditation. Not-for-profits include patient advocacy groups. Lobbying activities prohibited. May require coordination with extramural program office.
Service on scientific review or advisory boards for industry	E, B			I	<b>I:</b> must receive prior approval from supervisor and DEC.
<b>Activities with Professional Organizations</b>					
Member of Professional Organization		E, B, I			
Leadership Role in a Professional Organization					
General Leadership e.g. committee or symposium chair			E,B,I		
Officer of Professional Organization	E, I & B if position includes budget, management or personnel responsibilities			E,B,I	<b>E,B,I:</b> Need a section 208 waiver; consult your IC DEC
Attending Professional Organization's Events			E, B, I		Seek DEC advice if gifts (e.g., waiver of registration fees, meals) offered.
Federal Liaison to Professional Organization			E, B, I		

Activity	Not Permitted	No Formal Approval Needed	Supervisory Approval Needed	Other Clearance Needed	Notes
<b>Collaborative Activities</b>					
CRADAs				E,B,I	COIFA review by DEC. For E,B: Potential COI with Institutions involved in the CRADA if future applications are received from those institutions.
MCRADAs				E,B,I	COIFA review by DEC. For E, B: Potential COI with Institutions involved in the CRADA if future applications are received from those institutions.
Cooperative Agreements			E, B, I		<b>E,B:</b> Recused from dealing with collaborator as part of portfolio while collaborating and for three years after collaboration ends.
MTAs			E,B,I		
Collaboration between NIH intramural scientist and NIH extramural scientist		I	E, B		<b>E, B:</b> Recused from dealing with applications or grants where intramural NIH employee, with whom you have a a collaboration, is named as a collaborator or co-Investigator on the application or grant. Recused for three years after collaboration ends.
Collaborations with other U.S. government scientists		I	E, B		<b>E, B:</b> Recused from dealing with applications or grants where government employee, with whom you have a collaboration, is named as a collaborator or co-Investigator on the application or grant. Recused for three years after collaboration ends.
Collaborations with academic and not-for-profit foundation scientists		I	E, B		<b>E,B:</b> Recused from dealing with collaborator as part of portfolio while collaborating and for three years after collaboration ends. For RFA's: if a named collaborator (PI, co-PI, Advisor) submits to an RFA under the employee's purview, employee must recuse themselves from the entire RFA. However the employee is not recused from the entire RFA if other applications are submitted from the collaborator's institution, without the collaborator named on the application. If letter of support is being submitted with grant application, consider whether project should be managed as a cooperative agreement.
Collaborations with industry scientists not as part of a CRADA				E,B,I	All employees must receive prior approval from supervisor and DEC. Potential COIs depending on the size and structure of the industrial partner (single vs. multiple entity - See case study)
Scientific advisor on cooperative agreement				E,B,I	Supervisory, Scientific Director and/or extramural director approval required.

Activity	Not Permitted	No Formal Approval Needed	Supervisory Approval Needed	Other Clearance Needed	Notes
<b>Institutional Relationships</b>					
Entering into Public-Private Partnerships (NIH & an outside organization) (including preliminary discussions)				E, B, I	Requires NIH-level approval and execution of MOU. Conflict may arise if employee has personal or imputed interest in outside organization.
Participating in governance bodies for partnerships between NIH and outside entities				E, B, I	Requires NIH-level approval of partnership. Conflict may arise if employee has personal or imputed interest in outside organization.
Entering into Co-Sponsorship Agreements				E, B, I	Requires NIH-level approval prior to initiation of co-sponsorship. Conflict may arise if employee has personal or imputed interest in outside organization.
Receiving conditional or unconditional gifts				E, B, I	Requires NIH-level approval prior to receipt of gift. Conflict may arise if employee has personal or imputed interest in outside organization.
<b>Reference Letters/Letters of Recommendations</b>					
Reference Letters for colleagues with whom you have or had interactions while at the NIH, or persons who are applying for U.S. government jobs		E, B, I			May use government letterhead and sign letter with official title. However, extramural employee may not write such a letter for an investigator in his/her portfolio
Letters of Recommendation from superior to subordinates		E, B, I			May use government letterhead and sign letter with official title. Can be included in grant applications (K99 and R00)
Letters of support for collaboration on NIH extramural applications	N/A for E			B, I	Approval by SD after consultation with the extramural program director. IC Directors must write letters as intramural scientist on the lab's IC letterhead.
Letters of support for Work Visas or green cards	E, B, I				Prohibition includes representations to other govt agencies. Permissible if part of official request through Division Of International Services, ORS.
<b>Service on DSMBs</b>					
DSMB service for your own IC	E, B, I				DSMB policy being finalized
DSMB service where DSMB members selected by another IC			E, B, I		DSMB policy being finalized
DSMB service where DSMB members selected by employee's IC's grantee	E, B, I				DSMB policy being finalized
DSMB service where DSMB member selected by another IC's grantee			E, B, I		DSMB policy being finalized.
DSMB service for protocol funded by industry				E,B,I	DSMB policy being finalized.
Attending DSMB meeting as a Scientific Coordinator			E, B, I		

Activity	Not Permitted	No Formal Approval Needed	Supervisory Approval Needed	Other Clearance Needed	Notes
<b>Appearing Before Another Government Agency at a Public Meeting or Hearing (Does not include Professional Scientific Meetings)</b>					
At the other agency's request			E, B, I		Ask the agency to confirm in writing its invitation to you to appear before or give testimony as an NIH employee before you make such an appearance or give such testimony.
At a company's request	E,B, I				You are prohibited from being a representative of a company in your official capacity, or as a consultant as an outside activity. You may, however, ask the other agency if it wants an appearance or testimony from an NIH employee and present in that capacity. If you are then invited by the agency to make an appearance or give testimony (ask for written confirmation), you should clarify that you are there as an NIH employee and not a representative of the company.
At NIH's initiative			E, B, I		You may ask the other agency if it wants an appearance or testimony from an NIH employee and present in that capacity. Ask the agency to confirm in writing its invitation to you to make an appearance or give testimony as an NIH employee before you make the such an appearance or give such testimony.
*Note: You may need separate administrative approval for some of these activities, e.g., travel (either government-paid or sponsored (348)). This table does not give guidance on administrative requirements. Employees should consult with their AOs.					

# REGULATING OUTSIDE ACTIVITIES

## WHISTLEBLOWING and other PPPs



### *Rights of Federal Employees: CSRA and WPA*

Bruce Fong  
Field Office Chief  
S.F. Bay Area Field Office

U.S. OFFICE OF SPECIAL COUNSEL

# OFFICE OF SPECIAL COUNSEL (OSC)

5 U.S.C. §§ 1211-19; 5 C.F.R. PART 1800



## AUTHORIZED TO —

- INVESTIGATE PROHIBITED PERSONNEL PRACTICES AND OTHER ACTIVITIES PROHIBITED BY CIVIL SERVICE LAW, RULE, OR REGULATION
- SEEK CORRECTIVE ACTION ON BEHALF OF INDIVIDUALS WHO ARE THE VICTIMS OF PROHIBITED PERSONNEL PRACTICES
- SEEK DISCIPLINARY ACTION AGAINST AGENCY OFFICIALS WHO COMMIT PROHIBITED PERSONNEL PRACTICES

# REPRISAL FOR WHISTLEBLOWING



- PROTECTED DISCLOSURE
- PERSONNEL ACTION
- KNOWLEDGE
- CAUSAL CONNECTION

# WHAT IS WHISTLEBLOWING?



## REASONABLE BELIEF DISCLOSURE EVIDENCES:

- A VIOLATION OF ANY LAW, RULE OR REGULATION
- GROSS MISMANAGEMENT  
    MORE THAN *DE MINIMIS*
- GROSS WASTE OF FUNDS  
    MORE THAN A DEBATABLE EXPENDITURE
- ABUSE OF AUTHORITY
- SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH  
    AND/OR SAFETY

# WHISTLEBLOWING? (cont'd)



## NATIONAL SECURITY MATTERS:

DISCLOSURES ARE NOT PROTECTED, UNLESS MADE TO OSC OR OIG, IF

- PROHIBITED BY LAW, OR
- REQUIRED BY EXECUTIVE ORDER TO BE SECRET FOR NATIONAL SECURITY OR FOREIGN AFFAIRS REASONS

# CAUSAL CONNECTION



## CONTRIBUTING FACTOR TEST:

ANY FACTOR WHICH ALONE OR IN CONNECTION WITH OTHERS TENDS TO AFFECT IN ANY WAY THE OUTCOME OF THE PERSONNEL ACTION AT ISSUE

- CAN BE ESTABLISHED BY KNOWLEDGE / TIMING ALONE
- OFTEN ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE

# AFFIRMATIVE DEFENSE



## MT. HEALTHY TEST (MODIFIED):

CLEAR AND CONVINCING EVIDENCE THAT SAME ACTION WOULD HAVE OCCURRED IN ABSENCE OF WHISTLEBLOWING

- STRENGTH OF THE EVIDENCE IN SUPPORT OF THE PERSONNEL ACTION
- EXISTENCE AND STRENGTH OF MOTIVE TO RETALIATE
- TREATMENT OF SIMILAR EMPLOYEES WHO ARE NOT WHISTLEBLOWERS

# FIRST AMENDMENT



VIOLATION OF FIRST AMENDMENT IS A PPP:

5 U.S.C. § 2302(b)(12)

- Speech, Press, Association, Petition and Religion
- Speech/Expression: Must Touch Matters of Public Concern
- Balancing Test: Employee-Citizen's Interest in Speaking on Matter of Public Concern v. Employer's Interest in Regulating Speech
- Pickering v. Bd. of Educ., Connick v. Meyers, Garcetti v. Ceballos, Chambers v. Interior

# OFF-DUTY CONDUCT



- DISCRIMINATION BASED ON CONDUCT NOT RELATED TO PERFORMANCE, 5 U.S.C. § 2302(b)(10)
- NEXUS BETWEEN OFF-DUTY CONDUCT AND JOB PERFORMANCE (OR EFFICIENCY OF THE SERVICE)
- 5 U.S.C. § 7513 (Efficiency of Service); 5 C.F.R. § 7.1 (Fill Positions on Basis of Merit and Fitness)

OFFICE OF THE DEPUTY DEH  
A Large Eastern Army Post

- Deputy DEH - That no good, worthless, goldbricking so-and-so!  
Horace, get in here!
- Horace - Yes sir, Boss. What is it?
- Deputy DEH - Horace, I'm sitting here looking at my weekend edition of the  
*Washington Post*. . . . And do you know what I see in here?  
D'ya, Horace, d'ya?
- Horace - No, no sir. . . what, what d'ya see?
- Deputy DEH - That low-life GS-7, Dan Doright, who calls himself a  
maintenance foreman has the gall to go to the papers and claim  
that we wasted over a million bucks buying those twenty new  
transformers that we bought to replace the old ones.  
He works for you, doesn't he Horace?
- Horace - Well, uh, yes, yes sir he does.
- Deputy DEH - Listen to what it says here. "Army employee blows whistle on  
waste at Fort Swampy. Claims one million dollars spent  
needlessly to replace twenty electrical transformers brought less  
than ten years ago at half the cost." And that's not all. Listen to  
what he says. "'The Commanding General, General Bluster,  
knows all about this,' Doright said. 'In fact, his cousin holds a  
large minority interest in the company.' Doright alleges that the  
transformer incident is 'just the tip of the iceberg. Just get me to  
the grand jury,' Doright said, 'and I'll prove that General Bluster  
is a conniving snake. . .'"--he called the Commanding General  
a snake!--". . .who'd sell his own mother to make a buck!  
Everyone who works in DEH is up to his neck in fraud, waste  
and abuse.'" That's us he's talking about, boy! What're you  
going to do about this? What do you know about this?
- Horace - Well, uh, he's been working for us for about eighteen years and,  
uh, he knows the ropes, knows the system, knows how just to get  
by with the least effort. . . and he complains all the time.
- Deputy DEH - Doright -- "Donothing" would be a better name for him.  
What's he got to complain about, Horace?
- Horace - Well. . . Just a minute, Boss. The uh. . . I got, I got a  
million of these examples. Just last week for example -- that  
incinerator that's been down for about a month -- I asked him to  
get in there and clean it out. And he refused to do it. Said he  
wouldn't do it without an oxygen tank, or some hose coming in  
from the outside. You know, he's. . . he's complaining all the

time. He complains about his labor union rights, and he talks to the other folks there about how they're suckers if they stay working one minute past an eight-hour day.

- Deputy DEH - Tell me more about this, uh, incinerator deal, Horace.
- Horace - I told him and two other workers to get in there and clean that out. The other two, they went in just fine, but, uh, he just wouldn't get in there. He, uh, he said he had to have a respirator, and when I said I wouldn't take any of that nonsense, he said he wanted to see his union representative and an OSHA inspector first.
- Deputy DEH - OSHA, unions, the *Post*. . . He just loves to go after outsiders, doesn't he Horace?
- Horace - Well, anyway, I wasn't going to take any of that, so I told him to get in there, or I was going to clock him out right then. You know what he said to me? He says, "Don't bother you pencil-necked geek. Shove it!" Can you imagine him saying that to me? Well, he took off, and I couldn't find him the rest of the afternoon. But, that's just one example. I've got 'em all written down here. He complains when he thinks rules aren't being followed right. Every little rule he wants to be followed. He curses me out regularly. He's disappeared. . . about five days out of the last three months. And Boss, I got it all written out right here.
- Deputy DEH - Why haven't you done anything about all of this, Horace?
- Horace - Well, Boss, I haven't gotten around to it yet.
- Deputy DEH - Well, Doright certainly got around to taking care of us and General Bluster, hasn't he? Sounds to me like we got the makings of some serious offenses here: disobedience, disrespect, AWOL, and going outside of channels. I think we might have a 30-day suspension here, Horace.
- Horace - Boss, I'd just like to get rid of him.
- Deputy DEH - What we got here is a failure to communicate. We need to get his attention. You go on and get out of here, Horace, I'm going to get on back to work now.
- Horace - Yes Sir. (Aside) You know it is a little strange that we bought those new transformers before the others were even ten years old.

THE END

# **Ethics, Investigations and Discipline**

**Presented by**

**Jeff Rosenblum**

**Chief Counsel, Employee/Labor Relations Unit**

**Brigitte Frantz**

**Associate General Counsel and Ethics Officer**

**U.S. Department of Justice**

**Executive Office for Immigration Review**

**Office of the General Counsel**

# *Overview*

- **The Players**
- **The Rules**
- **The Process**
- **Cases**

# *The Players*



# *The Players*

## Ethics Official

- Prospective advice
- Contact person
- Liaison
- Post-violation

# *The Players*

- Employee
- Manager
- Agency Counsel/ELR

# *The Players*

- Investigative Agencies
  - Office of Inspector General
  - Office of Professional Responsibility
  - Office of Special Counsel

# *The Rules*



# **Rules**

# *The Rules*

- Standards of Conduct
- Criminal Statutes
- Hatch Act
- Rules of Professional Conduct
- Agency Policies/Misc.

# *Standards of Conduct*

- **Impartiality/Appearance (502)**
- **Misuse of Position (Subpart G)**
- **Gifts (Subparts B and C)**

# *Criminal Statutes*

- Conflicts of Interest (208)
- Post-Employment (207)
- Third-party Representation (203/205)

# *Hatch Act*

- Government resources (734.306)
- Running for office (734.207/734.304)
- Fundraising (734.303)

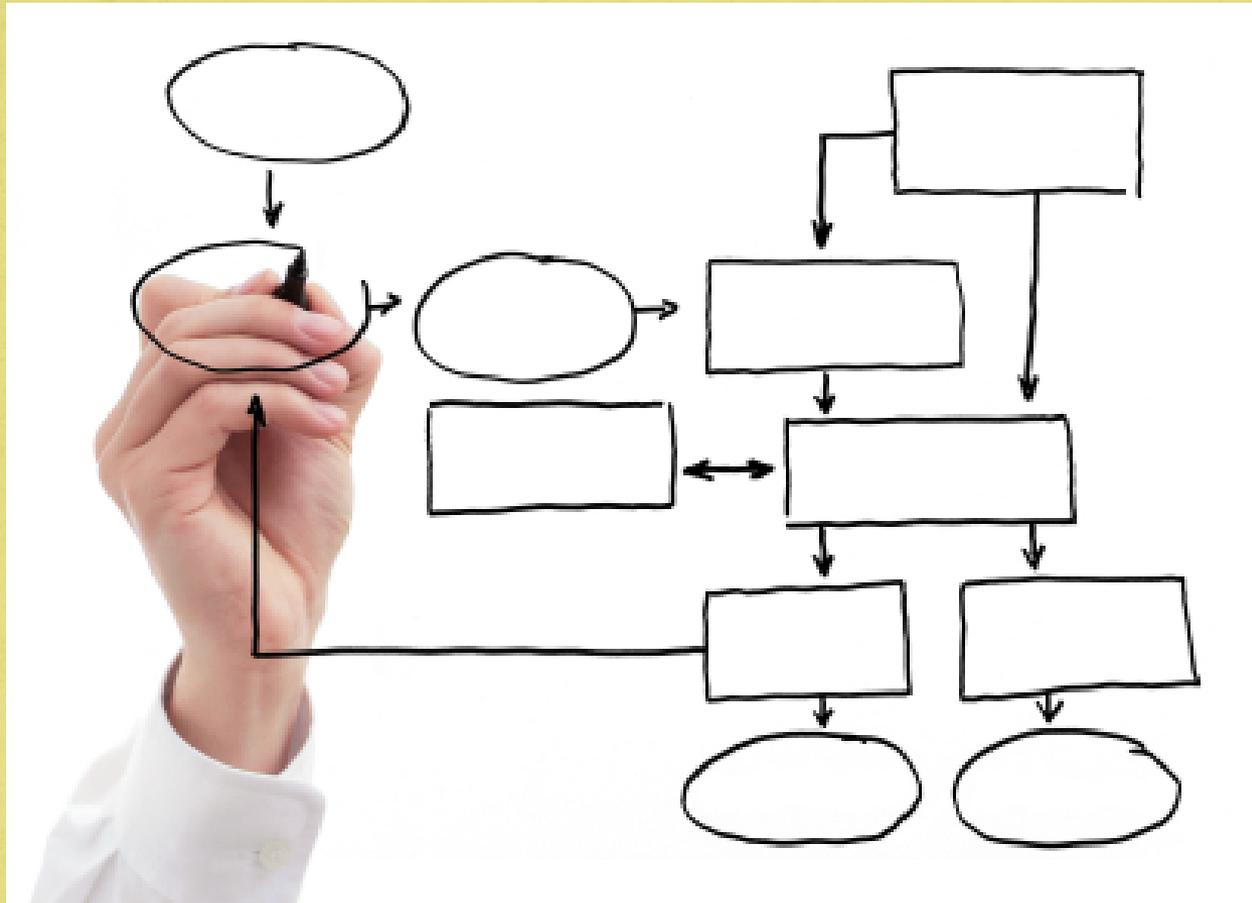
# *Rules of Professional Conduct*

- Unauthorized practice of law (MR 5.5)
- Communication with person represented by counsel (MR 4.2)
- Candor to the tribunal (MR 3.3)

# *Agency Policies/Misc.*

- Procurement Integrity Act
- Computer Use Policy
- Anti-lobbying Act
- Supplemental Ethics Regulations

# *The Process*



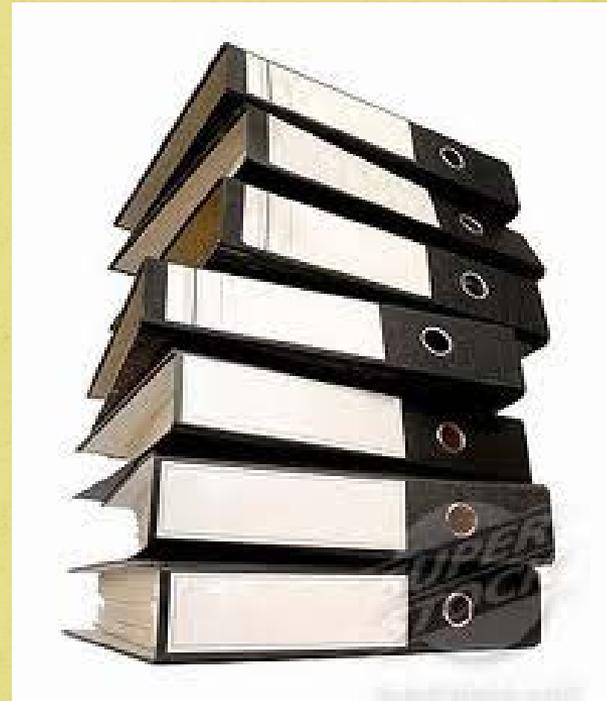
# *The Process*

- Advice
- Allegation of wrongdoing
- Referral

# *The Process*

- Investigation
  - Agency
  - OPR
  - OIG
- Discipline

# *Cases*



# Cases

- Gifts
  - *Sher v. Department of Veterans Affairs* (D. Me.)
- Public Office for Private Gain
  - *Phillips v. Department of Transportation* (MSPB)
- Misuse of Position
  - *Voorhis v. Department of Homeland Security* (MSPB)
  - *Wilson v. Department of Homeland Security* (MSPB)

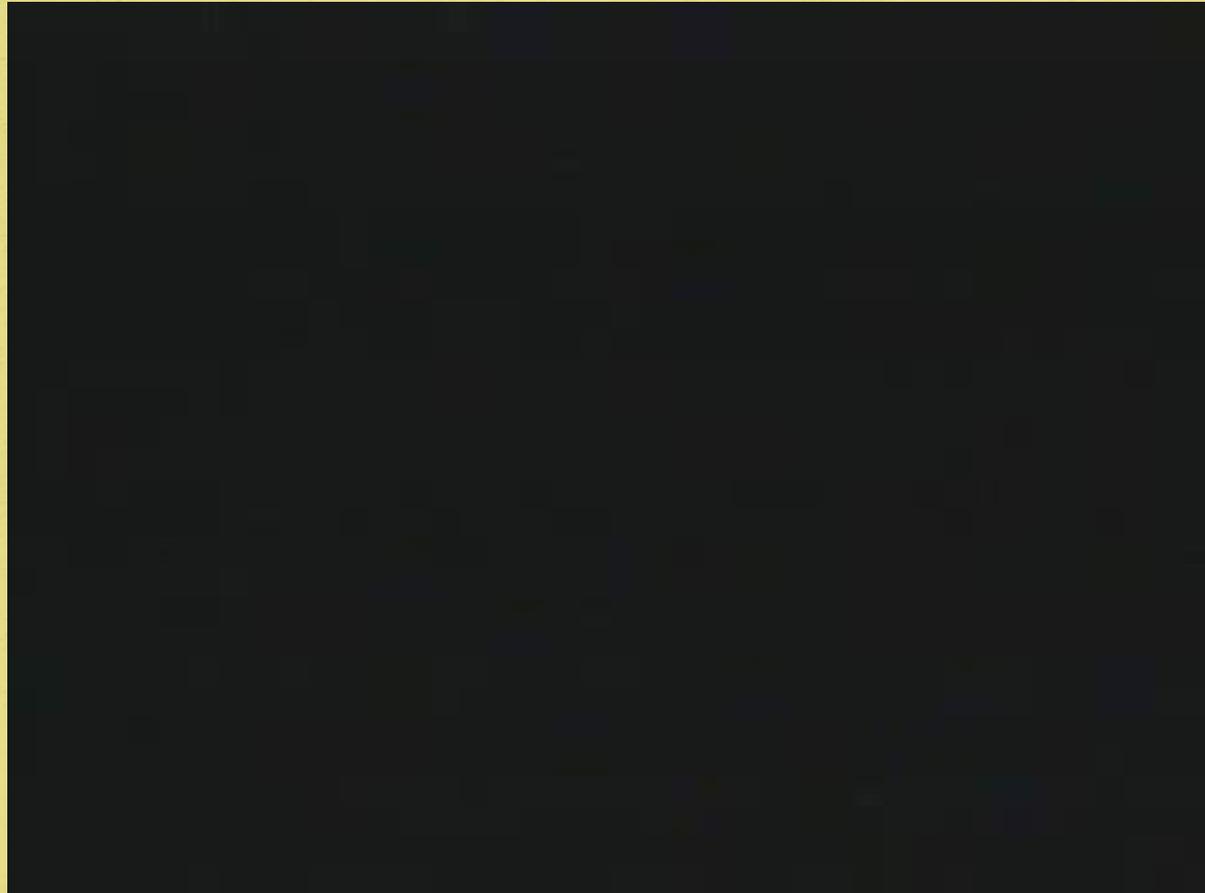
# Cases

- Rules of Professional Conduct
  - *Feld v. Department of Veterans Affairs* (MSPB)
  - *Kent v. Department of Justice* (MSPB)
- Conflicts
  - *Fea v. Department of the Army* (MSPB)

# Cases

- Hatch Act
  - *Special Counsel v. Eisinger* (MSPB)
  - *Special Counsel v. Winfield* (MSPB)
  - *Special Counsel v. Mark* (MSPB)
  - *Special Counsel v. Ware* (MSPB)

*Don't be afraid to ask for assistance*



## **Interagency *Pro Bono* Working Group Agencies**

Department of Agriculture  
Department of Commerce  
Department of Defense  
Department of Education  
Department of Energy  
Department of Health and Human Services  
Department of Housing and Urban Development  
Department of Justice  
Department of Interior  
Department of Labor  
Department of State  
Department of Transportation  
Department of the Treasury  
Department of Veterans Affairs  
Environmental Protection Agency  
Equal Employment Opportunity Commission  
Export Import Bank of the United States  
Federal Communications Commission  
Federal Deposit Insurance Corporation  
Federal Election Commission  
Federal Labor Relations Authority  
Federal Mine Safety and Health Review Commission  
Federal Reserve Board  
Federal Trade Commission  
General Services Administration  
Internal Revenue Service  
Merit Systems Protection Board  
National Aeronautics and Space Administration  
National Labor Relations Board  
Office of Government Ethics  
Overseas Private Investment Corporation  
Pension Benefit Guaranty Corporation  
Securities and Exchange Commission  
United States Agency for International Development  
United States Air Force  
United States Coast Guard  
United State International Trade Commission  
United States Navy  
United States Postal Service

# **MOST COMMONLY ASKED QUESTIONS ABOUT GOVERNMENT ATTORNEYS DOING PRO BONO WORK**

## **I. Definitions and Limitations**

### **What types of services may I provide?**

Pro bono legal work and volunteer services may be broadly defined to include many different types of activities performed without compensation. Examples include, but are not limited to, services to persons of limited means or other disadvantaged persons, assistance to charitable, religious, civic, community, governmental, health, and educational organizations, services to individuals or groups seeking to protect civil rights, civil liberties or public rights, and activities seeking to improve the law or legal system.

### **What types of pro bono and volunteer services are prohibited?**

Any service that would conflict with your official duties is prohibited. 5 C.F.R. § 2635.802. For example, federal employees, in most cases, are prohibited from representing parties before the federal government. 18 U.S.C. § 205. (See questions below on conflicts of interest.) In addition, each federal agency has its own regulatory standards of conduct which its employees must follow. For example, Department of Justice attorneys may not provide services that involve criminal or habeas corpus matters, whether federal, state, or local. 5 C.F.R. § 3801.106.

### **May I provide services to political organizations?**

Yes, however, you must comply with the restrictions of the Hatch Act (5 U.S.C. § 7234) and the your agency's policy concerning political activities by high-level and political appointees. It should be noted that the Office of Personnel Management has stated that it would be inappropriate to grant administrative leave to employees to engage in partisan political activities. Also, because partisan political activity is subject to more restrictive rules than other non-official activity, no partisan political activity may take place on government time or by using government property. See 5 C.F.R. Part 734.

### **May I represent someone in an action against the United States?**

No. 18 U.S.C. § 205 prohibits you from representing another person before any court or agency of the United States, in a matter in which the United States is a party or has a direct and substantial interest. There are limited exceptions for representing your immediate family (spouse, child, and parents), fellow employees in personnel administration proceedings, and certain employee organizations in limited circumstances.

### **May I assist persons seeking government benefits?**

Yes, in limited ways. You may provide non-representational assistance, such as filling out forms for a person seeking government benefits. However, you should be mindful

that you may not contact a federal agency, with the intent to influence, on behalf of another person except those persons permitted by 18 U.S.C. § 205(e). You may not represent a third party before any government agency.

**May I prepare income tax returns?**

Yes, however, you are prohibited from representing another person before the IRS in connection with a tax return.

**May I assist family and friends?**

Yes, provided the services you are providing fall within the definition of pro bono and/or volunteer services and you are not receiving compensation.

NOTE: There are some limited exceptions to this rule which may permit employees to represent family and friends in non-pro bono matters as long as the United States is not a party and the matter is not criminal in nature. You should contact your Deputy Designated Agency Ethics Official (DDAEO) if you would like to represent a family member or friend and the representation does not fall within the definition of pro bono or volunteer services.

**II. Use of Position and Agency Resources**

**May I use my official position in connection with my pro bono and/or volunteer services?**

No. You may not indicate or represent in any way that you are acting on behalf of the your agency, or in your official capacity, when providing pro bono or volunteer services.

**May I use office letterhead or my business cards?**

No. You may not use office letterhead, business cards, fax cover sheets, etc., or otherwise identify yourself as a federal government employee in any communication, correspondence, or pleading.

**May I use agency resources such as phone, email, internet, or other government property in connection with my pro bono services?**

Each agency has its own policy on the use of its resources and property. Some agencies will allow for the personal use of government equipment and facilities provided there is only a negligible cost to the government (such as electricity, ink, small amounts of paper, and ordinary wear and tear). You should contact your supervisor or ethics officer to find out about your agency's policy.

**May I ask my secretary to assist me?**

No. Pro bono and volunteer services are not official duties and may not be assigned to or required of support staff.

**May I use Westlaw and other electronic computer databases?**

Each agency has its own policy on this issue. Contact your supervisor or agency ethics officer to find out about your agency's policy.

**May I participate in pro bono and/or volunteer services on government time?**

You are encouraged to seek pro bono and volunteer opportunities that can be accomplished outside of your scheduled working hours. However, activities may sometimes occur during the work day. You may be granted annual leave, leave without pay, or may be permitted to make up any time you are away from the office. Contact your supervisor or agency ethics officer to find out about your agency's policy.

**May I be given administrative leave?**

Generally, it is inappropriate to pay an employee for time engaged in *pro bono* or volunteer services. However, some agencies allow for administrative leave or excused absence for *pro bono* activity, such as the Department of Justice (various divisions), the Department of Labor, the Department of Energy, the Department of Housing and Urban Development, the National Labor Relations Board, and some others. To find out if your agency has such a policy, contact Laura Klein, Department of Justice Pro Bono Program Manager, at [Laura.F.Klein@usdoj.gov](mailto:Laura.F.Klein@usdoj.gov). Additionally, OPM has issued a general guidance on the availability of administrative leave for volunteer activity. In limited circumstances, it may be appropriate to excuse an employee from duty for brief periods of time without loss of pay or charge of leave. Excused absence should be limited to those situations in which the employee's services meet one or more of the following criteria: is directly related to the agency's mission; is officially sponsored or sanctioned by the agency; or will enhance the professional development or skills of the employee in his or her current position. See OPM Guidance at <http://www.opm.gov/oca/leave/html/Volunteer2.asp>.

### **III. Conflicts of Interest**

#### **Who should I talk to about any possible conflicts of interest?**

Your Deputy Designated Agency Ethics Official (DDAEO).

#### **What constitutes a conflict of interest?**

Any activity that would:

1. Violate any federal statute, rule, or regulation, including for example, 18 U.S.C. § 201 et seq. and the Standards of Conduct at 5 C.F.R. § 2635;
2. Interfere with the proper and effective performance of your official duties, including time availability;
3. Cause a reasonable person to question the integrity of your agency's programs or operations;
4. Require your recusal from significant aspects of your official duties;
5. Create an appearance that your official duties are being performed in a biased or less than impartial manner; or
6. Create an appearance of official sanction or endorsement.

#### **Must I get approval to provide pro bono services?**

Each agency has its own policy regarding its employees' outside activities. An employee seeking to engage in any pro bono legal work or volunteer services must follow his or her agency's procedures for outside activities. You should consult with your ethics officer regarding approval requirements.

### **IV. Miscellaneous**

#### **What about malpractice coverage?**

The federal government does not provide malpractice coverage. Generally, volunteer programs organized by the local bar or more established referral programs provide malpractice coverage. For example, the Legal Aid Society of DC provides malpractice coverage for its volunteers. You should ask the organization through which you will be providing pro bono services whether it will provide malpractice coverage for you.

### **May I participate if I am not a member of the state bar where I am located?**

To do pro bono work in any state, you must be a member of that state's bar. However, federal government attorneys do not need to be members of the D.C. Bar in order to do pro bono work in D.C. Under an amendment to D.C. App. Rule 49, federal government attorneys who are not members of the D.C. Bar may provide legal counsel without fee provided that such a matter is assigned or referred to the attorney by an organization that provides legal services to the public without fee, the attorney is a member in good standing of another bar, the attorney provides the service without fee, and the attorney is supervised by an enrolled, active member of the District of Columbia Bar.

### **Are there activities I can do that do not involve client representation?**

Absolutely! Government attorneys regularly staff legal clinics. At these clinics, attorneys provide brief advice and referral for clients on a walk-in basis and do not take on the cases. You can also help clients to fill out tax forms, perform know-your-rights workshops for victims at domestic violence shelters, teach legal education in local schools, write wills and powers of attorney for elderly clients, and much more.

### **What if I have never done any pro bono work before?**

It is never too late to start doing pro bono work. There are lots of resources and support to help you. First, you can start by going to a training. The bar associations and other organizations host trainings throughout the year on substantive areas of law that are designed for attorneys who are new to the subject area. Second, local legal services organizations can assign mentors to government attorneys to help you with your work. Third, [probono.net](http://probono.net) and local legal service providers have terrific manuals, sample forms, and a pleadings bank that you can use. Many attorneys start by co-counseling their first pro bono case. And you don't have to start by taking a case – you can attend a brief advice clinic, volunteer at an intake site or do a range of other activities.

### **Is there a committee which helps government agencies to develop pro bono policies and programs?**

Yes. The Interagency Pro Bono Working Group has been established to assist federal agencies in developing pro bono policies and programs. The Working Group also organizes events to encourage more government attorneys to participate in pro bono work. The Working Group is chaired by the Department of Justice Pro Bono Program Manager and includes representatives from both large agencies, such as the Department of Transportation, and smaller agencies, such as the Office of Government Ethics.

### **How can I get my agency involved?**

Call the DOJ Pro Bono Program Manager, Laura Klein, at (202) 353-7529 or e-mail [laura.f.klein@usdoj.gov](mailto:laura.f.klein@usdoj.gov).



## Retainer Agreement for Attorney Services

1. By this agreement, \_\_\_\_\_ (“Client”) retains \_\_\_\_\_ (“Pro Bono Counsel”) to advise, represent, appear and act for Client concerning the following matter: \_\_\_\_\_

\_\_\_\_\_  
The Pro Bono Counsel is acting in his/her individual capacity, and is not acting on behalf of the \_\_\_\_\_ [name of agency].

2. This case was referred to Pro Bono Counsel through \_\_\_\_\_. The client understands that it is Pro Bono Counsel and not \_\_\_\_\_ that is representing him/her in this matter. The Client certifies that no other attorney is representing him/her in this matter and understands that the Pro Bono Counsel cannot and does not promise a successful outcome.
3. The Pro Bono Counsel agrees to undertake this representation on a pro bono basis, which means that the Pro Bono Counsel will not charge the Client for attorney or paralegal hours expended on this matter. Additionally, Pro Bono Counsel will not seek attorney’s fees in connection with this matter.
4. The Client agrees to cooperate fully with the Pro Bono Counsel and will promptly notify the Pro Bono Counsel of any of the following:
- (A) any changes in address, telephone number, or changes in the client’s situation which may impact Attorney’s representation; or
  - (B) any plans to leave town which might interfere with court dates or appointments.
5. The Client agrees to assist the Pro Bono Counsel with this matter by:
- (A) providing complete information, including information that will assist the Pro Bono Counsel to investigate this matter;
  - (B) maintaining regular contact with Pro Bono Counsel as is necessary for the conduct of his/her case;
  - (C) attending and being on time for all appointments and court dates;
  - (D) promptly notifying Pro Bono Counsel when other people contact Client about the case; and
  - (E) helping to locate persons who may provide information about this case.
6. Pro Bono Counsel agrees to:
- (A) keep the Client informed about the status of his/her case;
  - (B) keep all sensitive information provided by the client confidential unless authorized by the Client to disclose it (except that information may be shared with other attorneys who are working on the case or assisting with representation);
  - (C) consult with the Client before making any significant decisions about the case; and
  - (D) not settle the case without Client’s consent.

7. The Client agrees to assume responsibility for all expenses, which may include, but are not limited to, agency or court filing fees, costs of service of process and certified mail and any other administrative costs or litigation expenses. Attorney will discuss any significant costs with Client before incurring them. Client understands that Pro Bono Counsel does not charge a fee for his/her work on the case.
8. When Pro Bono Counsel closes Client's file, all original documents that were furnished by Client shall be returned. Pro Bono Counsel will maintain the file for 5 years from the date of case closing, after which time it will be destroyed.
9. By agreeing to represent Client in the matter set forth above, Pro Bono Counsel does not agree to represent Client in any appeal, to collect any money judgment, or to enforce any order obtained in this matter. The parties may agree at a later time to extend representation to another matter. Any such extension will be the subject of a separate written agreement between the parties.
10. Client understands that Client may end this agreement at any time for any reason and agrees to notify Pro Bono Counsel in writing that he/she wishes to end this Agreement.
11. Client understands that Pro Bono Counsel reserves the right to withdraw from representing Client in certain limited circumstances. These circumstances include, but are not limited to, the following:
  - (A) where insufficient legal grounds exist to continue a court or administrative action or appeal;
  - (B) where Client fails to cooperate with the reasonable requests of Pro Bono Counsel;
  - (C) where a conflict of interest is discovered or arises which makes it inappropriate for Pro Bono Counsel to continue representation; and
  - (D) where client fails to meet the terms of this agreement.
12. Client has read this agreement in its entirety, or has had it read and explained to him/her in its entirety, before signing it. Client understands the terms of this agreement and agrees that it shall apply throughout the course of Pro Bono Counsel's representation of him/her.

13. This writing represents the entire agreement between the parties and cannot be amended or modified except in writing signed by the parties.

\_\_\_\_\_  
Client

\_\_\_\_\_  
Date

\_\_\_\_\_  
Pro Bono Counsel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Pro Bono Co-Counsel

\_\_\_\_\_  
Date

# Pro Bono Activity:

A Legal and Procedural Guide for Federal  
Agency Ethics Counsel

Laura Klein  
Pro Bono Program Manager  
U.S. Department of Justice

# Why Should Federal Attorneys Do Pro Bono Work?

- **Need is Enormous**

According to the ABA and LSC, 80% of poor Americans' legal needs are not met.

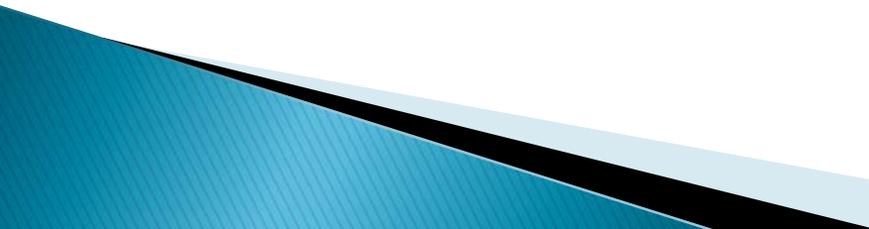
- **Free Professional Development/Training**

Attorneys gain experience at no expense to the agency.

- **Professional Satisfaction**

Government attorneys do not often get a true client experience in their jobs.

# Federal Government Pro Bono Program

- Executive Order 12988 (1996) directed federal agencies to encourage employee volunteerism, specifically pro bono work.
  - Department of Justice coordinates government-wide effort and Chairs the Program.
  - 40 agencies currently participate.
  - Formal programs exist in DC, Chicago, New York City, and San Francisco.
  - In 2009, ABA selected the FGPPB for its Pro Bono Publico Award.
- 



## DOJ Attorneys Volunteer at Advice Clinic >>

Eleven federal agencies have committed to send volunteers to the DC Bar Pro Bono Program Advice & Referral Clinic in 2011. Agency leaders often participate. Here, Assistant Attorney General Tony West accompanies a group from the DOJ Civil Division.

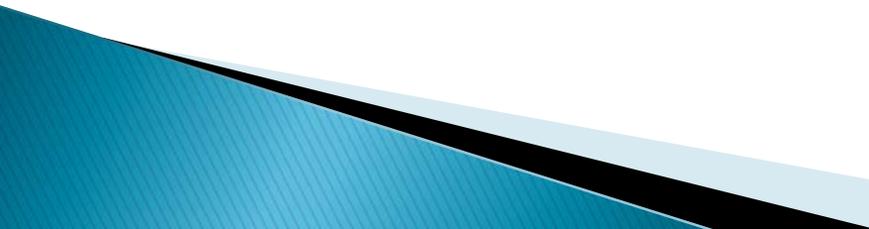


Department of Labor Recognized for Pro Bono >>>  
Leadership in 2009

# Conflicts of Interest

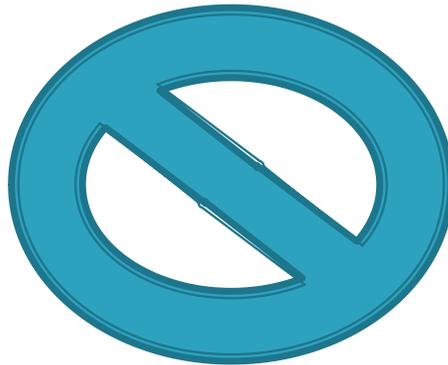
18 U.S.C. 205:

It is prohibited for a federal employee to prosecute any claim against the United States or assist in any such prosecution or act as an agent or attorney for anyone in connection with any proceeding “in which the United States is a party or has a direct and substantial interest.”



# Conflicts of Interest – Examples

- Immigration issues
- Public Benefits (Medicaid, Medicare, SSI, SSDI)
- Federal tax issues
- Bankruptcy petitions



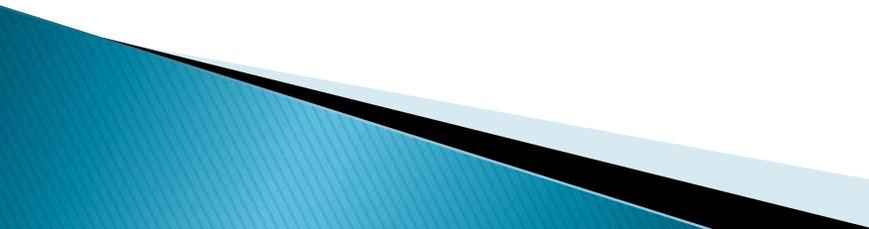
# Conflicts – Outside Activities

Outside Activities – 5 C.F.R. 2635.801 – 803

- 2635.801(c) – “an employee shall endeavor to avoid actions creating an appearance of violating any of the ethical standards in this part . . . .”

# Conflicts – Outside Activities

2635.802 – An employee shall not engage in outside activity that conflicts with his official duties.

- ▶ Prohibited by statute or agency supplemental regulation
  - ▶ Requires employee's disqualification from matters central or critical to his performance of official duties that his ability to perform is materially impaired
- 

# Conflicts – Outside Activities

2635.803 – When required by agency supplemental regulation, an employee shall obtain prior approval before engaging in outside activities.

- Agency Pro Bono Policies usually outline approval procedures.
- Agencies without a Pro Bono Policy can follow procedures for all outside activities.

# Individual Capacity

When engaging in pro bono work, a federal employee is acting in his individual capacity, not his official capacity.

Misuse of Position – 5 C.F.R. 2635.701–705

# Individual Capacity

2635.702 – Cannot imply that the Government sanctions or endorses the employee's personal activities or those of another.

Attorney must make it clear to all involved in the pro bono matter that his agency is not involved in the pro bono matter in any way.

- Client
- Opposing Party
- Opposing Counsel
- Judge
- Witnesses

# Individual Capacity

## Retainer Agreement

- Sample created for government attorneys
- Specific language regarding capacity:

“By this agreement, \_\_\_\_\_ (“Client”) retains \_\_\_\_\_ (“Pro Bono Counsel”) to advise, represent, appear and act for Client concerning the following matter:\_\_\_\_\_. The Pro Bono Counsel is acting in his/her individual capacity, and is not acting on behalf of the \_\_\_\_\_ [name of agency].”

# Individual Capacity

Attorneys should avoid the appearance that the agency is involved in the pro bono matter:

- Cannot use business cards or agency letterhead
  - Cannot ask support staff to assist on pro bono matter
  - Cannot meet client or counsel at agency office
- 

# Individual Capacity

The attorney may:

- Tell the client where he works
  - Use his office mailing address without the agency name
  - Use his office phone number
  - Use his government email address with a disclaimer
- 

# Individual Capacity

## Malpractice Insurance

- The government does not provide any malpractice insurance coverage for pro bono activity.
  - Many legal services organizations provide coverage for their volunteer attorneys.
  - The Federal Government Pro Bono Program will promote and publicize only those pro bono opportunities in which malpractice insurance coverage is provided.
- 

# Individual Capacity

## Use of Agency Resources

5 C.F.R. 2635.704 – “Employees have a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.”

Agency Supplemental Regulations generally allow for the personal use of Government property when the cost to the Government will be negligible.

# Individual Capacity

Generally permissible to use:

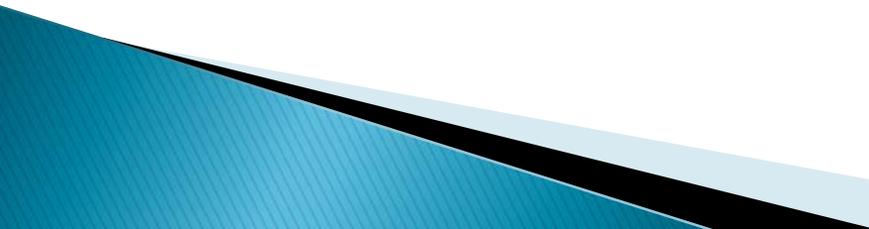
- Telephone for local calls
- Copier
- Fax machine for local faxes
- Library
- Computer and printer
  - \*Internet use should follow agency policy
  - \*Some agencies now allow the use of Westlaw and LEXIS for pro bono work

# Individual Capacity

5 C.F.R. 2635.705 – An employee shall use official time for official duties.

The general rule is that pro bono work should be done on an employee's personal time.

Not a problem for most pro bono activity:

- Clinics
  - Drafting wills
  - Research and writing
- 

# Individual Capacity

When pro bono work cannot be accomplished outside of business hours, such as for court appearances and mediations, options include:

- Annual leave
- Leave without pay
  - Flex schedules
- Administrative leave/excused absence

# Individual Capacity

## Administrative Leave

OPM Guidance: Permits employee to request administrative leave for volunteer activity when that activity will enhance the professional development or skills which the employee uses in his work for the agency.

[www.opm.gov/oca/leave/html/Volunteer2.asp](http://www.opm.gov/oca/leave/html/Volunteer2.asp)

# Individual Capacity

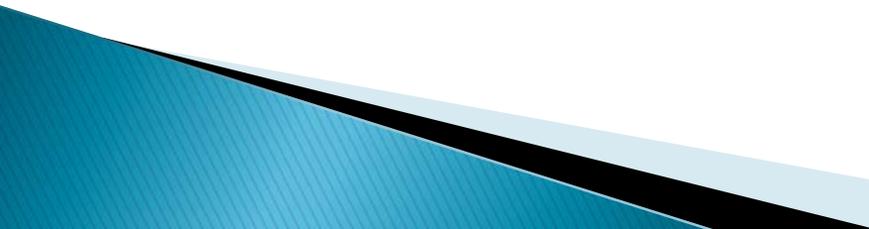
## Administrative Leave

Many agencies have now adopted their own policies allowing for administrative leave for pro bono work.

- Department of Justice (various divisions)
  - Department of Labor
  - Department of Energy
  - Department of Housing and Urban Development
  - National Labor Relations Board
  - US Agency for International Development
  - US International Trade Commission
  - Pension Benefit Guaranty Corporation
  - Merit Systems Protection Board
  - Federal Election Commission
- 

# Pro Bono Opportunities

## How To Analyze A Particular Pro Bono Opportunity

- Does the organization offer malpractice insurance coverage to volunteers?
  - Does the opportunity allow time for a conflicts check?
  - Does the opportunity pose a conflict?
  - Are training and mentoring available for volunteers?
  - Does the opportunity require the attorney to be out of the office during business hours?
- 

# Pro Bono Opportunities

Examples of Appropriate Opportunities:

## Non-Litigation

- Clinics
  - Drafting Wills and Powers of Attorney
  - Guardian ad Litem
  - Law-related Education in Schools
- 

# Pro Bono Opportunities

## Litigation

- Family law – divorce, custody, support
  - Housing – landlord–tenant
  - Domestic Violence – protection orders
  - Consumer law – contracts, home repairs
  - Personal Injury – car accidents, insurance
- 

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DOJ Pro Bono Program Manager  
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# Post-Government Employment Workshop--18 U.S.C. 207(a)(1)

## Elements of 18 U.S.C. 207(a)(1)\*

Permanent Ban
<ul style="list-style-type: none"><li>• (Former) Employee</li><li>• Knowingly Make</li><li>• Appearance or Communication</li><li>• Intent to Influence</li><li>• To or Before an Employee</li><li>• On Behalf of Any Other Person</li><li>• U.S. is a Party or Has a Direct and Substantial Interest</li><li>• Particular Matter Involving Specific Parties</li><li>• Same Particular Matter</li></ul>
Where Participated Personally and Substantially

\* This is only a summary. When giving advice, always consult the complete set of laws, rules, and opinions that apply to the particular situation.

## Basic Prohibition

None of the provisions of 18 U.S.C. 207 bar any individual from accepting employment with any private or public employer after Government service. Section 207 only prohibits individuals from engaging in certain activities on behalf of persons or entities other than the United States, whether or not done for compensation. None of the restrictions bar self-representation.

Section 207(a)(1) is a lifetime restriction that begins when an employee leaves Government service. This provision prevents a Government employee from “switching sides” and representing another person or entity before the United States on the same matters they worked on as a Government employee. See *DO-04-023a*.



## Implementing Regulation

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5 CFR Part 2641 -- Post-Employment Conflict of Interest Restrictions under 18 U.S.C. 207 ("207")

5 CFR 2641.201(a) -- Permanent restriction under 18 U.S.C. 207(a)(1)

## The Process

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## Employee

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18 U.S.C. 207(a)(1) applies to all Executive branch employees *except* the President, Vice President, and enlisted military personnel, including: (See 5 CFR 2641.104)

- Full-time “officers” and “employees” of the Executive branch, regardless of grade or rank (except as stated above)
- Part-time employees, including special government employees (SGEs), whether or not compensated; 18 U.S.C. § 202
- “Detailees” under the Intergovernmental Personnel Act; See 5 U.S.C. §§ 3371-3376

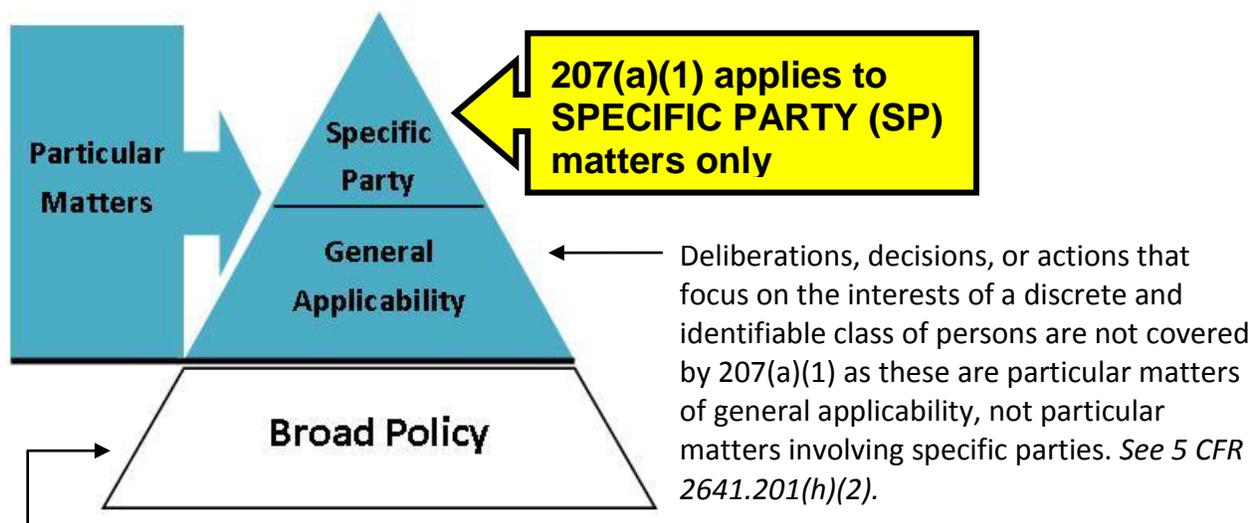
## Particular Matters

See 5 CFR 2641.201(h)

**A particular matter involving specific parties typically involves:**

- Specific proceedings affecting the legal rights of the parties; e.g., judicial proceedings or requests for a ruling or other determination, such as immigration or tax hearings
- Isolatable transaction or related set of transactions between identified parties; e.g., contracts, grants, licenses, product approvals, applications, enforcement actions, administrative adjudications, or court cases.

See 5 CFR 2641.201(h)(1)



Broad policy matters (those deliberations, decisions, or actions that focus on the interests of a large and diverse group) are not particular matters at all, thus, not covered by 207(a)(1).

For further elaboration, see OGE Advisory Memo 06 x 9 of October 4, 2006 titled, "*Particular Matter Involving Specific Parties*," "*Particular Matter*," and "*Matter*."

## Personal and Substantial Participation

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5 CFR 2641.201(i)

**TIP:** Remember that personal and substantial participation is a **very low threshold**.

Term	Definitions
Participate Personally 5 CFR 2641.201(i)(2)	<ul style="list-style-type: none"><li>• Directly</li><li>• Includes direct and active supervision of a subordinate's participation in the matter</li></ul>
Participate Substantially 5 CFR 2641.201(i)(3)	<ul style="list-style-type: none"><li>• Involvement is of significance to the matter</li><li>• May be substantial even though it does not determine the outcome of a particular matter</li><li>• Should be based not only on the effort devoted to a matter, but also on the importance of the effort; While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial</li><li>• Can include participation at all levels of the decision-making process, including making recommendations and giving advice; It also includes the direct and active supervision of a subordinate's participation in the particular matter</li></ul>
Personal and Substantial Participation 5 CFR 2641.201(i)(1)	<ul style="list-style-type: none"><li>▪ Requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.</li></ul>

## Appearance or Communication

---

Appearance = physical presence (See 5 CFR 2641.201(d)(2))

- Formal or informal setting
- Participating in discussions
- Simply appearing in the room (even without participation)

Communication = imparting/transmitting information (facts, opinions, ideas, questions, direction, etc.) (See 5 CFR 2641.201(d)(1))

- Formal and informal
- Intent that information be attributed to former employee
- Orally - In writing - Electronically

Behind the Scenes activity is permitted under 207 (a)(1) (e.g., advice or assistance) so long as it is not done through a third party with attribution intended. See 5 CFR 2641.201(d)(3).

A former employee is prohibited from “**knowingly**” making prohibited contact.

- The question of knowledge comes up *after* an appearance or communication occurs and OGE deals with prospective advice so this element is not included in the analysis.
- Only the Department of Justice can decide whether to prosecute a former employee for knowingly making a communication or appearance that violated 18 U.S.C. 207.

## Intent to Influence

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Intent to influence is present when a former employee seeks:

- A Government ruling, benefit, approval, or other discretionary action OR
  - To affect Government action where real or potential dispute or controversy exists
- See 5 CFR 2641.201(e)(1)*

But not when purely:

- A social visit with former co-workers
- To convey or request purely factual information (no chance of controversy); e.g., status of the matter
- To request publicly available documents

Other specific activities that are not considered to have the intent to influence include:

- Preparers of tax returns
  - Principal investigators for Federal research grants
  - Filers of Security and Exchange Commission forms
- See 5 CFR 2641.201(e)(2)(iii)-(v)*
- Communication made at the initiation of the Government concerning work performed/to be performed under a Government contract or grant during a routine Government site visit to non-Government premises (*See 5 CFR 2641.201(e)(2)(vi)*)

The CHALLENGE... Is a former employee's mere physical presence intended to influence? When a former employee makes an appearance but does not communicate in any way, consider whether:

- The former employee has been given actual or apparent authority to make any decisions, commitments, or substantive arguments in the course of the appearance
- It is anticipated that others present at the meeting will make reference to the views or past or present work of the former employee
- Circumstances do not indicate that the former employee is present merely for informational purposes; e.g., merely to listen and record information for later use
- The former employee has entered a formal appearance in connection with a legal proceeding at which he is present
- The appearance is before former subordinates or others in the same chain of command as the former employee.

*See 5 CFR 2641.201(e)(4)*

All relevant circumstances must be considered for a given case. *See 5 CFR 2641.201(e)(2)*. Be cautious... a communication or appearance that begins without any intent to influence may become one with the intent to influence if an unforeseen dispute arises. *See 5 CFR 2641.201(e)(3)*.

## To or Before an Employee

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An employee or officer of any:

- Department
- Agency
- Court
- Court-martial

This includes to or before an employee who is detailed to any of the above. *See 5 CFR 2641.201(f).*

Some public commentary is okay, when *specific conditions* are met: *See 5 CFR 2641.201(f)(3)*

- Appearances or communications at public gatherings or conferences, seminars, etc.
- Broadcasts or publications of commentaries

Note, 207(a)(1) does not prohibit communications or appearances before Members of Congress\* and legislative staff, or the District of Columbia, but be careful where Federal employees are also in attendance (in their official capacity).

\*Not all 207 prohibitions permit communications or appearances with Congress; i.e., 207(f) bars former senior employees from representing a foreign entity before Congress (as well as a department, agency, court, and court-martials) within one year of leaving their Federal Government positions.

## On behalf of Any Other Person

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Any other person includes: (*See 5 CFR 2641.104; Also see 5 CFR 2614.201(g)(2)*)

- Individual, corporation, company, association, firm, or partnership (commercial or non-profit)
- Any other organization, institution, or entity (commercial or non-profit)
- All Federal, state, local, and foreign governments

The term person also includes any officer, employee, or agent of any of the above. It does not include the former employee themselves or a sole proprietorship owned by former employee (so long as the former employee represents their own interests, not a third party's interests).

Considered on behalf of a third party when a former employee acts: (*See 5 CFR 2641.201(g)(1)*)

- As agent or attorney
- With expressed or implied consent
- Subject to some degree of control or direction

Not considered on behalf of a third party merely because:

- In interest or support of another
- Because it results in a benefit to another

## Same Particular Matter

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5 CFR 2641.201(h)(5)

The permanent ban in 207(a)(1) applies only to those same particular matter involving specific parties matters that the employee worked on as a Government employee. Some factors to consider in making this determination are:

- Whether It involves the same basic facts
- Whether It involves the same or related parties
- Whether the issues are related
- The amount of time elapsed

*See 5 CFR 2641.201(h)(5)(i)*

The particular matter must have involved specific parties when the:

- Employee worked on it while with the Government AND
- At the time the former employee makes an appearance or communication

HOWEVER, the parties do not need to be identical at both times. *See 5 CFR 2641.201(h)(3).*

As a point of reference, ordinarily, separate contracts and follow-on contracts are considered separate particular matters involving specific parties; however, if there is some indication that one contract directly contemplates the other contract or if there are other circumstances indicating that two contracts are really part of the same proceeding involving specific parties, then two contracts may be viewed as the same particular matter. Additionally, a Government procurement has specific parties identified to it when a bid or proposal is received in response to a solicitation, if not before. *See 5 CFR 2641.201(h)(5)(ii) for considerations in the case of contracts, grants, and other agreements. See also OGE Opinions 02x5 and 05x6 for discussions on when particular matters involving specific parties are the same matters.*

### **SCENARIOS: Same Particular Matter**

- 1) Apple files a patent infringement lawsuit in the U.S. District Court for the Southern District of New York against seven cell phone manufacturers for infringing on U.S. Patent D781,672 (ornamental design for cell phone).
- 2) Dunlap Grubb Weaver LLC -- for Sarah T. Brown -- files an appeal with the U.S. Patent and Trademark Office on the denial of Patent Application D11-23,779 (ornamental design for beverage container).
- 3) Dunlap Grubb Weaver LLC -- for Nike -- files a patent infringement lawsuit in U.S. District Court against three shoe manufacturers for infringing on U.S. Patent D501,232 (ornamental design of a shoe topper).

## **U.S. is a Party or Has a Direct and Substantial Interest**

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The United States (“U.S.”) must be a party or have a direct and substantial interest at the time of the post-Government employment communication. For purposes of 207(a)(1), U.S. encompasses the entire Federal Government, **all branches**, including Government corporations.

- The U.S. does not have to be a party to the matter; e.g., a false claims against the Government case that is being pursued by a whistleblower and not the Government.
- The matter does not have to be pending in a Federal forum for the U.S. to be a party or have a direct and substantial interest; e.g., a matter pending in a State court.
- HOWEVER, the U.S. does not necessarily have an interest in a matter simply because a Federal statute is at issue or the matter is pending in a Federal court.

When it is not clear whether the U.S. is a party to or has a direct and substantial interest in a particular matter, a determination is required. *See 5 CFR 2641.201(j)(2)(i)-(ii) for the procedures required for this determination.*

### **SCENARIOS: U.S. is a Party or has a Direct and Substantial Interest**

- 1) Apple files a patent infringement lawsuit in the U.S. District Court for the Southern District of New York against seven cell phone manufacturers for infringing on U.S. Patent D781,672 (ornamental design for cell phone).
- 2) As an attempt to invalidate Patent D781,672, HTC Corp. (one of the seven companies) requested the U.S. Patent and Trademark Office reexamine the patent. HTC Corp. based its Reexamination Request on specific prior art references that HTC claimed should have prevented issuance of the patent in the first place.
- 3) Apple filed a lawsuit against LG for infringing on Patent D781,672. The lawsuit was filed concurrently with the U.S. International Trade Commission (ITC) in U.S. District Court in Delaware.

## Profile:

# Susan M. Johnson, U.S. Patent and Trademark Office

---

POSITION TITLE: Design Patent Examiner

LEVEL: GS-12

OFFICE PHONE: 571-272-9977

EMAIL: smjohnson@uspto.gov

DIVISION / OFFICE: Office of the Commissioner for Patents

### DUTIES OF CURRENT POSITION:

- ▶ Review patent applications to determine if they comply with Federal law and regulations
- ▶ Conduct extensive reviews of a large body of technical information which regularly includes detailed drawings
- ▶ Decide whether the claimed design is in fact novel and meets the standards of patentable invention
- ▶ Determine whether the components of a design must be considered separately for patentability
- ▶ Determine whether two individual claims are enough alike that only one patent can be issued and whether an issue of fact arises as to who was the first inventor.
- ▶ Upon request, draft counter brief ("Examiner's Answer on Appeal") in appeals of rejected applications
- ▶ Design Patent Applications
  - Approved Patent D781,672 (05/25/10): Ornamental design for cell phone
  - Denied Patent Application D11-23,779: Sarah T. Brown - Ornamental design for beverage container *\*\*appeal in progress\*\**

### Proposed Post-Government Employment Position and Information:

PROSPECTIVE EMPLOYER: Dunlap Grubb Weaver LLC

PROSPECTIVE POSITION / DUTIES: Assist clients in preparing and processing applications for design patents and assist attorneys in representing clients in appeals of PTO's denial of applications, including appeal of denied Application D11-23,779: Ornamental design for beverage container (Client: Sarah T. Brown)

**Employee**

Empty text box for notes under the Employee category.

**Specific Party Matter**

Empty text box for notes under the Specific Party Matter category.

**Personal and Substantial Participation**

Empty text box for notes under the Personal and Substantial Participation category.

**Appearance or Communication**

Empty text box for notes under the Appearance or Communication category.

**Intent to Influence**

Empty text box for notes under the Intent to Influence category.

Employee

Specific Party Matter

Personal and Substantial

Appearance or Communication

Intent to Influence

**To or Before an  
Employee**

**On Behalf of Any  
Other Person**

**Same Particular  
Matter**

**US is Party or  
has Interest**

To or Before an Employee

On Behalf of Any Other Person

Same Particular Matter

U.S. is a Party or has a Direct and Substantial Interest

# MANAGING THE MULTI-SECTOR WORKFORCE 2011 UPDATE

John Szabo & Steve Epstein

National Government Ethics Conference  
September 15, 2011

# Goals for Today

- Identify ethics and compliance issues that commonly arise in the multi-sector workforce.
- Focus on changing regulatory environment
- Identify applicable guidance.
- Identify best practices to mitigate risks.
- Share the experiences and knowledge of the audience.

# Unique Situation/Challenge of the Multi-Sector Workforce

- Government and contractor personnel work side-by-side on a long-term basis.
  - Blurs distinction between them.
  - “One-team” concept obscures legal differences.
  - Share common overall goal of work center.
  - Consider each other to be friends, colleagues, and co-workers.
  - Obscures “arms-length” legal relationship that separates Government personnel and prohibited sources.

# Way Forward for Presentation

- For each issue identify:
  - Challenge
  - Rules
  - Examples
  - Best practices
- Seek your thoughts and recommendations
- Lots of slides: Retain for reference.

# Knowing “Who is Who”

- Challenge: Knowing the status of the person with whom you are dealing.
  - Inadvertent disclosure of sensitive information.
  - Create OCI (Organizational Conflict of Interest).
- Rule:
  - Contractor and Government personnel are subject to different rules.
  - Rules demand “arms-length” relationship.
- Best Practices:
  - Identify status on badges, email, phone.
  - Train employees regarding legal significance.

# ACUS

## Recommendations For Contractor COI

- FAR Council promulgate model language for contracts with high risk of:
  - personal conflicts of Interest or
  - misuse of non-public information
- Agencies have discretion to use or modify.
- Contractors required to:
  - Make certifications,
  - Train employees, and
  - Report conflicts and non-disclosure breaches

# Gifts

- Challenge:
  - As contractor and Government personnel develop friendships, they exchange personal gifts.
- Rules:
  - 5 CFR 2635 Subpart B (gifts from outside sources)
  - EO 13490 (1/21/09) Ethics pledge
    - DAEOGRAM 09-007 (2/11/09)
    - Prohibits: Gifts of \$20 or less
    - Awards and honorary degrees
    - Attendance at widely-attended gatherings
    - Food and refreshments in foreign areas
  - Contractor gift policies
  - Agency gift acceptance statutes

# Gifts

- Examples:
  - Contractor hosts contract kick-off meeting for entire team. Serves breakfast.
  - Government employee gets married, and office personnel contribute to wedding gift.
  - Government employee is getting married and invites entire office, including contractors, to her wedding.
    - Accept invitation?
    - Gifts?

# Gifts

- More examples:
  - Contractor employee and Government employee carpool to work, rotating driving duties.
  - Government employee rides with contractor to work daily.
  - Contractor employee brings company coffee mugs to work. One for everyone in the office.
  - For office training, contractor offers use of its meeting room and graphics department.

# Gifts

- More examples:
  - Judy, a contractor employee, invites Boris, a Government employee with whom she works closely and has started dating, to her company's holiday party.
  - George and Bill, Government employees, are friends: fishing, golfing, playing cards. George resigns to work for a contractor, assisting Bill's branch. They would like to continue their activities together.

# Gifts

- Best practices:
  - Ensure everyone recognizes the differences between contractor and Government personnel.
    - Training: Include contractor and Government personnel in the same training
    - Reminders:
      - Examples briefed at meetings, in office emails
      - Wallet cards, calendars, posters, e-announcements, newsletters.
    - Address common situations before they occur.

# Protection of Non-Public Information

- Challenge:
  - Preventing improper disclosure of non-public information:
    - Government to contractor (source selection information)
    - Contractor to other contractor (proprietary information)
    - Contractor to Government (proprietary information)
  - Non-public Information includes:
    - Contractor Bid or Proposal Information (41 USC 423(b))
    - Source selection information (FAR 2.101)
    - Classified information
    - Information protected by the Privacy Act
    - Proprietary information
    - Information not releasable under FOIA
    - Law enforcement information

# Protection of Non-Public Information

- Rules:
  - Privacy Act
  - Freedom of Information Act
  - Economic Espionage Act 18 USC 1832
  - Procurement Integrity Act FAR 3.104-4
  - Trade Secrets Act 18 USC 1905
  - 5 CFR 2635.703 Use of non-public information

# Protection of Non-Public Information

- Examples:
  - Email
    - Including contractors when they should not be included.
    - Forwarding emails containing attachments that include non-public information.
    - Forwarding emails that include a trail of earlier emails with non-public information.
  - Leaving non-public information on shared printers.

# Protection of Non-Public Information

- More examples:
  - Dropping off non-public information on the unoccupied desk of the recipient.
  - Using a speaker phone to discuss non-public information.
  - Speaking loudly when in a cubicle.
  - Presenting non-public information at meetings when you don't know everyone who is present.
  - Conference calls.
  - Sharing one contractor's bid information with another contractor.

# Protection of Non-Public Information

- Best Practices:
  - Clearly mark non-public information.
  - Be careful when emailing non-public info. Ensure you know everyone who is receiving it.
    - Does the recipient have a contractor assistant who filters the recipient's email?
  - If contractors are at meetings, do not disclose non-public information unless they have a need to know.
  - Do not leave non-public information exposed in your office.
  - Printers!!!!

# Protection of Non-Public Information

- More best practices:
  - Be careful when using a speakerphone.
  - Be careful if you work in a cubicle.
  - Before forwarding an email, check the entire email chain and attachments.
  - Be careful if you use social media, e.g., Facebook, Twitter, blogs, third links.
  - Establish agreed-upon procedures for handling and reporting of improper disclosures.
    - Who should be notified.

# Office Events

- Challenge and Examples:
  - Conducting office events such as office parties, holiday parties, team-building events with a multi-sector workforce.
    - Exchange of gifts
      - Gift rules for Government employees and contractors
    - Paying for costs
      - Payment by individuals.
      - Can contractor pay costs for contractor employees?
      - Can contractor make a donation to office?
    - Charging time
    - Events outside of the workplace

# Office Events

- Rules:
  - 5 CFR 2635.101(b)(14)
  - 5 CFR 2635 subpart B (Gifts)
  - Contractor gift rules
- Best practices:
  - Include ethics counselor/legal counsel in event planning.
  - Consider gift issues.

# Solicitations and Favors

- Challenge: Government personnel request things from contractor employees:
  - Examples:
    - Work for the agency beyond scope of contract.
    - Participate in fundraisers, Girl Scout cookies.
    - Provide personal assistance (fix my laptop?).
    - Help with the statement of work (OCI).
    - Job for spouse, child, or friend.

# Solicitations and Favors

- Rules:
  - 5 CFR 2635.202: May not solicit gifts from prohibited sources.
  - FAR 3.101-2 May not solicit anything of monetary value from contractor.
  - Contractor rules on acceptance of gifts from customers and suppliers.
    - Improper influence on business decisions.
    - May not participate in customer/supplier raffles.

# Solicitations and Favors

- Best Practices:
  - Recognize the contractor's strong interest in satisfying customer.
  - Promote understanding of limits.

# Workplace Issues

- Challenge:
  - Contractor employment in the workplace can result in misuse of property and position and violation of political and gambling rules.
    - Use of Government property
    - Political activities
    - Gambling
    - Awards
    - Charitable fundraising

# Workplace Issues

- Rules:
  - Contractors cannot use Government property, except as authorized under contract.
  - Political activities:
    - 5 USC 7321-7326 Political activities by Government civilian personnel
    - 5 CFR 733 and 734 Political activities by Federal employees
    - 41 CFR 102-74.415 Prohibits posting of materials in GSA facilities.
  - Gambling:
    - 41 CFR 102-74.395 No gambling in GSA facilities.
    - 5 CFR 735.201 No gambling by Federal employees.

# Workplace Issues

- Rules:
  - Awards:
    - No fiscal authority to use appropriated funds to give awards to contractors.
      - Awards of little intrinsic value (certificates) permitted.
      - Coins (if personally funded).
    - 5 CFR 2635.204(d) permits contractor awards to Government personnel if approved by ethics official. (Should be coordinated with contracting officer.)

# Workplace Issues

## – Charitable Fundraising.

- CFC only authorized fundraising on Government property. (5 CFR 950)
- CFC permits solicitations of Government personnel only.
  - Contractor personnel may contribute voluntarily.
- 5 CFR 2635.808(c)(1)(i) Government personnel may not solicit prohibited sources (contractors).
- 41 CFR 102-74.410 No soliciting on GSA property. (Includes contractors)

# Workplace Issues

- Best Practices:
  - Conduct joint training.
  - As part of charitable campaign, include restrictions applicable to contractors and Government personnel.
  - Emphasize ban on use of Government equipment to conduct private business.

# Outside Activities

- Challenge:
  - Contractor and Government personnel joint activities create conflicting interests.
- Rules:
  - 5 CFR 2635.502 Impartiality
  - 18 USC 208 Conflicting financial interests
  - 5 CFR 2635.802 Outside Activities
  - 5 CFR 2635.807 Speaking, Teaching and Writing
  - Contractor codes of conduct
- Examples:
  - Co-authoring professional articles
    - Use of office and position
    - Official capacity v personal capacity
    - Copyright
  - Part-time work with contractor

# Outside Activities

- Best Practices:
  - Recognize legal and compliance limits.
  - Establish workplace culture of open communication with supervisor and ethics advisor.

# Revolving Door

- Challenge:
  - It is sooooo easy to discuss potential employment with contractor employees with whom you work.
  - Since many contractor jobs mirror Government jobs, it is easy to retire, and return as a contractor.
  - Changing Government workplace.

# Revolving Door

- Rules:
  - 18 USC 208 (Employment negotiations)
    - No negotiations without disqualification.
  - 5 CFR 2635. Subpart F (Seeking employment)
    - No “seeking employment” without disqualification.
    - 5 CFR 2635.603 defines “seeking employment” and gives examples.
  - 18 USC 207 (Post-employment restrictions)

# Revolving Door

- Procurement Integrity Act (41 USC 2101-2107)
  - One-year ban on employment for procurement officials involved in awards of \$10M or more.
  - Required disqualification and reports for employment discussions of procurement officials.
- EO 13490 (1/21/09) Ethics pledge
  - Applicable to political appointees
  - Two-year cooling-off
  - No lobbying during Obama Administration
- Contractor rules on conflicts of interest
  - Contractor employees seeking employment with Government may create conflict of interest.

# Revolving Door

- Examples:
  - Government office supervisor, over coffee, notes she plans to retire, and asks contractor co-worker if she could get a job with the contractor.
  - Government employee, after hearing that a contractor co-worker is leaving, asks if he can apply for the contractor's position.

# Revolving Door

- Best Practices:
  - Train contractor and Government personnel regarding disqualification requirements triggered by “innocent” employment discussions.
    - Give examples of discussions that trigger disqualification.
    - Ensure Government personnel know how to seek advice.
    - Ensure contractor employees know how to handle such discussions.
    - Remind personnel involved in procurements of PIA restrictions and reports.
  - Issue reminders to both sides.
  - Remind political appointees of Ethics Pledge.

# Revolving Door

- Proposed Regulation for DoD
  - DFARS Case 2010-D020 (June 6, 2010)
  - Requires Defense contractors to certify at time of award of contract that all employees who are former DoD and military “covered officials” are in compliance with post-employment restrictions.

# Remedies

- Tailor training for your workplace issues.
  - Include everyone in work center (especially those who do not attend annual training.)
- Recognition that contractors are prohibited sources.
  - Alliance v partnership
  - Contractor under great pressure to say “yes”

# Remedies

- Create workplace culture of open communications.
- Communicate with contractor ethics advisors.
  - We're all in the same boat.
  - Involve ethics officials in planning events.
  - What can management do to reduce these risks?
  - What can contractors do to reduce these risks?
- OGE: “Working with Government Contractors” Booklet
- DoD Ethics Counselor’s Deskbook Chapter N  
[http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/2009Deskbook/7ECC\\_ContractorsInFederalWorkplace.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/2009Deskbook/7ECC_ContractorsInFederalWorkplace.pdf)

# Feedback

- What do you know now that you didn't know an hour ago?
- How did this presentation help you do your job?

# Questions?

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## In This Issue

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## Growing Old Together: Inspector General and Ethics Counsel — Changing Environments and Challenges

By Nancy Eyl, Maryann Lawrence Grodin and Alexandra Keith

### Introduction

Both the Inspector General Act and the Ethics in Government Act date from 1978, an important year for “good government,” with the concurrent creation of the Merit Systems Protection Board and the Office of Special Counsel.<sup>1</sup> The past thirty-three years have given Inspector General (“IG”) Counsels and Designated Agency Ethics Officials (“DAEO”) the opportunity to work together and iron out some of the problems we noted in our article of 1995.<sup>2</sup> Nevertheless, questions continue to arise because of the different roles each plays. The purpose of this article is to revisit basic issues and report on the legal and practice changes that have occurred in the intervening years. Our goal is to provide an update, overview, and some suggestions for best practices regarding the IG Counsel/DAEO relationship and respective roles. In addition to identifying relevant statutes and policies, we intend to clarify misunderstandings and restate our common objectives.

### The IG Counsel Develops

The Inspector General Act of 1978 (“IG Act”) mandated only three positions within each Office of Inspector General (“OIG”): the Inspector General and Assistant Inspectors General for Auditing (“AIGA”) and Investigations (“AIGI”).<sup>3</sup> Neither the original statute, nor its first major amendment in 1988, mentioned the role of counsel within an OIG. Indeed, many IGs initially received legal advice and representation from attorneys working in their agency’s Office of General Counsel (“OGC”).<sup>4</sup> However, because independence is the cornerstone of the OIGs, independence of counsel was a recurring issue.

While some IGs initially relied on OGC counsel, IGs recognized the value of having their own counsel. Since the IG Act gave IGs broad authority to hire employees, contract with persons with appropriate knowledge and skills, and organize their own offices, in the decades following the IG Act’s passage, many IGs eventually shed their assigned OGC at

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## Growing Old Together

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torneys and hired attorneys to work exclusively as part of the OIG staff.<sup>5</sup>

## Congress Considers Independent IG Counsel

The Federal Acquisition Streamlining Act of 1994 (“FASA”) was a key turning point leading to IG Act amendments requiring presidentially appointed IGs to have independent counsel.<sup>6</sup> Section 6007 of the FASA directed the Comptroller General to review the independence of legal services provided to presidentially appointed IGs.

## The GAO Reports on Inspector General Legal Services

Consistent with the FASA’s requirement, the Government Accountability Office (“GAO”) issued GAO Report GAO/OGC-95-15, “Inspectors General: Independence of Legal Services Provided to IGs,” in March 1995.<sup>7</sup> In this report to Congress, GAO compared the independence of legal services provided to IGs by attorneys located in agency OGCs with those provided by attorneys hired by and located in OIGs. GAO asked whether agency attorneys could provide the independent legal services necessary for an official who is statutorily required to independently review that agency’s programs and operations.

GAO reviewed the premise of federal IG functions from the IG Act, reporting that the intent was to establish OIGs in departments and agencies to consolidate the audit and investigative functions of those departments and agencies in an independent office under the leadership of a senior official, the IG.

Based on a survey of 27 OIGs, and interviews with 5 IGs whose legal advisors were located in the OGC and 7 whose legal advisors were on the OIG staff, GAO concluded that there was no evidence that the composition and duties of the legal staffs of the IG Offices reviewed were significantly differ-

ent based on their organizational location.<sup>8</sup> Further, GAO reported that it was the preference of the individual IGs that influenced the functions and activities of their counsel. Finally, GAO found no indication that attorneys located in agency OGCs were less able than those within OIGs to provide independent legal services.<sup>9</sup> So with that result, no changes were made to the status of IG Counsel.

## The Homeland Security Act of 2002 Gives IGs Independent Law Enforcement Authority

The structure and authority of the OIGs received a major boost in 2002 with the second major IG Act amendment.<sup>10</sup> The Homeland Security Act of 2002 (“Homeland Security Act”) amended section 6 of the IG Act to allow the Attorney General, after an initial determination of need (for certain IGs not exempted), to authorize full law enforcement pow-

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## FEDERAL ETHICS *Report*

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## Growing Old Together

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ers for eligible personnel of each of the various offices of presidentially appointed IGs.<sup>11</sup> As required by the Homeland Security Act, the Attorney General issued guidelines governing the exercise of such law enforcement powers.<sup>12</sup> The “Attorney General Guidelines for Offices of Inspectors General with Statutory Law Enforcement Authority” provide that OIGs have primary responsibility for the prevention and detection of waste and abuse, and concurrent responsibility with the Department of Justice (“DOJ”) for the prevention and detection of fraud and other criminal activity within their agencies and their agencies’ programs.<sup>13</sup>

Before the Homeland Security Act was enacted, the IG Act had not provided firearms, arrest, or search warrant authority for IG investigators. Rather, the IGs of the various executive agencies had relied on Memorandums of Understanding that provided temporary grants of law enforcement power through deputations. As the volume of investigations warranting such police powers increased, deputations were authorized on a “blanket” or OIG office wide basis.<sup>14</sup> Nevertheless, before 2002, certain IGs, such as the IG for the Department of Defense, enjoyed – and today continue to enjoy – specific grants of statutory authority under which they exercise law enforcement powers.<sup>15</sup>

## Congress Mandates Independent IG Counsel

In 2008, it was the lawyers’ turn. The third major IG Act amendment, the IG Reform Act of 2008 (“Reform Act”), addressed a number of matters related to enhancing the independence and prestige of the IGs.<sup>16</sup> Among them was a provision for independent counsel to support IGs. Section 6 of the Reform Act amended Section 3 of the IG Act to add:

“(g) Each Inspector General shall, in accordance with applicable laws and regulations, governing the civil service, obtain legal advice from a counsel either reporting directly

to the Inspector General or another Inspector General.”

With this provision, IGs no longer had to rely for confidential legal advice on attorneys employed by and reporting to someone else – the General Counsel. This provision gave each IG a dedicated IG Counsel whose job, job assignments, and professional loyalty belonged exclusively to the IG.

In his signing statement, President Bush addressed the different roles of the agency and IG Counsel as follows:

It is important that Inspectors General have timely and accurate legal advice. It is also important that agencies have structures through which to reach a single, final authoritative determination for the agency of what the law is. This determination is subject to the authority of the Attorney General with respect to legal questions within, and the President’s authority to supervise the executive branch and, of course, the courts in specific cases or controversies. To this end, the “rule of construction” in section 6 ensures that, within each agency, the determinations of the law remain ultimately the responsibility of the chief legal officer and the head of the agency.<sup>17</sup>

With these words, the President emphasized that even though the OIG is independent, the IG does not determine law for the agency; nor does the IG Counsel. The IG Counsel’s role is to advise and represent only the IG. The agency General Counsel is the sole attorney with authority to interpret the agency’s law.

## Independence of the IG

In addition to the aforementioned amendments that enhanced IG independence, the IG Act contains other provisions designed to ensure that IGs carry out their responsibilities independently. For example, IGs do not report to those directly responsible for carrying out the programs and activities subject to audit and investigation. Rather, they report to, and are under the general supervision of, the agency head or the official next in rank, if such

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## Growing Old Together

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authority is delegated.<sup>18</sup> OIGs have their own hiring authority, as well as the authority to enter into contracts and to structure their offices and perform their mission as they see fit. With few exceptions, neither the agency heads nor subordinates are to prevent or prohibit IGs from initiating, carrying out, or completing any audit or investigation or from issuing any subpoena.<sup>19</sup> Further, IGs may not accept cash awards or bonuses from the agency head.<sup>20</sup> Presidentially appointed IGs must be appointed by the President with the advice and consent of the Senate “without regard to political affiliation and solely on the basis of integrity and demonstrated ability” in fields critical to OIG functions.<sup>21</sup> They may be removed from office only by the President, who is required to inform both Houses of Congress not later than 30 days before the removal.<sup>22</sup> In addition, all IGs are required to report at least semiannually to Congress (and some IGs are required to report quarterly),<sup>23</sup> but Congress cannot order or prohibit the IG from conducting an investigation, audit or other review, or from issuing a subpoena, except through legislation. OIGs are prohibited from carrying out agency programs and operations so that they can objectively and independently audit and investigate such programs and operations.<sup>24</sup> Moreover, OIGs in the establishments have a separate budget authority that the agency head must submit to the President.<sup>25</sup> Finally, the IG Reform Act established the “watchdog of the watchdogs,” the Council of Inspectors General on Integrity and Efficiency (“CIGIE”).<sup>26</sup> The Integrity Committee within CIGIE receives, reviews and refers for investigation allegations of wrongdoing made against an IG or OIG employees.<sup>27</sup> In short, all these provisions were intended to ensure that IGs are able to fulfill their mission without interference from senior officials, such as General Counsels and management.

## The DAEO's Role

Title 5 of the Code of Federal Regulations (“C.F.R.”), Part 2600, implements the Ethics in Government Act of 1978, as amended (“Ethics in Government Act”), the statute that created the Office of Government Ethics (“OGE”), the overseer of ethics regula-

tion in the Executive Branch.<sup>28</sup> As the agency responsible for directing ethics programs in executive departments and agencies, OGE issues rules, directives, and advisory opinions on ethics matters. It partners with executive branch agencies and departments to prevent conflicts of interest on the part of executive branch employees and resolves the conflicts of interest that occur. Pursuant to the authority of Title IV of the Ethics in Government Act, OGE directs the administration of agency ethics programs and agency DAEOs. Title 5 of the C.F.R., section 2638.201, *et. seq.*, mandates that each agency shall have a DAEO (and alternate DAEO) to coordinate and manage the agency's ethics program and provide liaison with the OGE regarding such ethics program. The Director of OGE and agency DAEOs have different roles from that of the IG and the IG Counsel. With noteworthy exceptions, the Director of OGE directs, and the agency DAEO and deputy DAEOs implement, the Ethics in Government Act. The DAEO's mission is to provide ethics advice and preventive legal assistance to agency employees. Specifically, as described in 5 C.F.R. 2638.203, the DAEO's duties include liaison with OGE, review of financial disclosure reports (one of the most unappreciated and tedious tasks in government), initiation and maintenance of ethical education and training programs, and monitoring of administrative actions and sanctions.

Like IGs and their counsel, the functions and authorities of OGE and agency DAEOs have grown in scope and prestige since 1978. For example, while requiring executive branch appointees to sign an ethics pledge is not new, DAEOs now have more discretion today in implementation. To illustrate, recently issued Executive Order (“EO”) 13490, “Ethics Commitments by Executive Branch Personnel,” requires every full-time political appointee appointed on or after January 20, 2009, to sign an Ethics Pledge, committing the appointee to comply with seven ethics obligations generally involving lobbying, employment actions and post-employment.<sup>29</sup> Following the model in the Ethics in Government Act, the OGE Director is charged with providing government-wide guidance as to how DAEOs and their agency heads should implement the EO. In addition to recounting ethics re-

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restrictions applicable to the appointees and the procedural steps for oversight and enforcement, Section 3(a) of the Executive Order vested waiver authority with the Director of the Office of Management and Budget, (“OMB”) in consultation with the Counsel to the President.<sup>30</sup> Shortly thereafter, however, a DAEOgram informed agencies that OMB had authorized DAEOs of each executive agency to exercise waiver authority in consultation with the Counsel to the President.<sup>31</sup> As a result, DAEOs’ authority grew to include a new authority – to waive the ethics pledge requirement for certain executive employees.<sup>32</sup>

## DAEOs Provide Written Ethics Advice

As part of a program of formal advice to all agency employees, one of the DAEO’s most critical functions is to develop and provide counseling on ethics and Standards of Conduct (“Standards”). Most ethics restrictions are found in sections 202 to 209 of Title 18 of the U.S. Code and in EO 12674 as modified by EO 12731.<sup>33</sup> The Standards, found at 5 C.F.R. Part 2635, cover the basic ethical obligations of public service, including rules regarding gifts from outside sources and between employees, conflicting financial interests, impartiality in performing official duties, outside employment and activities, post-employment, and misuse of position.<sup>34</sup> The regulations require the DAEO to keep records on advice rendered “when appropriate.”<sup>35</sup> To ensure a productive relationship with the OIG, however, a DAEO should strive to record and maintain consistent written advice to employees and communicate promptly regarding administrative actions. Written records evidencing the facts conveyed by an employee, and limitations and restrictions identified in the ethics advice given by the DAEO in response to those facts, play a vital role in ethics investigations. This is because OIG investigators and DOJ attorneys rely on them in prosecution, as may an employee in his or her defense.

Although not requiring ethics officials to maintain written documentation of ethics advice, OGE

has consistently emphasized the importance of doing so.<sup>36</sup> In DAEOgram DO-05-019, OGE explained that “cases involving ethics laws can succeed or fail depending on the efficacy of the written documentation by ethics officials.” In this same DAEOgram, OGE also described the advantages of documenting ethics advice: it protects employees, who may rely on the advice, and it also protects the integrity of the ethics program. Good practice would include:

- (1) an indication of when the advice was given;
- (2) a summary of the relevant facts as described by the employee;
- (3) citation of the applicable legal authority;
- (4) an analysis describing how the law applies to the facts; and
- (5) a conclusion.<sup>37</sup>

In DAEOgram DO-08-025, OGE “strongly encouraged” agency ethics officials to document ethics advice. Moreover, OGE instructed ethics officials to establish close working relationships with their OIGs, including, when needed, providing OIG employees with information about ethics advice given and also perhaps providing training and other assistance to help the OIG “understand better the criminal conflict of interest laws, standards of conduct, and pertinent supplemental agency regulations.”

## The DAEOs Have a Special Relationship with the IG

The federal ethics regulations recognize a special relationship between DAEOs and IGs. In carrying out their agency ethics programs, DAEOs are required by the Standards to review information developed by the OIG and other auditors.<sup>38</sup> The purpose of such review can be to determine whether there is a need to revise the agency’s supplemental Standards or take corrective action to remedy actual or potential conflict of interest situations. Thus, if an OIG audit identifies a recurring conflict situation unique to the agency, and it is not addressed by the Standards, then the DAEO might consider a curative supplemental regulation. If an OIG investigation finds that an agency contracting officer has violated the Standards by, for instance,

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purchasing stock in a firm with which the agency contracts, the DAEO might be asked by management to recommend appropriate remedial or corrective action.

DAEOs are in an excellent position to refer to the IG allegations of criminal, civil, or administrative ethics violations that they encounter in their daily work, including violations of the Standards. When employees come to the DAEO for prospective ethics advice, there is usually no need to refer the matter to the IG. However, the DAEO might choose to proactively discuss concerns with the IG; after all, disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege.<sup>39</sup> When agency employees inform the DAEO of past transgressions, or explain what prospective mischief they are planning, however, the DAEO is obligated to make sure that “prompt and effective action” is taken to remedy the potential or actual violation.<sup>40</sup> The best thing that the DAEO can do at this point is to refer all information, documentary and otherwise, to the IG, pursuant to the Standards and the agency’s own regulations. This is because, first, the DAEO is required to use the services of the agency’s OIG, including the referral of matters to and acceptance of matters from the OIG.<sup>41</sup> Second, an agency’s internal investigative authority resides with the IG, and the IG must be given the opportunity to investigate.

## DAEOs Refer Investigations to the IG through the Agency Head

The law regarding the OGE Director’s responsibilities provides that when the OGE Director believes an employee is in violation of a conflict of interest or Standards regulation, he or she may recommend that the agency head investigate possible violations and take disciplinary action.<sup>42</sup> Section 403(a) of the Ethics in Government Act states that the Director has the authority to request assistance from the inspector general to conduct ethics investigations. In these cases, the usual practice for an agency head in receipt of such a request is to ask the OIG to investigate.

This is for two main reasons. First, even though the OGE Director is authorized to undertake administrative investigations of ethics violations, the Ethics in Government Act prohibits the Director *or any designee* (italics supplied) from finding that any provision of Title 18 of the U.S. Code or any U.S. criminal law has been or is being violated.<sup>43</sup> Most of the ethics rules on which the Standards are based are located in Title 18 U.S.C. Sections 201, *et seq.*, and are criminal violations, although rarely prosecuted as such. Accordingly, while an ethics violation may constitute a regulatory violation, it could also be a crime and require a criminal investigation. Neither the OGE Director nor agency DAEOs are, or have on their staff, internal criminal investigators. This is the exclusive province of the OIG and outside the jurisdiction and scope of employment of a DAEO.

## What Does the IG Investigate?

The IG Act authorizes IGs to conduct criminal, civil, and administrative investigations. This broad investigative authority is the same for the presidentially appointed IGs generally at the larger departments and agencies, and agency head-appointed IGs at the generally smaller “designated federal entities” and “federal entities.”

The IGs’ investigative authority is found in several places in the IG Act. For example, section 2(1) of the IG Act authorizes IGs “to conduct and supervise audits and investigations relating to the programs and operations of [their agencies].” Section 7(a) provides that an IG may receive and investigate complaints or information from employees about an array of activities. These are described as activities that could constitute, “a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety.”<sup>44</sup>

Section 4(d) of the IG Act requires the IGs to report “expeditiously” to the Attorney General when they have reasonable grounds to believe that there is a violation of federal criminal law. IGs interpret this section to mean referrals for prosecution. Thus, an IG may, although may not always choose

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to, undertake significant investigative work to determine whether an allegation can be substantiated before presenting evidence of a violation of federal criminal law to the DOJ or an Assistant United States Attorney for prosecution. The Attorney General and the Federal Bureau of Investigation have authority to investigate any violation of federal criminal law, including those involving government officers and employees.<sup>45</sup>

To carry out their investigative authority, IGs are given some helpful law enforcement tools. For example, section 6(a)(1) of the IG Act permits IGs to access all records, reports, documents, etc., available to the agency relating to the programs and operations for which the IG has responsibility.<sup>46</sup> IGs interpret this section to mean that anything the agency can access, the IG can access also. If the agency does not have the material, then the IG can subpoena it if it is held privately.<sup>47</sup> If the record is in the custody of another federal entity, the IG may not issue a subpoena, but may request and expect to receive the information.<sup>48</sup>

With one exception, IGs do not yet have testimonial subpoena authority. Thus, IGs may require agency employees to speak with them about official matters within the confines of the constitutional privilege against self-incrimination, but, except for the Department of Defense OIG, they cannot subpoena a private citizen to speak with OIG agents.<sup>49</sup> Section 6(a)(2) of the IG Act allows IGs “to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are . . . necessary and desirable.”<sup>50</sup> As investigations are completed, IGs may issue reports and make recommendations for prosecution, administrative discipline, systemic internal controls, or anything else that would help the agency improve operations, prevent or detect fraud, or save money.

## What Constitutes an Investigation?

Agency Counsel and DAEOs may justifiably assert that they correctly understand the requirement to

refer criminal allegations to the OIG, and to request approval to undertake administrative investigations when the IG decides not to pursue an investigation. Agency Counsel and DAEOs also may argue that, based on the information before them, they cannot always determine whether an allegation rises to a criminal level or is simply a management issue. The DAEO or OGC attorney then might interview witnesses, request documents, and do other things an IG investigator might do, and later decide whether to refer to the IG. This can present problems for an OIG if the allegation is eventually referred to or discovered by the OIG after an agency lawyer has gathered evidence and talked with witnesses. The IG investigator may find witnesses tainted, documents altered or destroyed, and confidentiality nonexistent. Moreover, agency attorneys gathering evidence rarely provide the employee the necessary and proper warnings, and they likely are not as skilled at using the tried-and-true investigative techniques that professional law enforcement employs. Accordingly, some agency OIGs have endeavored to specify in internal policies exactly what should be referred to the IG and when. Others use a rule of thumb, such as if the OGC attorney needs to talk with more than one other person to substantiate an allegation, then he or she should refer the matter to the OIG.

## What Happens When IGs Do Not Investigate Allegations?

On occasion, IG investigators do not investigate allegations of administrative ethics violations and instead focus solely on criminal violations, sometimes based on the advice of the U.S. Attorney's office. In such cases, if no one is investigating, the DAEO should be advised at the right time, so he or she can pursue administrative remedies and inform the Director of OGE. *This does not mean that the DAEO can undertake an investigation on his or her own, as discussed above, however, without the IG's approval.* A DAEO may be able to use the IG's evidence to recommend administrative action against an employee, e.g., discipline or counseling. If the issue is one that affects many agency employees, the DAEO can

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ensure that training and written advice address the troublesome issues.

It might be hard to determine immediately the effects of an unexplored allegation of an ethics violation. At the least, however, failure to deal with such allegations and to administer appropriate discipline when they are substantiated, runs counter to the purpose of the Ethics in Government Act and may diminish the overall ethical culture that the DAEOs try to foster. Furthermore, it could hurt national security and significantly harm government operations. For example, if an employee in a “public trust position” commits a certain ethics violation and the violation is not taken seriously and investigated, that employee – and the government – might not recognize the potential harm until it is too late. The employee may be encouraged by the lack of oversight to commit another violation, or lackadaisically or unwittingly create additional vulnerabilities. A public trust position includes those involved in policy making, major program responsibility, public safety and health, law enforcement, fiduciary responsibilities or “other duties demanding a significant degree of public trust, and positions involving access to or operation or control of financial records, with a significant risk for causing damage or realizing personal gain.”<sup>51</sup> An employee in such a position is particularly able to cause harm through continued access to or control of critical systems, records, and information. No matter the reason for the possible violation, failing to investigate could lead to serious national security consequences. Therefore, it is not only in the OIG’s and agency’s best interest to explore all potential violations, but also it helps protect national security.

## IGs Should Cooperate with DAEOs

Communications cannot be a one-way street. The DAEO is required by regulation to be aware of all ethics infractions, and must maintain a list of all situations that have resulted or may result in non-compliance with ethics laws and regulations.<sup>52</sup> This list must be published within the agency and

made available to the public. Thus, the IG must inform the DAEO of all ethics infractions the IG has verified to enable the DAEO to fulfill his or her regulatory obligations.

This does not mean the IG must notify the DAEO immediately each time he opens an investigation involving a violation of the Standards. Nor must the IG advise the DAEO at any particular point in an investigation. Nevertheless, the Quality Standards for Federal Offices of Inspector General (October 2003) state that the OIG “should make a special and continuing effort” to keep the DAEO informed about OIG activities, including “the results of investigations and allegations of ethical misconduct where appropriate, that relate to the ethics official’s responsibilities for the agency’s ethics program.”<sup>53</sup> When an IG investigation uncovers an ethics violation, the DAEO may serve as a consultant for OIG investigators on technical issues of ethics law. OIG investigators and counsel might both consult the DAEO, within the confines of the Privacy Act, about what constitutes a violation, whether a violation has occurred, and what remedy or corrective action is usual within the agency.

IGs also may refer to DAEOs audit or investigative findings regarding the agency’s ethics program, e.g., which employee grades and classifications are required to submit financial disclosure forms, which employees are not receiving their confidential forms or whether an employee is not filling them out properly or in a timely manner.

## IG Counsels May Serve as Deputy DAEOs

In many large agencies, DAEOs delegate Deputy DAEO (“DepDAEO”) authority to attorneys in various agency sub-components, including the OIG, pursuant to 5 C.F.R. 2638.204(a). OIGs can benefit from having a DepDAEO in-house. A DepDAEO in the OIG who is aware of the OIG’s special needs and mission can help the DAEO implement the agency’s ethics program. In addition, having a DepDAEO in-house might appear to enhance an IG’s independence. Finally,

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OIG employees may feel more comfortable seeking advice from the OIG DepDAEO than with the DAEO. This comfort may encourage employees to seek advice and, as a result, have a preventive effect.

In addition to the advantages, however, OIGs should consider a few issues when implementing an agency's ethics program in-house. First, the OIG must decide whether it will seek an official delegation from the DAEO, as the regulations dictate. Based on the regulations, each agency has only one primary DAEO and one alternate DAEO, and DepDAEOs must receive their authority through delegation. The DAEO must keep a list of persons to whom delegations have been made to provide to OGE upon request.<sup>54</sup> OIGs that have DepDAEOs in-house serving without a delegation may lack the support of the Ethics in Government Act.

Second, because of the nature of the DAEO's duties, OIGs with DepDAEO functions in the IG Counsel's office might risk at least a perceived conflict of interest. When and if IG Counsels adopt this role, they must be cautious. IG Counsels may give ethics advice to IG employees, which may provide a "safe harbor." The regulations state that disciplinary action for violating ethics rules "will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances."<sup>55</sup> However, if an IG Counsel were to give a "safe harbor" opinion to an IG employee, and that employee relied on the advice to commit an act later investigated by the IG, the DepDAEO must be careful to recuse himself or herself from any ensuing investigation. If not, not only could the investigation be jeopardized, but also the attorney risks violating rules of professional conduct. Accordingly, the soundest way to prevent conflicts of interest within the OIG is for IG Counsel not to accept the DepDAEO role or to undertake the responsibilities, but limit advice to informal ethics advice and communicate the limits of such advice to the employee. Additionally, the IG Counsel DepDAEO

should recuse himself or herself from any investigations involving matters in which he or she gave advice. Finally, when the OIG's DepDAEO faces a novel or complex issue, or when an employee requires a written opinion, he or she should refer it to the agency's DAEO.

## Reporting Requirements

Reporting requirements are imposed on both OIGs and DAEOs. In accordance with §402(b)(2) of the Ethics in Government Act, the Director of OGE, in consultation with the Attorney General and the Office of Personnel Management, promulgated regulations pertaining to conflicts of interest in the executive branch. These regulations require agencies to notify the OGE Director when any matter involving an alleged violation of federal conflict of interest laws is referred to the Attorney General in accordance with 28 U.S.C. §535.<sup>56</sup> This is usually accomplished by OIG submission of OGE Form 202 (7/94), "Notification of Conflict of Interest Referral," at the time formal referral is made to the DOJ. The form indicates that it is to be used in cases involving possible violation of 18 U.S.C. §§203, 205, 207-209 by current or former executive branch employees. As discussed above, under §4(d) of the IG Act, OIGs are required to report violations of federal criminal law to the Attorney General.

## OIGs and DAEOs Can Work Together Better

To summarize, the federal OIG and ethics communities have flourished, making important contributions to government integrity. Employees dedicated to ethics issues have earned high degrees of respect and deference as valued experts within their individual agencies and as sources of high-level insight at the federal level. As the DAEOgram discussing the DAEOs' new waiver authority of the President's ethics pledge stated, "This designation reflects the high degree of trust and confidence with which the experience and professional judgment of the DAEOs is viewed."<sup>57</sup> OIGs' and OGE's combined efforts and achievements have been individually recognized by statutory and executive

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enhancements to their responsibilities and authorities. Together, IG Counsel and DAEOs can continue to improve government by adopting or maintaining the following best practices.

### *-IG Counsels and DAEOs should maintain ongoing communications*

It may be trite, but it is true—regular communication can solve a lot of problems. When IG Counsel and DAEOs build and maintain strong relationships, problems can be resolved by informal discussion before they blossom into full-fledged headaches. IG Counsels should keep DAEOs informed of the progress of relevant ethics investigations and whether documents and/or testimony may be requested. For their part, DAEOs should consult with IG Counsel and refer potential ethics violations to the IG for investigation.

### *-IG Counsels and DAEOs should do joint training*

DAEOs are required to provide annual ethics training, and many IGs present integrity awareness briefings. Combining the two provides agency employees with the continuum from ethics education and advice to investigation and prosecution of violations. Such cooperation fosters a stronger ethical culture, which in turn breeds employees who care about doing the right thing, whether the action is guided by a Standard or not. IGs can publish internal web newsletters highlighting recurring issues and reminding agency staff of common pitfalls. DAEOs can write articles for their agency web and social networking sites to make agency employees aware of current ethics issues. OGE has always graciously invited IGs and IG Counsels to participate and present at annual OGE conferences. This cooperation is valuable to everyone and should be continued.

### *-DAEOs should promptly document ethics advice to employees.*

Friction between IGs and DAEOs can be avoided when written records of advice relevant to an al-

legation are available. In these cases, disputed testimony about whether the DAEO's advice indicated the activity was permitted or prohibited can be eliminated and potential for prosecution can be preserved.

### *-DAEOs should refer investigations to the OIG.*

DAEOs can potentially complicate OIG investigations if they undertake their own investigations without OIG approval and before referring allegations to the OIG. By exposing confidential information, they can inadvertently allow wrongdoers to destroy evidence, fabricate stories, and taint testimony. Thus, DAEOs should *always* refer investigations to the OIG.

### *-IG Counsels should be cautious if they act as DepDAEOs.*

IG Counsel and DAEOs roles are not the same, so when an IG Counsel is confronted with an unusual, complicated, or novel ethics issue that could be referred to the OIG for investigation, he or she should also refer it to the agency DAEO.

### *-IG Counsels should consult with DAEOs on ethics investigations.*

Recognizing that DAEOs are ethics experts, IG Counsel assisting with investigations involving ethics violations should consult with and exchange information with DAEOs. IG Counsel can be a bridge between OIG investigators and the DAEO. Through training and education targeting specific problems, IG Counsel can further the DAEO mission, even without being formally delegated DepDAEOs. Moreover, by sharing information with the DAEO, an OIG ensures that no ethics violation will go unnoticed. Such vigilance serves not only to promote an ethical culture, but also can help protect national security. ■

## Endnotes

<sup>1</sup> IG Act, 5 U.S.C. app., Pub. Law No. 95-542, 92 Stat. 1101 (1978), as amended; Ethics in Government Act, 5 U.S.C. app., Pub. Law No. 95-521, 92 Stat. 1824 (1978), as amended. The Merit Systems Protection Board and the Office of Special Counsel were created by the Civil Service Reform Act of 1978, Pub. Law No. 95-454.

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- <sup>2</sup> The substance of this article was presented in lectures given to ethics attorneys at the Interagency Ethics Council on May 4, 1995, and at the Office of Government Ethics (“OGE”) Annual Conferences in 1995 and 1996 in, respectively, Philadelphia and Williamsburg, Virginia. The original article, which sought to provide a comprehensive description of statutory and regulatory rules that define the roles of federal government attorneys serving in ethics and Office of Inspector General (“OIG”) counsel positions was published as “The Role of Inspectors General in Ethics: Inspector General Counsel and Ethics Counsel Interface” (without copyright restrictions) in the August 1995 edition of the *Federal Ethics Report*. A second publication, essentially a restatement of the original, was published as “Legal Eagles: Ethics” in the Spring 1996 edition of the *Journal of Public Inquiry*.
- <sup>3</sup> IG Act, 5 U.S.C. app., Sec. 3(d).
- <sup>4</sup> GAO/OGC-95-15, March 1, 1995, “Inspectors General-Independence of Legal Services Provided to IGs,” Appendix IV, pp. 19-20.
- <sup>5</sup> 5 U.S.C. app., Sec. 6(a)(7), (9).
- <sup>6</sup> Pub. Law No. 103-355.
- <sup>7</sup> GAO/OGC-95-15, p. 12.
- <sup>8</sup> *Id.*
- <sup>9</sup> *Id.*
- <sup>10</sup> Pub. Law No. 107-296. Section 812 of the Homeland Security Act amended section 6 of the IG Act to provide full, statutory law enforcement powers.
- <sup>11</sup> Section 812(a), Homeland Security Act; 5 U.S.C. app., 6(e)(1)-(2). The OIGs listed in section 6(e)(3) of the IG Act are exempt from this requirement of an initial determination of need.
- <sup>12</sup> Section 812 of the Homeland Security Act; 5 U.S.C. app., 6(e)(1), (4); “Attorney General Guidelines for Offices of Inspectors General with Statutory Law Enforcement Authority,” Dec. 8, 2003.
- <sup>13</sup> *Id.*, p. 1.
- <sup>14</sup> *Id.*
- <sup>15</sup> *Id.*
- <sup>16</sup> IG Reform Act of 2008, Pub. Law No. 110-409, 122 Stat. 4302.
- <sup>17</sup> Statement on Signing the Inspector General Reform Act of 2008, 44 Weekly Compilation of Presidential Documents 1345 (Oct. 14, 2008).
- <sup>18</sup> 5 U.S.C. app., Sec.3(a).
- <sup>19</sup> 5 U.S.C. app., Sec.3(a). Under the IG Act, the heads of only six agencies – the Departments of Defense, Homeland Security, Justice, and the Treasury, plus the U.S. Postal Service and the Federal Reserve Board – may prevent the IG from initiating, carrying out, or completing an audit or investigation, or issuing a subpoena. These agency heads may only exercise this authority for specific reasons, including to protect national security interests or ongoing criminal investigations.
- <sup>20</sup> 5 U.S.C. app., Sec. 3(f).
- <sup>21</sup> *Id.*
- <sup>22</sup> 5 U.S.C. app., Sec. 3(b).
- <sup>23</sup> 5 U.S.C. app., Sec. 5.
- <sup>24</sup> 5 U.S.C. app., Sec. 9(a).
- <sup>25</sup> 5 U.S.C. app., Sec. 6(f).

- <sup>26</sup> 5 U.S.C. app., Sec. 11.
- <sup>27</sup> 5 U.S.C. app., Sec. 11(d)(1).
- <sup>28</sup> 5 U.S.C. app.; Pub. Law No. 95-521, 92 Stat. 1824.
- <sup>29</sup> EO 13490 was issued on January 21, 2009. For example, registered lobbyist-appointees are required to recuse themselves for two years after appointment from any particular matter lobbied during the two years prior to appointment, and all appointees must agree not to lobby certain executive branch officials for as long as President Obama is in office. Notably, former President Clinton had required every senior appointee to sign a stricter ethics pledge. For instance, Clinton mandated five year restrictions on lobbying on all appointees, not just lobbyists, as well as a permanent bar from participating in an activity on behalf of a foreign government or political party.
- <sup>30</sup> Executive Order 13490, Sec. 3.
- <sup>31</sup> DAEOgram DO-09-008, “Authorizations Pursuant to Section 3 of Executive Order 13490,” February 23, 2009. A DAEOgram is an OGE memorandum to the DAEOs. Starting in January 2011, “OGE Advisories” replaced DAEOgrams.
- <sup>32</sup> *Id.*
- <sup>33</sup> The Executive Order is implemented by regulations at 5 C.F.R. 2635.
- <sup>34</sup> 5 C.F.R. 2635. *et. seq.*, Standards of Ethical Conduct for Employees of the Executive Branch.
- <sup>35</sup> 5 C.F.R. 2638.203(b)(8).
- <sup>36</sup> *E.g.*, OGE List Serve Message to Agency Ethics Contacts, No. 279, Jan. 17, 2008; Ethics Program Review Guidelines, Oct. 2004, pp. 18-19; DAEOgram DO-05-019, “Documenting Ethics Advice,” Nov. 17, 2005; DAEOgram DO-08-025, New GAO Report; Documenting Ethics Advice, Aug. 26, 2008.
- <sup>37</sup> DAEOgram DO-05-019, p. 3.
- <sup>38</sup> 5 C.F.R. 2638.203(b)(11).
- <sup>39</sup> 5 C.F.R. 2635.107(b).
- <sup>40</sup> 5 C.F.R. 2638.203(b)(9).
- <sup>41</sup> 5 C.F.R. 2638.203(b)(12).
- <sup>42</sup> 5 U.S.C. 402(f)(2)(A)(ii)(I). If the employee involved is the agency head, however, any such recommendation must be submitted to the President.
- <sup>43</sup> 5 U.S.C. 402(f)(5).
- <sup>44</sup> 5 U.S.C. app., Sec. 7(a).
- <sup>45</sup> 28 U.S.C. 535.
- <sup>46</sup> 5 U.S.C. app., Sec. 6(a)(1).
- <sup>47</sup> 5 U.S.C. app., Sec. 6(a)(3).
- <sup>48</sup> 5 U.S.C. app., Sec. 6(a)(3).
- <sup>49</sup> The National Defense Authorization Act for Fiscal Year 2010, Pub. Law No. 111-84, enacted on October 28, 2009, at Title X, Subtitle D, Section 1042, amended Section 8 of the Inspector General Act to grant the Defense Department IG testimonial subpoena authority.
- <sup>50</sup> 5 U.S.C. app., Sec. 6(a)(2).
- <sup>51</sup> 5 C.F.R. § 731.106(b).
- <sup>52</sup> 5 C.F.R. 2638.203(b)(5).
- <sup>53</sup> Quality Standards for Federal Offices of Inspector General, President’s Council on Integrity and Efficiency, October 2003, pp. 30-31.
- <sup>54</sup> 5 C.F.R. 2635.107(b).
- <sup>55</sup> 5 C.F.R. 2635.107(b).
- <sup>56</sup> 5 C.F.R. 2638.603(b).
- <sup>57</sup> DAEOgram DO-09-008, Authorizations Pursuant to Section 3 of Executive Order 13490, “Ethics Commitments by Executive Branch Personnel,” Feb. 23, 2009.

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UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



Preventing Conflicts of Interest  
in the Executive Branch

# **Financial Instruments and Public Financial Disclosure:**

## **Exercise**



# Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

<b>Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year)</b>	<b>Reporting Status</b> (Check Appropriate Boxes)	<b>Incumbent</b> <input type="checkbox"/>	<b>Calendar Year Covered by Report</b>	<b>New Entrant, Nominee, or Candidate</b> <input checked="" type="checkbox"/>	<b>Termination Filer</b> <input type="checkbox"/>	<b>Termination Date (If Applicable) (Month, Day, Year)</b>	<p style="text-align: center;"><b>Fee for Late Filing</b></p> <p>Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a \$200 fee.</p> <p style="text-align: center;"><b>Reporting Periods</b></p> <p><b>Incumbents:</b> The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.</p> <p><b>Termination Filers:</b> The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.</p> <p><b>Nominees, New Entrants and Candidates for President and Vice President:</b></p> <p><b>Schedule A</b>—The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.</p> <p><b>Schedule B</b>—Not applicable.</p> <p><b>Schedule C, Part I (Liabilities)</b>—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.</p> <p><b>Schedule C, Part II (Agreements or Arrangements)</b>—Show any agreements or arrangements as of the date of filing.</p> <p><b>Schedule D</b>—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.</p>
<b>Reporting Individual's Name</b>	<b>Last Name</b>			<b>First Name and Middle Initial</b>			
	Maxwell			James			
<b>Position for Which Filing</b>	<b>Title of Position</b>			<b>Department or Agency (If Applicable)</b>			
	Commissioner			Federal Insurance Commission			
<b>Location of Present Office</b> (or forwarding address)	<b>Address (Number, Street, City, State, and ZIP Code)</b>				<b>Telephone No. (Include Area Code)</b>		
	456 A St., SW., Washington, DC 20000				202-555-5556		
<b>Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)</b>	<b>Title of Position(s) and Date(s) Held</b>						
<b>Presidential Nominees Subject to Senate Confirmation</b>	<b>Name of Congressional Committee Considering Nomination</b>			<b>Do You Intend to Create a Qualified Diversified Trust?</b>			
	Committee on Banking, Housing and Urban Affairs			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>Certification</b>	<b>Signature of Reporting Individual</b>				<b>Date (Month, Day, Year)</b>		
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.							
<b>Other Review (If desired by agency)</b>	<b>Signature of Other Reviewer</b>				<b>Date (Month, Day, Year)</b>		
<b>Agency Ethics Official's Opinion</b>	<b>Signature of Designated Agency Ethics Official/Reviewing Official</b>				<b>Date (Month, Day, Year)</b>		
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).							
<b>Office of Government Ethics Use Only</b>	<b>Signature</b>				<b>Date (Month, Day, Year)</b>		
<b>Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)</b>							
(Check box if filing extension granted & indicate number of days _____) <input type="checkbox"/>							
(Check box if comments are continued on the reverse side) <input type="checkbox"/>							
<b>Agency Use Only</b>							
<b>OGE Use Only</b>							



Reporting Individual's Name Maxwell, James	<b>SCHEDULE C</b>	Page Number 19 of
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**Part I: Liabilities**

Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude**

a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None

			Category of Amount or Value (x)													
			\$10,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000			
	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable											
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, Washington, DC	Promissory note	1999	10%	on demand				x							
1																
2																
3																
4																
5																

\*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

**Part II: Agreements or Arrangements**

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves

of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Pursuant to company's compensation policy, I will receive a performance-based bonus for services rendered in 2011 up the date of resignation.	Tyson's Financial Group, Inc., Leeds, NJ	08/98
2	Pursuant to the TFG deferred compensation plan, the balance of my account will be distributed in 12 quarterly payments starting within 90 days of resignation.	Tyson's Financial Group, Inc., Leeds, NJ	8/98
3	Vested stock options will be exercised or forfeited within 90 days of confirmation. If I divest the options by exercising them, I will divest resulting stock within 90 days of confirmation. Unvested options will be forfeited at resignation.	Tyson's Financial Group, Inc., Leeds, NJ	8/98
4	Pursuant to the company's compensation plan, my unvested restricted stock units will be forfeited at resignation.	Tyson's Financial Group, Inc., Leeds, NJ	10/08
5	Continued participation in Tyson's Financial Group 401(k). No further contributions by employer. Continued participation in defined benefit plan.	Tyson's Financial Group, Inc., Leeds, NJ	4/89
6	Pursuant to company's compensation policy, my spouse and I will continue to receive free health insurance.	Tyson's Financial Group, Inc., Leeds, NJ	8/98

Reporting Individual's Name Maxwell, James	<b>SCHEDULE D</b>	Page Number 20 of
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**Part I: Positions Held Outside U.S. Government**

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature. None

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Tyson's Financial Group, Inc., Leeds, NJ	Corporation	Vice President	04/1989	Present
2					
3					
4					
5					
6					

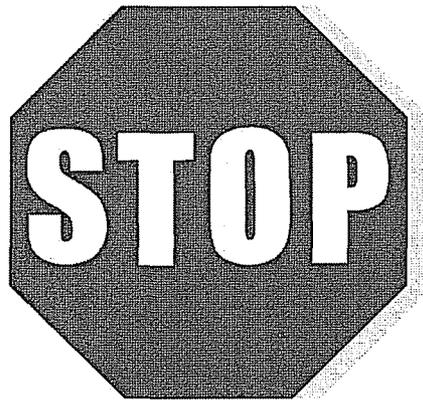
**Part II: Compensation in Excess of \$5,000 Paid by One Source**

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source. Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate. None

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Tyson's Financial Group, Inc., Leeds, NJ	Vice President for Global Opportunities
2		
3		
4		
5		
6		

# **Financial Instruments and Public Financial Disclosure:**

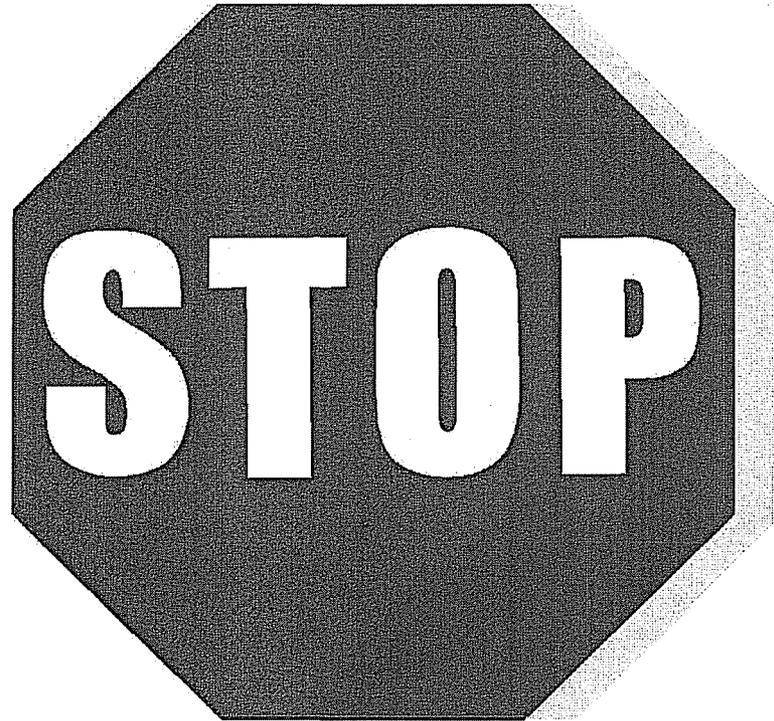
## **Answers**











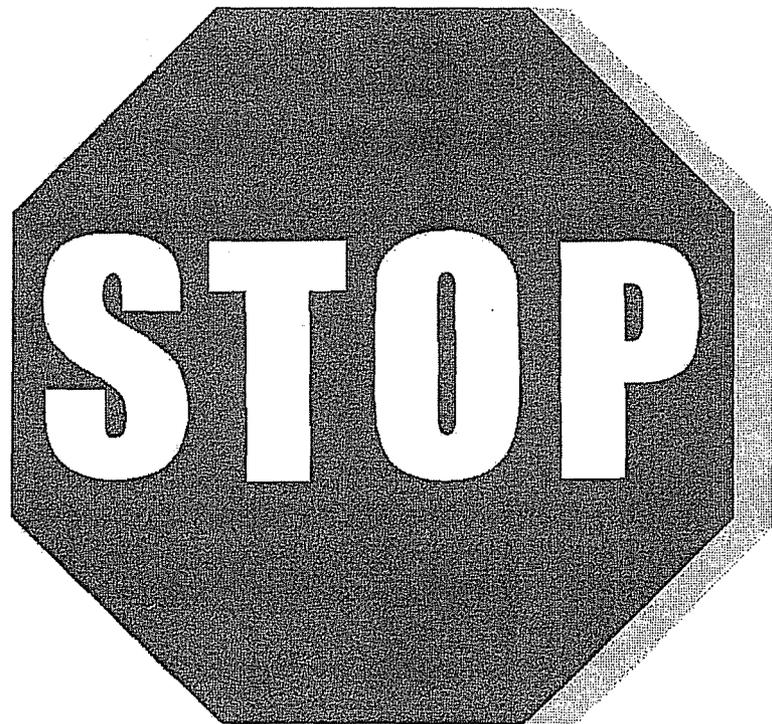


Reporting Individual's Name Maxwell, James	<b>SCHEDULE A continued</b> (Use only if needed)	Page Number 5 of
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Assets and Income	Valuation of Assets at close of reporting period											Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.																									
BLOCK A	BLOCK B											BLOCK C																									
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type				Amount							Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.)  Only if Honoraria									
																Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000			\$100,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000					
1	Positron Investments X, LLC (investment fund, Atlanta, GA)												X																								
2	TFG Capital Partners V, LP (investment fund, NY, NY):															X																					
3	Underlying assets are not disclosed because the fund does not disclose its underlying assets																																				
4	to investors. I will divest this asset if confirmed.																																				
5																																					
6																																					
7																																					
8																																					
9																																					

\* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.









Reporting Individual's Name Maxwell, James	<b>SCHEDULE C</b>	Page Number 19 of
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**Part I: Liabilities**

Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude

a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x)													
						\$10,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000			
Examples	First District Bank, Washington, DC John Jones, Washington, DC	Mortgage on rental property, Delaware Promissory note	1991 1999	8% 10%	25 yrs. on demand			x											
1	Bar Harbor Ventures III Fund, LP Portland, ME	capital commitment - closed	2009	N/A	on demand			X											
2																			
3																			
4																			
5																			

\*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

**Part II: Agreements or Arrangements**

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves

of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Pursuant to company's compensation policy, I will receive a performance-based bonus for services rendered in 2011 up the date of resignation.	Tyson's Financial Group, Inc., Leeds, NJ	08/98
2	Pursuant to the TFG deferred compensation plan, the balance of my account will be distributed in 12 quarterly payments starting within 90 days of resignation.	Tyson's Financial Group, Inc., Leeds, NJ	8/98
3	Vested stock options will be exercised or forfeited within 90 days of confirmation. If I divest the options by exercising them, I will divest resulting stock within 90 days of confirmation. Unvested options will be forfeited at resignation.	Tyson's Financial Group, Inc., Leeds, NJ	8/98
4	Pursuant to the company's compensation plan, my unvested restricted stock units will be forfeited at resignation.	Tyson's Financial Group, Inc., Leeds, NJ	10/08
5	Continued participation in Tyson's Financial Group 401(k). No further contributions by employer. Continued participation in defined benefit plan.	Tyson's Financial Group, Inc., Leeds, NJ	4/89
6	Pursuant to company's compensation policy, my spouse and I will continue to receive free health insurance.	Tyson's Financial Group, Inc., Leeds, NJ	8/98





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Dow ↓ 0.37% Nasdaq ↓ 0.13%

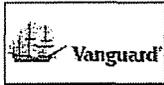
HOME INVESTING NEWS PERSONAL FINANCE MY PORTFOLIOS **NEW!** EXCLUSIVES

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Thu, Sep 1, 2011, 9:56AM EDT - US Markets close in 6 hrs and 3 mins

**Rydex|SGI Multi-Hedge Strategies H (RYMSX)**

On Aug 31: **22.22** ↑ 0.04 (0.18%)



Profile as of Jul 31, 2011

Get Profile for:  GO

**Rydex|SGI Multi-Hedge Strategies H**  
 Rydex Series Funds9601 Blackwell Road, Suite  
 500Rockville, MD 20850  
 Map  
 Phone: 800-820-0888

AdChoices

**Fund Overview**

Category: Multialternative  
 Fund Family: Rydex|SGI  
 Net Assets: 65.99M  
 Year-to-Date Return: 1.62%  
 Yield: 0.00%  
 Morningstar Rating: ★★  
 Fund Inception Date: Sep 19, 2005

Keep more of your returns with Vanguard at-cost mutual funds.

Open a Vanguard mutual fund

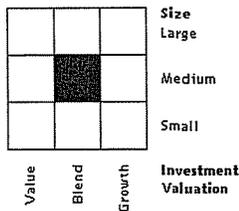
Vanguard provides its services to the Vanguard funds at-cost.

Obtain prospectus

**Morningstar Style Box**

Multialternative  
 [View Category Definition]

View Top Multialternative Funds  
 About the Morningstar Style Box



**Fund Summary**

The investment seeks long-term capital appreciation with less risk than traditional equity funds. The fund pursues multiple investment styles or mandates that correspond to investment strategies widely employed by hedge funds. The allocation to these strategies is based on a proprietary evaluation of their risk and return characteristics. The fund may also invest up to 25% of total assets in a wholly-owned and controlled Cayman Islands subsidiary. It is non-diversified.

**Fund Operations**

Last Dividend (Nov 25, 2008) :	0.12
Last Cap Gain (Nov 25, 2008) :	0.06
Annual Holdings Turnover (Oct 6, 2010) :	993.00%
Average for Category:	295.96%

**Management Information**

**Ryan A. Harder**  
 Lead Manager since Mar 14, 2008

Harder joined Rydex Investments in 2004 as an assistant portfolio manager, was promoted to portfolio manager in 2005 and has served in his current capacity since 2008. Prior to joining Rydex Investments, he served in various capacities with WestLB Asset Management, including as an assistant portfolio manager, and worked in risk management at CIBC World Markets. He holds a B.A. in Economics from Brock University in Ontario, Canada and a Master of Science in International Securities, Investment and Banking from the ICMA Centre at the University of Reading in the U.K. Harder holds the Chartered Financial Analyst designation.

**Fees & Expenses**

Expense	RYMSX	Category Avg
Annual Report Expense Ratio (net):	1.41%	1.67%
Prospectus Net Expense Ratio:	1.55%	N/A
Prospectus Gross Expense Ratio:	3.82%	N/A
Max 12b1 Fee:	0.25%	N/A
Max Front End Sales Load:	N/A	5.39%
Max Deferred Sales Load:	N/A	1.65%
3 Yr Expense Projection*:	1,123	1,025
5 Yr Expense Projection*:	1,897	1,771
10 Yr Expense Projection*:	3,924	3,334

\* Per \$10,000 invested

**Investment Information**

Min Initial Investment: 2,500



**ANW Bank**

*Watching your money like a hawk*

## **S&P500 Linked Note, Series 4**

Term sheet dated September 20, 2010 to prospectus dated December 10, 2008

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### **Key Terms**

Issuer: ANW Bank

Issue Date: September 28, 2010

Maturity Date: September 25, 2015

Term: 5 years

Underlying Index: S&P 500

Minimum Investment: \$5,000

Coupon: None.

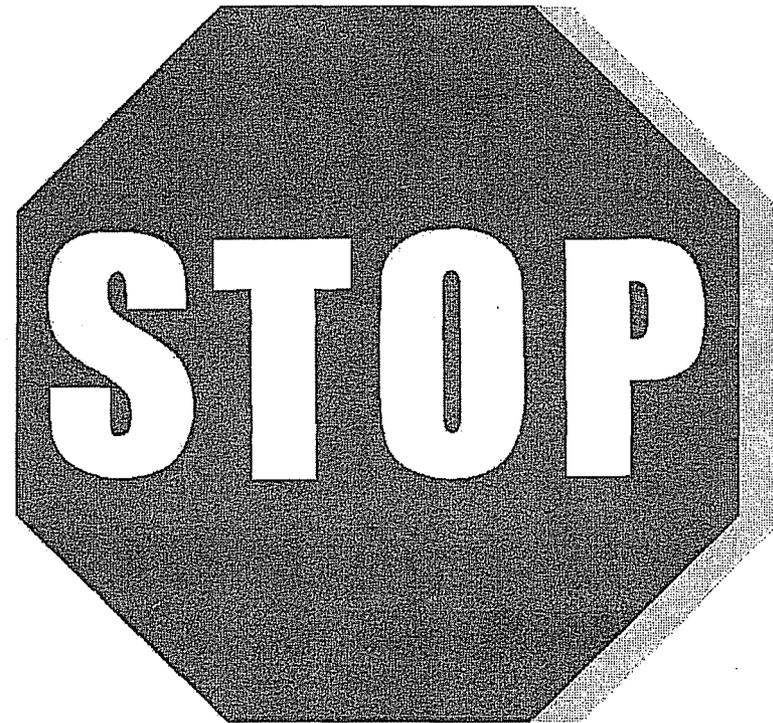
Payment at Maturity: Principal plus variable return linked to change in the S&P 500 Index (initially valued as of September 26, 2010). Variable return will be calculated as the principal multiplied by 60% of the average annual return of the index over the term of the note.

CUSIP: 555482924OGE

The Securities and Exchange Commission (SEC) has not approved or disapproved these notes or passed upon the adequacy of this term sheet or the accompanying prospectus. Any representation to the contrary is a criminal offense.

The notes are not bank deposits and are not insured or guaranteed by the Federal Deposit Insurance Corporation or any other governmental agency, nor are they obligations of, or guaranteed by, a bank.

This term sheet is a fake. Any similarity to a real product is accidental and surprising. Do not try to invest in this.







Reporting Individual's Name Maxwell, James	<b>SCHEDULE D</b>	Page Number 20 of
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**Part I: Positions Held Outside U.S. Government**

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature. None

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY Doe Jones & Smith, Hometown, State	Non-profit education Law firm	President Partner	6/92 7/85	Present 1/00
1	Tyson's Financial Group, Inc., Leeds, NJ	Corporation	Vice President	04/1989	Present
2	Maxwell Partners 2003, LP, Leeds, NJ	Investment Partnership	General Partner	07/2003	Present
3					
4					
5					
6					

**Part II: Compensation in Excess of \$5,000 Paid by One Source**

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source. Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate. None

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State Metro University (client of Doe Jones & Smith), Moneytown, State	Legalservices Legal services in connection with university construction
1	Tyson's Financial Group, Inc., Leeds, NJ	Vice President for Global Opportunities
2		
3		
4		
5		
6		





## Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

<b>Date of Appointment, Candidacy, Election, or Nomination</b> (Month, Day, Year)	<b>Reporting Status</b> (Check Appropriate Boxes)	<b>Incumbent</b> <input type="checkbox"/>	<b>Calendar Year Covered by Report</b>	<b>New Entrant, Nominee, or Candidate</b> <input checked="" type="checkbox"/>	<b>Termination Filer</b> <input type="checkbox"/>	<b>Termination Date (If Applicable)</b> (Month, Day, Year)	<b>Fee for Late Filing</b> Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a \$200 fee.
<b>Reporting Individual's Name</b>	Last Name Maxwell		First Name and Middle Initial James				
<b>Position for Which Filing</b>	Title of Position Commissioner		Department or Agency (If Applicable) Federal Insurance Commission				
<b>Location of Present Office</b> (or forwarding address)	Address (Number, Street, City, State, and ZIP Code) 456 A St., SW., Washington, DC 20000				Telephone No. (Include Area Code) 202-555-5556		
<b>Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)</b>	Title of Position(s) and Date(s) Held						
<b>Presidential Nominees Subject to Senate Confirmation</b>	Name of Congressional Committee Considering Nomination Committee on Banking, Housing and Urban Affairs			Do You Intend to Create a Qualified Diversified Trust? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>Certification</b>	Signature of Reporting Individual				Date (Month, Day, Year)		
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.							
<b>Other Review</b> (If desired by agency)	Signature of Other Reviewer				Date (Month, Day, Year)		
<b>Agency Ethics Official's Opinion</b>	Signature of Designated Agency Ethics Official/Reviewing Official				Date (Month, Day, Year)		
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).							
<b>Office of Government Ethics Use Only</b>	Signature				Date (Month, Day, Year)		
Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)							
(Check box if filing extension granted & indicate number of days _____) <input type="checkbox"/>							
(Check box if comments are continued on the reverse side) <input type="checkbox"/>							
<b>Agency Use Only</b>							
<b>OGE Use Only</b>							







Reporting Individual's Name Maxwell, James	<b>SCHEDULE A continued</b> (Use only if needed)	Page Number 8 of
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Assets and Income	Valuation of Assets at close of reporting period										Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.																								
BLOCK A	BLOCK B										BLOCK C																								
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type				Amount							Date (Mo., Day, Yr.)  Only if Honoraria								
																Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000		\$100,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000	Other Income (Specify Type & Actual Amount)			
1 --Alcoa, Inc.	X															X		X		X															
2 --Exxon Mobil Corp.	X																		X		X														
3 --Coca Cola Co.	X																			X		X													
4 --Intel Corp	X																X				X														
5 --Merck & Co Inc	X																				X		X												
6 --Medtronic	X																X				X		X												
7 --Weyerhaeuser	X																				X		X												
8 --General Electric	X																X				X														
9 --Wal-Mart Stores	X																				X		X												

\* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Reporting Individual's Name Maxwell, James	<b>SCHEDULE C</b>	Page Number 19 of
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**Part I: Liabilities**

Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude

a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None

Creditors (Name and Address)		Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x)												
						\$10,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000		
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x										
	John Jones, Washington, DC	Promissory note	1999	10%	on demand					x								
1	Bar Harbor Ventures III Fund, LP Portland, ME	capital commitment - closed	2009	N/A	on demand			X										
2																		
3																		
4																		
5																		

\*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

**Part II: Agreements or Arrangements**

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves

of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None

Status and Terms of any Agreement or Arrangement		Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Pursuant to company's compensation policy, I will receive a performance-based bonus for services rendered in 2011 up the date of resignation.	Tyson's Financial Group, Inc., Leeds, NJ	08/98
2	Pursuant to the TFG deferred compensation plan, the balance of my account will be distributed in 12 quarterly payments starting within 90 days of resignation.	Tyson's Financial Group, Inc., Leeds, NJ	8/98
3	Vested stock options will be exercised or forfeited within 90 days of confirmation. If I divest the options by exercising them, I will divest resulting stock within 90 days of confirmation. Unvested options will be forfeited at resignation.	Tyson's Financial Group, Inc., Leeds, NJ	8/98
4	Pursuant to the company's compensation plan, my unvested restricted stock units will be forfeited at resignation.	Tyson's Financial Group, Inc., Leeds, NJ	10/08
5	Continued participation in Tyson's Financial Group 401(k). No further contributions by employer. Continued participation in defined benefit plan.	Tyson's Financial Group, Inc., Leeds, NJ	4/89
6	Pursuant to company's compensation policy, my spouse and I will continue to receive free health insurance.	Tyson's Financial Group, Inc., Leeds, NJ	8/98

Reporting Individual's Name Maxwell, James	SCHEDULE D	Page Number 20 of
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### Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature. None

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY ----- Doe Jones & Smith, Hometown, State	Non-profit education ----- Law firm	President ----- Partner	6/92 ----- 7/85	Present ----- 1/00
1	Tyson's Financial Group, Inc., Leeds, NJ	Corporation	Vice President	04/1989	Present
2	Maxwell Partners 2003, LP, Leeds, NJ	Investment Partnership	General Partner	07/2003	Present
3					
4					
5					
6					

### Part II: Compensation in Excess of \$5,000 Paid by One Source

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source. Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.  
None

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State ----- Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services ----- Legal services in connection with university construction
1	Tyson's Financial Group, Inc., Leeds, NJ	Vice President for Global Opportunities
2		
3		
4		
5		
6		



August 24, 2011

Danielle E. Olsen  
General Counsel  
Federal Insurance Commission  
456 A St. SW.,  
Washington, DC 20000

Dear Ms. Olsen:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Commissioner, Federal Insurance Commission.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

...[other ethics commitments]

I will divest my interests in the entities listed in Attachment A within 90 days of my confirmation. With regard to each of these entities, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of the entity until I have divested it, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I have disclosed in my financial disclosure report a financial interest in the TFG Capital Partners V, LP. However, the fund's manager declined to provide me with sufficient information to enable me to disclose the fund's underlying assets in my financial disclosure report. Therefore, I will divest my financial interest in the TFG Capital Partners V, LP, within 90 days of my confirmation. Until I have divested TFG Capital Partners V, LP, I will not participate personally and substantially in any particular matter in which to my knowledge I have a financial interest, if the particular matter has a direct and predictable effect on the financial interests of TFG Capital Partners V, LP, or its underlying assets, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

Upon confirmation, I will resign from my position as general partner of Maxwell Partners 2003, LP. I will retain my financial interest in Maxwell Partners 2003, LP, but I will not manage this entity or provide any other services to it. Instead, I will receive only passive investment

income from it. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of Maxwell Partners 2003, LP, or its underlying assets, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

...[other ethics commitments]

Sincerely,

James Maxwell

ATTACHMENT A:

Positron Investments X, LLC  
Berkshire Hathaway  
Walt Disney Co.  
Microsoft  
Apple  
Chevron  
PepsiCo  
Bank of America  
Allstate  
Verizon Communications  
Ford Motor Co.  
International Business Machines  
Travelers  
Procter & Gamble  
AT&T  
Caterpillar  
ConocoPhillips  
MetLife  
Johnson & Johnson

## Financial Instruments and Public Financial Disclosure Handout

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- Ethics Official: Thank you for taking the time to speak with me regarding Mr. Maxwell's financial disclosure report. As I mentioned in my e-mail, I need to gather some additional information about the entries disclosed on page 5 of Mr. Maxwell's report.
- Broker: No problem. Glad to help.
- Ethics Official: Great. Starting with Positron Investments X, LLC on line 1, what type of investment is this exactly?
- Broker: A hedge fund.
- Ethics Official: Ok. What are the criteria for investing in this fund? I mean, can anyone invest or is it closed to certain investors?
- Broker: Well, you have to be a qualified investor.
- Ethics Official: Are there any other restrictions?
- Broker: No.
- Ethics Official: Does the fund have more than 100 investors?
- Broker: There are 80 investors. I think 75 people or so and a few institutional investors.
- Ethics Official: Does the fund provide a list of the investments?
- Broker: Only the top 10 positions. I can send you the list later today. Would that help?
- Ethics Official: Yes, that would be very helpful. Moving on to TFG Capital Partners V, is this also a hedge fund?
- Broker: No, I think it's a private equity fund offered by Tysons. I don't have anything on that, though, since Mr. Maxwell didn't invest in it through us at Bar Harbor.
- Ethics Official: Ok, I will follow up with Mr. Maxwell on that entry. Right below it, there is a fund called Bar Harbor Ventures III? Is this a venture capital fund?
- Broker: That's correct. It's managed by Bar Harbor Investments and was offered on a limited basis to our clients only. It is now closed to all new investors. The last capital call was in August 2010.
- Ethics Official: Are there any restrictions on who can be a client at Bar Harbor?
- Broker: Generally, we require minimum initial investment from our prospective clients.
- Ethics Official: How many investors does the fund have?
- Broker: 105 limited partners and the general partner, Bar Harbor Investments.

Ethics Official: Do you have a list of the investments that you could send?

Broker: I have the paperwork in front of me -- Electro Parts Worldwide Co.; Synergy Propulsion, LLC; Halley Engineering; Hydroponics Unlimited; Data Elements, Inc.; and Allied Building Computing, Inc. I can send you the list, though.

Ethics Official: If you could please. Thank you.

Broker: Sure. Do you need anything else?

Ethics Official: Yes. Maxwell Partners 2003. Do you know what type of investment this is?

Broker: Sorry, no. You'll have to check with Mr. Maxwell.

Ethics Official: All right. There is just one more entry here -- BH Large Cap Value Portfolio. Is this a mutual fund? I experienced a little difficulty finding a fund with this particular name.

Broker: It functions just like a typical large cap mutual fund. The strategy is set centrally for all of the investors holding the portfolio. Mr. Maxwell has no control. There are definitely more than 100 investors. It's one of our more popular options.

Ethics Official: Are the funds actually pooled together or does Mr. Maxwell individually hold legal title to the underlying assets?

Broker: Technically, Mr. Maxwell holds title; however, we make all the investment decisions for him. He can't direct us to buy or sell the individual components of the portfolio any more than he could the stocks within a mutual fund. So, are we all finished?

.....

[Received later that day]

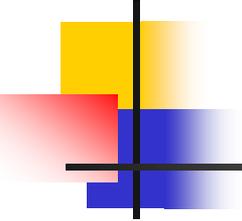
**Positron Investments X, LLC**

--- Top Positions // 081211 // ---

- Quasar Finance II, LP
- Zorn Capital 2010, LP
- General Electric (GE)
- Nova Real Return, LP
- George India III, LLC
- JP Morgan Chase (JPM)
- Petroleo Brasileiro (PBR)
- Syme Arbitrage, LLC
- Amer Intl Group Inc. (AIG)
- Time Warner Inc. (TWX)

**Bar Harbor Ventures III Fund, LP**

- Electro Parts Worldwide Co.  
(electronics manufacturer, Austin, TX)
- Synergy Propulsion, LLC  
(rocket fuel research, Huntsville, AL)
- Halley Engineering  
(satellite technology, Modesto, CA)
- Hydroponics Unlimited  
(agricultural research, Sioux Falls, SD)
- Data Elements, Inc.  
(statistical software, Ann Arbor, MI)
- Allied Building Computing, Inc.  
(engineering software, Boston, MA)



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**OGE PROGRAM REVIEW:  
U.S. DEPARTMENT OF TRANSPORTATION  
FINANCIAL DISCLOSURE PROGRAM  
February 2009 – September 2011**

Judith S. Kaleta  
Assistant General Counsel  
Alternate Agency Ethics Official  
U.S. Department of Transportation



# FEBRUARY 2009

## OGE CALLS DOT

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- OGE: "Hello, we would like to schedule a review of DOT's ethics program."
- DOT: "We will schedule a time for you to meet with the DAEO."



# FEBRUARY 2009

## OGE MEETS WITH DOT'S DAEO AND AAEO

- OGE: "We conduct program reviews on financial disclosure, training, counseling, administration, and compliance."
- DOT: "We would like you to focus on financial disclosure across the entire Department."



- Key Learning Point: Focus on your needs

# FEBRUARY 2009

## DAEO MEETS WITH THE DEOs

- DAEO: "OGE is coming in June to review our ethics program."
- DEOs (in unison): "Oh !?#!"
- DAEO: "The review will focus on our financial disclosure programs. Here's a link to the OGE review guide:

[www.oge.gov/ethics\\_docs/office\\_agency\\_prog.aspx](http://www.oge.gov/ethics_docs/office_agency_prog.aspx)"



- Key Learning Point: OGE resources are available to help.

# MARCH 2009

## DOT PREPARATION BEGINS!

- AAEO meets with the DOT ethics team comprising each of DOT's 10 operating administrations, the Office of the Secretary, and the Office of the Inspector General.
- DOT ethics team prepares "desk books" describing their ethics programs with emphasis on financial disclosure.



- Key learning point: Don't wait until OGE arrives

# APRIL 2009

## OGE's APRIL FOOLS RELEASE

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- OGE releases a report on April 1, titled: "Elements of a Successful Financial Disclosure Program"
- DOT immediately shares with the Ethics Team



- Key learning point: Keep your eyes open!

# APRIL 2009

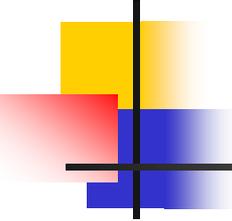
## DOT PREPARATION CONTINUES

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- The DAEO:
  - Provides assistance with desk books
  - Checks DOT ethics team files
  - Responds to questions
  - Develops a preliminary review schedule



- Key learning point: Prepare thoroughly

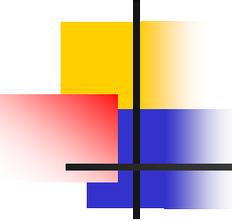


# MAY 2009

## OGE PROGRAM REVIEWERS 1<sup>st</sup> CONTACT

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- OGE requests:
  - Entrance conference with DAEO
  - Schedule for review
  - Copies of annual agency ethics questionnaire and supporting data



# JUNE 2009

## OGE ENTRANCE CONFERENCE

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- OGE announces:
  - Three-day review of each of 12 programs (36 days over 6 months)
  - Follow-up report to the Secretary, DAEO, each OA and the Inspector General
  - Meeting between OGE Director and the DOT Secretary

# JUNE – NOVEMBER 2009

## OGE ONSITE PROGRAM REVIEWS

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- OGE reviews financial disclosure files for:

- Timely submission of forms
- Timely review
- Completeness of reviews



- Key Learning Point: All files are subject to review

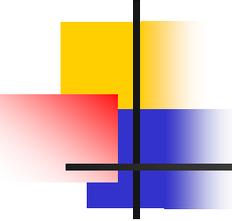
# JUNE – NOVEMBER 2009

## “REQUESTS”

- “We want to see a demonstration of your HR program to identify new entrant filers.”
- “We want to visit (a) regional facility.”
- “We want you to bring files down from your regional facility.”
- “We want to see a demonstration of your e-filing system.”



- Key Learning point: Be ready to show more!

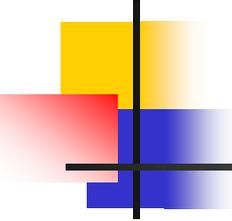


# JUNE – NOVEMBER 2009

## DOT ETHICS PROGRAM NEVER SLEEPS!

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- While on-site reviews go on, the DOT Ethics Program also:
  - Reviews almost 2,400 financial disclosure reports
  - Conducts annual ethics training and new entrant training sessions throughout DOT
  - Continues ongoing ethics counseling and ethics compliance matters

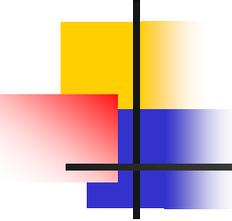


# JUNE – NOVEMBER 2009

## DOT MISSION CONTINUES

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- American Recovery and Reinvestment Act of 2009
- WMATA incident
- Car Allowance Rebate System (Cash For Clunkers)
- USMMA graduates 197
- High Speed Intercity Passenger Rail
- E.O. XXXX No Texting while driving
- Colgan Air Crash
- Highway Trust Fund

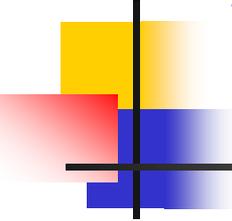


# NOVEMBER 2009

## OGE SURPRISE!!

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- **CABINET-LEVEL REVIEW PROJECT!!**
  - DAEO meets with OGE to discuss Cabinet-Level review project scheduled for January through September 2010
  - OGE explains that the Cabinet-Level review project will assess ethics program management **INCLUDING FINANCIAL DISCLOSURE**

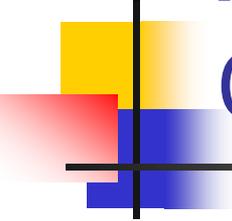


# JANUARY 2010

## OGE EXIT CONFERENCE

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- OGE meets with the DAEO to discuss results of program review
- OGE findings cover:
  - Leadership support
  - Written procedures
  - Financial disclosure reviews
  - Compliance



# APRIL 2010

## OGE SENDS DRAFT REPORTS TO DEOs

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- OGE sends draft reports to each operating administration, the Office of the Inspector General, and the Office of the Secretary

# OGE DRAFT RECOMMENDATIONS – APRIL 2010

	OST	RITA	FTA	FAA	FMCSA	NHTSA	SLSDC	FRA	MARAD	FHWA	OIG
Improve timeliness of new entrant filing	•	•	•	•	•	•			•	•	
Improve timeliness of review and certification of reports	•			•		•					
Develop written procedures		•			•			•			•
Revise/update written procedures	•		•	•		•				•	
Use agency date of receipt stamp on all reports	•									•	
Take immediate action to remedy conflicts of 21 filers				•							
Timely resolve divestiture appeals				•							
Correctly use/file OGE Form 450-A						•				•	
Conduct intermediate reviews before certification, not afterwards										•	
Improve tracking system					•						
Have the DEO certify all public reports									•		
<b>TABLE PREPARED BY DOT</b>											



# APRIL 27, 2010

## DAEO TO OGE:



U.S. Department of  
Transportation  
Office of the Secretary  
of Transportation

GENERAL COUNSEL

April 27, 2010

1201 New York Avenue, SE  
Washington, DC 20590

David A. Meyers  
Office of Government Ethics  
1201 New York Avenue, Suite 500  
Washington, D.C. 20005

Dear Mr. Meyers:

The Department of Transportation (DOT) (OGE) for its review of our Department Secretary of Transportation (OST). We

DOT employs nearly 60,000 employees at our Washington, DC headquarters. OST Federal Aviation Administration (FAA), Transit Administration (FTA), Federal Railroad Administration (FRA), Federal Motor Carrier Safety Administration (FMCSA), Pipeline and Hazardous Material Safety Administration (PHMSA), Research and Innovative Technology Administration (RITA), and Saint Lawrence Seaway Development Corporation (SLSDC). Each administration operates regional offices throughout the country. The FAA occasionally operates offices, including air traffic control operations, at every airport in the United States. . . .

Two recurring recommendations in OGE's review were: (1) improve the process for filing new entrant reports, and (2) modify written procedures for processing financial disclosure reports. I have personally discussed these issues with the Deputy Ethics Officials, and we are committed to making these improvements. I have requested the Deputy Ethics Officials to obtain a commitment from their human resources offices to alert ethics officials in a timely way to new employees as well as employees who have been promoted. I have also asked the Deputy Ethics Officials to conduct an annual review of their staffing and GS levels to determine whether employees should be filing based on changed duties or positions.

in procedures to provide, in processes that we follow. OST by reflect OGE requirements

RAID, FMCSA, NHTSA, nents separately. Because neither has provided

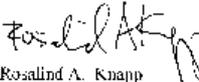
3

financial disclosure program. knesses. We are committed pensive to our employees' mission.

### DOT is committed to:

- Improving the process for filing new entrant reports
- Modifying written procedures for financial disclosure

Sincerely,

  
Rosalind A. Knapp

Attachments



# JULY 19, 2010

## OGE DIRECTOR TO THE SECRETARY:



United States  
**Office of Government Ethics**  
1201 New York Avenue, N.W., Suite 500  
Washington, DC 20004-3917

July 19, 2010

The Honorable Ray LaHood  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Secretary LaHood:

As part of the Office of Government Ethics' review, we completed a focused review of the financial disclosure program of the Department of Transportation (DOT). This review is required by section 402 of the Ethics in Government Act of 1978, and your agency's interest in improving the financial disclosure program. Our primary objective was to determine the fit of DOT's financial disclosure program with applicable ethics laws and regulations. We also identified strengths and weaknesses of DOT's financial disclosure program and its ability to prevent and detect ethics violations. OGE conducted its review intermittently from January to July of calendar year 2008 activities.

As our enclosed letter to the Designated Review Officer (DRO) revealed that improvements are needed to ensure full compliance with applicable ethics laws and regulations, we have formulated a more comprehensive plan of actions. (1) We recommend DOT take the following actions into positions requiring a confidential review of these reports. (2) Develop a continuing education program for both review and certification for public officials. (3) Develop an oversight program that at a minimum includes each operating administration and at headquarters site reviews as it relates to the financial disclosure program. Each operating administration develops or modifies written procedures for these improvements are made, DOT's financial

The Honorable Ray LaHood  
Page 2

The enclosed letter and chapter report details our findings and recommends the actions that both the DAEO and the Deputy Ethics Officials are directed to take to improve DOT's financial disclosure program.<sup>1</sup> In light of the role that financial disclosure plays in preventing employees from committing ethics violations, both reports also make several suggestions for program enhancement.

Drafts of our individual reports were sent to the DAEO and each Deputy Ethics Official for review and comment, and we did receive written comments back on the corrective actions

### OGE to the Secretary:

Improve timely new entrant filing

Improve timeliness and quality of reviews and set up an education program

Provide more oversight including tracking systems and on-site reviews

Develop written procedures

review the status  
view that will

and interest in  
noted in this  
to bring the  
discuss these

each operating



# OGE ISSUES IDENTIFIED IN ON-SITE REVIEWS

<b>Issues Identified</b>	<b>FAA</b>	<b>FHWA</b>	<b>FMCSA</b>	<b>FRA</b>	<b>FTA</b>	<b>MARAD</b>	<b>NHTSA</b>	<b>OIG</b>	<b>OST</b>	<b>PHMSA</b>	<b>RITA</b>	<b>SLSDC</b>
<b>Timely Action</b>												
Resolving Conflicts	•											
Divestiture Appeals	•											
Review/Certification	•						•					
Collection					•		•					
<b>Certification</b>												
Wrong Form							•					
Wrong Status			•									
Wrong Certifier						•						
Digital Signature					•						•	
Incomplete Review	•	•	•		•	•	•				•	•
Reporting Errors	•						•		•		•	•
<b>Master list</b>												
Non-filers					•		•					
Other			•			•					•	
<b>Other -- Procedural</b>												
Date Stamp		•	•			•		•	•		•	
Records Destruction										•	•	
Filing Extensions			•				•					
<b>TABLE PREPARED BY OGE</b>												

# JULY 19, 2010

## OGE DIRECTOR TO THE DAEO:



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

July 19, 2010

Roselind A. Knapp  
Designated Agency Ethics Official  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Ms. Knapp:

succession plan to help maintain the consistent administration of an ethics program, OGE also suggests that the procedures for administering other elements of the ethics program be developed as well. OGE considers an agency's use of individualized written procedures to be a model agency practice and a valuable resource to both employees and ethics officials.

In closing, as you work to resolve these issues my staff, as well as the OGE Desk Officer assigned to DOT, stands ready to provide any expertise or advice you may need to bring your financial disclosure program into full compliance. We will review the status of DOT's progress in addressing our recommendations as part of a follow-up review that will be scheduled within six months from the date of this report. Should you or your staff have any questions before then, please feel free to contact David Meyers at (202) 482-9263 or by email at [dameyers@oge.gov](mailto:dameyers@oge.gov). You can also contact me at (202) 482-9286 or by email at [rczemple@oge.gov](mailto:rczemple@oge.gov).

Copies of the attached report have also been sent via transmittal letter to the Secretary and DOT's Inspector General.

Sincerely,

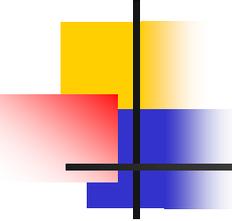
**“In view of the corrective action authority vested with the Director . . . it is important that you take timely and effective action to resolve all recommendations.”**

In addition to the specific actions that must be taken, our report also cites a number of suggestions and good management practices that will help DOT improve its management and coordination of the financial disclosure program.

Individual reports of our findings have been provided to each operating administration, OST and the OIG.

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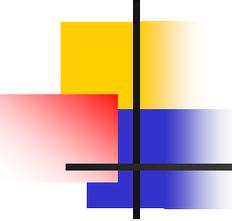
# JULY 30, 2010

## ACTION ON OGE's RECOMMENDATIONS

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DAEO to the DEOs:

- Action must be taken promptly to implement improvements
- Submit a report of each improvement by December 1, 2010



# DECEMBER 2010

## DEO's REPORT TO THE DAEO

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- Each DEO report is posted on the DOT Ethics Share Point for all ethics officials to see
- Each report advises that improvements are underway or completed

# MARCH 2011

## DAEO TO DEOS: REVIEW REPORTS TIMELY

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- The DAEO requires reports to be reviewed initially within 60 days and final review within 90 days
- Delays beyond 90 days may be authorized only in documented instances
- Periodic status reports must be sent to the DAEO and posted on the DOT Ethics Share Point



- Key learning point: Don't wait – Do now!

# MAY – JULY 2011

## OGE CONDUCTS FOLLOW-UP ON-SITE REVIEWS

---

- Each on-site review lasts 2-4 hours
- After each review, the DEO is advised orally which recommendations will be closed
- OGE will come back in 6 months to review recommendations still open



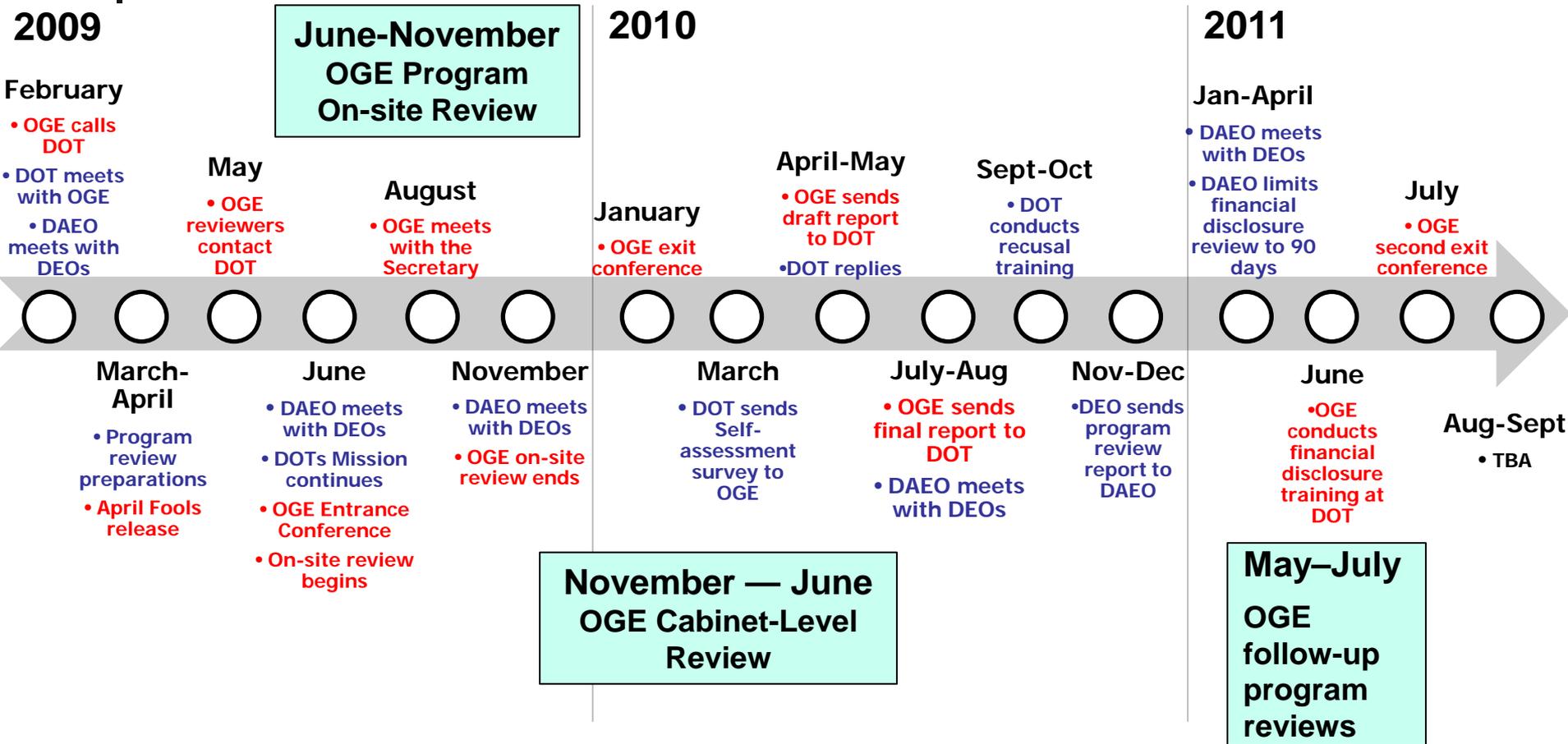
- Key Learning Point: OGE is watching. Are you?

# SUMMARY OF KEY LEARNING POINTS

- 🔑 **Focus on your needs**
- 🔑 **OGE resources are available to help**
- 🔑 **Don't wait until OGE arrives**
- 🔑 **Keep your eyes open!**
- 🔑 **Prepare thoroughly**
- 🔑 **All files are subject to review**
- 🔑 **Be ready to show more!**
- 🔑 **Don't wait – Do now!**
- 🔑 **OGE is watching. Are you?**

# OGE Review of DOT's Financial Disclosure Program

February 2009 – September 2011



# OGE Program Reviews

Survival Guide

# DOT OIG Ethics Program

- For many years, OIG did not have its own counsel, so DOT OGC's ethics program handled OIG employees
- In the late-1990's OIG obtained its own counsel, who provided training, advice, and counseling to OIG employees. DOT OGC continued in review 450s and 278s filed by OIG employees
- In 2008, when staffing in the OIG counsel's office was sufficient, OIG ethics officials began reviews of 450s
- In 2011, OIG began to review 278s of most of its public filers
- As of August 2011, OIG has 469 employees - 298 are 450 filers; 14 are public filers
- Assistant IG for Legal, Legislative, and External Affairs is the Deputy Ethics Official (DEO). Chief Counsel supervises the ethics program. Senior Counsel Seth Kaufman keeps the trains on time with assistance of Fritz Swartzbaugh, both of whom are at this conference.

# Immediate Actions Upon Learning of Program Review

- Dispassionate self-assessment of our program
  - What were our strengths and weaknesses?
- Got the word out within agency
  - We informed agency head and front office as well as stakeholders (HR director, CIO, Office of Investigations leaders).
- Began deskbook (book) to aid OGE's review and our preparation

# Self-Assessment

- Tried to be dispassionate
  - Examined OGE’s online guidance for preparing for program review
  - Reviewed OGE regulations to identify responsibilities
- Assessed Weaknesses
  - What could result in recommendations/findings?
    - New entrant timeliness, notification of criminal referrals to OGE
  - What can we improve quickly?
- Identified Strengths
  - What are we doing well and how can we document it?
  - Used specific examples
    - Leadership support emails
    - Analysis of covered positions
    - Annual training of all employees

# Got The Word Out

- Kept agency head, executives, and stakeholders informed of developments
  - OGE will do site visits
- Explained what OGE will be doing and process
- When in need of assistance or information, reminded leadership and stakeholders of review

# Preparation for Site Visits

- Assembled written materials in advance of OGE's survey work in a deskbook to aid OGE's review
  - Documents and examples related to OGE's online guidance
  - Information about the mission, leadership, and structure of the agency
  - Business practices and procedures
  - Written analyses to explain actions
  - Out of scope evidence
  - Employee rosters
  - Annual written training plan
- Ensured proper organization of past financial disclosures

# Interviews with Program Reviewers

- Candid dialogue
- Talked about procedures and interactions with agency leadership, HR, and other stakeholders
- Highlighted what we do well
- Took advantage of opportunities to talk to OGE on larger issues about ethics program management, not limited to matters being reviewed
- Identified challenges and progress

# Pre-Exit Conference

- Opportunity to make improvements and modifications
- Identified issues for stakeholders
- Discussed immediate and future actions to address issues

# Pre- Exit Conference (Cont.)

- Our actions taken before exit conference
  - New Entrant Timeliness and Tracking
    - Improved tracking system for new entrants
    - Biweekly personnel action report from HR
    - Selection notifications from HR
    - New account notifications from IT
  - Criminal referrals
    - Ensured that Office of Investigations filed past due notifications
    - Agreement in principle on revised policy chapter and coordination on referral
    - Discussions with Investigations management about incorporation into case management system
  - Date stamping of reports
    - Ethics officials received a date stamp and used it
    - HR specialists who receive annual reports were trained to stamp

# Exit Conference

- Gave evidence of improvements since site visit
- Received positive feedback on strengths and potential model practices
  - Documentation of 450 reviews and conflict analysis
  - Timely 450 reviews
  - Prior assessment of covered positions
  - OIG ownership of ethics program
- Received notice of potential recommendations
  - OIG-specific written procedures lacked certain requirements
  - Criminal referrals
  - New entrant timeliness
  - Date stamping of report as they are received
- OGE shared model procedures for financial disclosure systems

# Commenting on draft report

- Three of four potential recommendations were characterized as technical issues based on progress and assurances by ethics officials
- Comments focused on the recommendations/findings
  - Highlighted improvements since survey work
  - Pointed to future plans – made sure they were achievable
  - Corrected factual errors about the organization of the agency and ethics program
  - Provided additional evidence not cited in the report
- OIG provided comments separately from DOT
- Written as if comments would be for public consumption

# Final Report

- Fair incorporation of our comments on draft report
- One recommendation and three technical issues
- Communicated with leadership and stakeholders
  - Update on actions to resolve all findings
  - Gave credit
- We communicated with rest of the OIG through the OIG newsletter

# Follow Up Actions

- Took concrete actions to completely resolve all of OGE's findings
- Increased attention to new entrant filings
  - Persistent reminders about deadlines
- If cooperation from other offices had been lacking, we would have escalated the issue
- Gave credit to stakeholders for their cooperation

# Follow Up Report

- Assembled materials in advance of OGE's site visit to show remedies of recommendation and technical issue
  - Copy of written procedures for financial disclosure system
  - Ensured that criminal referrals were reported to OGE
  - Supplied all new entrants from that year to show evidence of timeliness and date-stamping
- Office of Investigations plans to incorporate referral requirements into case management system

# Benefits of Program Review

- Resolved long-standing coordination issues with stakeholders
- Improved reporting practices benefitting ethics program and other management functions
- Improved organization of records
- Positive reinforcement of our efforts

## Mutual Funds Summary (Common Exemptions)

- Diversified Mutual Funds
  1. No stated policy of concentrating in any one industry, sector, country outside of the United States, or the bonds of any State
    - No value limit
    - % invested in affected holding does not matter
- Sector Mutual Funds
  1. Affected holding is not in the sector in which the fund concentrates
    - No value limit
    - % invested in affected holding does not matter
  2. All sector funds concentrating in the disqualifying sector that have one or more holdings that may be affected
    - Aggregate of \$50,000 or less
    - % invested in affected holding does not matter

## Mutual Funds Scenario

The CIO of your agency will be working on a new telecommunications contract for cellular phone service. The CIO's investment portfolio consists of:

- \$200,000 invested in the Wells Fargo Advantage Endeavor Select Fund
- \$50,000 invested in the JPMorgan Large Cap Value Select Fund
- \$12,000 invested in Vanguard Information Technology Index
- \$75,000 invested in iShares Dow Jones U.S. Financial Sector Index Fund

## Publicly Traded Securities Summary (Common Exemptions)

- De Minimis Securities
  - Specific party matters
    - No more than \$15,000 aggregate in all affected parties
  - Matters of General Applicability
    - No more than \$25,000 in one affected entity; no more than \$50,000 aggregate in all affected entities.

## Securities Scenarios

1) Judy will be assigned to work on a regulation to set standards to reduce harmful bacteria at facilities that manufacture frozen dinners. Judy's husband and her 12 year old son inherited \$2,500 each in ConAgra stock last year when Judy's father-in-law died. Judy also has \$12,000 worth of stock in Nestlé.

- ConAgra Foods (manufacturer of Healthy Choice and Banquet frozen meals)
- Nestlé S.A. (manufacturer of Stouffers and Lean Cuisine frozen meals)

2) James, an attorney with the Department of Justice, is assigned to work on a government lawsuit against several pharmaceutical manufacturers for price-fixing. His portfolio includes stock in four of the 12 manufacturers named as defendants in the suit:

- \$4,500 in PharmaCorp stock
- \$8,000 in Stewart Holdings stock
- \$3,000 in Topeka Chemical Industries stock
- \$1,100 in KimCo Bio-Medical Solutions stock

3) Janet, a Special Agent with the United States Secret Service, is assigned to work on a mortgage fraud investigation. Her portfolio includes:

- \$200,000 invested in the JPMorgan Large Cap Value Select Fund. She knows that 8% of the Fund is invested in MegaBankCorp, one of the banks that is a target of the investigation.
- \$47,000 invested in the iShares Dow Jones U.S. Financial Sector Index Fund.
- \$4,500 in MegaBankCorp stock (publicly traded)

# Working with 208 Exemptions

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



Preventing Conflicts of Interest  
in the Executive Branch

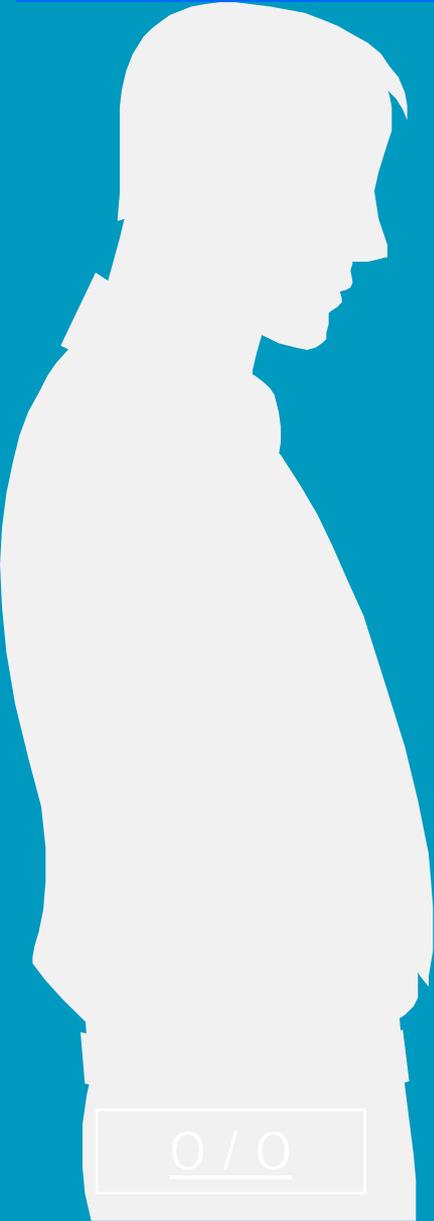
Kim Kaplan and Mark Stewart

United States Office of Government Ethics

# Announcements



# Test *Your* Knowledge



Bob, a federal employee, will be writing a finance regulation that will affect all electric utilities. Bob owns \$500 worth of Evergreen Electric Company Stock.

Bob may not work on the regulation because he has a potential conflict of interest under 18 U.S.C. 208.

1. Yes
2. No
3. Need more information

# Presentation Overview

- OGE's interpretation of 18 U.S.C. 208
- De minimis exemptions for mutual funds
- De minimis exemptions for publicly traded securities

## OGE 208 Implementing Regulations

- 5 C.F.R. part 2640
  - Subpart A, General Provisions
  - Subpart B, 208(b)(2) Exemptions
  - Subpart C, Individual Waivers
- 5 C.F.R. part 2635, subpart D
  - Prior OGE guidance on 208

# Conflict of Interest

18 U.S.C. 208

- Government employees are prohibited from participating personally and substantially in a **particular government matter** that will have a direct and predictable effect on **their financial interests**, **including** the financial interests **of others**, which are attributed to the federal employee.

Purpose:

To prevent financial interests from affecting official actions

# Must Be Working on a “Particular Matter”

Includes:

- Matters involving specific parties (contracts, grants, litigation, etc.)
- Matters of general applicability (regulations, policies, etc. that focus on the interests of a discrete and identifiable class of persons)

# Interests – More than Just the Employee's

Spouse

Minor child

General partner

Interests of certain other organizations

# Presentation Overview

- OGE's interpretation of 18 U.S.C. 208
- De minimis exemptions for mutual funds
- De minimis exemptions for publicly traded securities

## § 2640.201 Exemptions for interests in mutual funds, unit investment trusts, and employee benefit plans

- (a) *Diversified mutual funds and unit investment trusts.* An employee may participate in **any particular matter** affecting one or more holdings of a diversified mutual fund or a diversified unit investment trust where the disqualifying financial interest in the matter arises because of the ownership of an interest in the fund or trust.

## § 2640.201 Exemptions for interests in mutual funds, unit investment trusts, and employee benefit plans

- (b) *Sector mutual funds.* (1) An employee may participate in **any particular matter** affecting one or more **holdings** of a sector mutual fund where the affected holding is **not invested in the sector** in which the fund concentrates, and where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund.

## § 2640.201 Exemptions for interests in mutual funds, unit investment trusts, and employee benefit plans

- (2)(i) An employee may participate in a **particular matter** affecting one or more **holdings** of a sector mutual fund where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund and the **aggregate market value** of interests in any sector fund or funds **does not exceed \$50,000**.

## § 2640.201 Exemptions for interests in mutual funds, unit investment trusts, and employee benefit plans

- (ii) For purposes of **calculating** the \$50,000 de minimis amount in paragraph (b)(2)(i) of this section, an employee must **aggregate** the market value of **all sector mutual funds** in which he has a disqualifying financial interest and that concentrate in the **same sector** and have one or more holdings that may be affected by the particular matter.

# Mutual Funds

- Diversified Mutual Funds

1. No stated policy of concentrating in any one industry, sector, country outside of the United States, or the bonds of any State
  - No value limit
  - % invested in affected holding does not matter

- Sector Mutual Funds

1. Affected holding is not in the sector in which the fund concentrates
  - No value limit
  - % invested in affected holding does not matter
2. All sector funds concentrating in the disqualifying sector that have one or more holdings that may be affected
  - Aggregate of \$50,000 or less
  - % invested in affected holding does not matter

# Exemptions for mutual funds

The CIO of your agency will be working on a new telecommunications contract for cellular phone service. The CIO's investment portfolio consists of:

- \$200,000 invested in the Wells Fargo Advantage Endeavor Select Fund
- \$50,000 invested in the JPMorgan Large Cap Value Select Fund
- \$12,000 invested in Vanguard Information Technology Index
- \$75,000 invested in iShares Dow Jones U.S. Financial Sector Index Fund

Scenario

# Exemptions for mutual funds



Is it a *mutual fund*?

# 1

## Is it a *mutual fund*?

*Mutual fund* means an entity which is registered as a management company under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 et seq. ). For purposes of this part, the term mutual fund includes open-end and closed-end mutual funds and registered money market funds.



5 CFR § 2640.102(k)

# Wells Fargo Advantage Endeavor Select A (STAEX)

More On STAEX

QUOTES

► Summary

Historical Prices

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Interactive

Basic Chart

Basic Tech. Analysis

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## WELLS FARGO ADVANTAGE ENDEAVOR

Net Asset Value:	<b>9.82</b>	Prev Close:	<b>9.82</b>
Trade Time:	<b>Jun 27</b>	YTD Return*:	<b>6.88%</b>
Change:	<b>↑ 0.12 (1.24%)</b>	Net Assets*:	<b>1.28B</b>
		Yield*:	<b>N/A</b>

\* As of 31-May-11

Quotes delayed, except where indicated otherwise. Currency in USD.

## Headlines

[Filter Headlines](#)

- No Headlines available for STAEX at this time.

JPMorgan Large Cap Value Fund Select HLQVX

Market Close Date: July 22, 2011

Net Asset Value:	\$11.3700	Change Net / %:	-0.02 ▼ -0.18%
Previous NAV:	\$11.39	Ask:	\$11.3700

---

Vanguard Information Technology Idx Adm (MUTF:VITAX) [Watch this mutual fund](#)

**33.69** **+0.41 (1.23%)**

Jul 22, 4:00PM EDT Overall Morningstar Rating™ ★★★★★



# 1

## Is it a *mutual fund*?

---

Pay attention to the ticker symbol!

Wells Fargo Advantage Endeavor Select Fund: STAEX

JPMorgan Large Cap Value Select Fund: HLQVX

Vanguard Information Technology Index: VITAX

- 5 letters
- Last letter is X

# iShares Dow Jones US Financial Sector (IYF)

(IYF)

?????

More On IYF

QUOTES

Summary

Order Book

Options

Historical Prices

CHARTS

Interactive

Basic Chart

Basic Tech. Analysis

NEWS & INFO

Headlines

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Market Pulse **NEW!**

ETF

Profile

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Holdings

Risk

ANALYST

## iShares Dow Jones U.S. Financia (NYSEArca: IYF )

REAL-TIME 56.24 ↓ 0.25 (0.44%) 1:39PM EDT

Last Trade:	<b>56.23</b>	Day's Range:	<b>55.68 - 56.30</b>
Trade Time:	<b>1:25PM EDT</b>	52wk Range:	<b>48.13 - 61.61</b>
Change:	<b>↓ 0.26 (0.46%)</b>	Volume:	<b>200,934</b>
Prev Close:	<b>56.49</b>	Avg Vol (3m):	<b>364,203</b>
Open:	<b>55.92</b>	YTD Return (Mkt) <sup>2</sup> :	<b>-1.45%</b>
Bid:	<b>56.23 x 7000</b>	Net Assets <sup>2</sup> :	<b>487.35M</b>
Ask:	<b>56.25 x 200</b>	P/E (ttm) <sup>2</sup> :	<b>13</b>
NAV <sup>1</sup> :	<b>53</b>	Yield (ttm) <sup>2</sup> :	<b>1.25</b>

<sup>1</sup>As of Oct 6, 2010

<sup>2</sup>As of Jun 30, 2011

People viewing **IYF** also viewed:

**SLV IYW IYM XLF IYE C**

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM N-Q**

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**QUARTERLY SCHEDULE OF PORTFOLIO HOLDINGS OF REGISTERED  
MANAGEMENT INVESTMENT COMPANY**

Investment Company Act file number 811-09729

---

**iShares Trust**

(Exact name of registrant as specified in charter)

---

c/o: State Street Bank and Trust Company  
200 Clarendon Street, Boston, MA 02116-5021  
(Address of principal executive offices) (Zip code)

The Corporation Trust Company  
1209 Orange Street, Wilmington, DE 19801  
(Name and address of agent for service)

## Notes to Schedules of Investments (Unaudited)

### *iSHARES® TRUST*

iShares Trust (the “Trust”) is registered under the **Investment Company Act of 1940**, as amended (the “1940 Act”), as an open-end management investment company. The Trust was established as a Delaware statutory trust pursuant to an Agreement and Declaration of Trust dated December 16, 1999.

These notes relate only to the schedules of investments for the iShares Cohen & Steers Realty Majors, iShares Dow Jones International Select Dividend, iShares Dow Jones Select Dividend, iShares Dow Jones Transportation Average, iShares Dow Jones U.S., iShares Dow Jones U.S. Aerospace & Defense, iShares Dow Jones U.S. Basic Materials Sector, iShares Dow Jones U.S. Broker-Dealers, iShares Dow Jones U.S. Consumer Goods Sector, iShares Dow Jones U.S. Consumer Services Sector, iShares Dow Jones U.S. Energy Sector, iShares Dow Jones U.S. Financial Sector, iShares Dow Jones U.S. Financial Services, iShares Dow Jones U.S. Healthcare Providers, iShares Dow Jones U.S. Healthcare Sector, iShares Dow Jones U.S. Home Construction, iShares Dow Jones U.S. Industrial Sector, iShares Dow Jones U.S. Insurance, iShares Dow Jones U.S. Medical Devices, iShares Dow Jones U.S. Oil & Gas Exploration & Production, iShares Dow Jones U.S. Oil Equipment & Services, iShares Dow Jones U.S. Pharmaceuticals, iShares Dow Jones U.S. Real Estate, iShares Dow Jones U.S. Regional Banks, iShares Dow Jones U.S. Technology Sector, iShares Dow Jones U.S. Telecommunications Sector, iShares Dow Jones U.S. Utilities Sector, iShares FTSE EPRA/NAREIT Developed Asia, iShares FTSE EPRA/NAREIT Developed Europe, iShares FTSE EPRA/NAREIT Developed Real Estate ex-U.S., iShares FTSE EPRA/NAREIT North America, iShares FTSE NAREIT Industrial/Office Capped, iShares FTSE NAREIT Mortgage Plus Capped, iShares FTSE NAREIT Real Estate 50, iShares FTSE NAREIT Residential Plus Capped, iShares FTSE NAREIT Retail Capped, iShares Morningstar Large Core, iShares Morningstar Large Growth, iShares Morningstar Large Value, iShares Morningstar Mid Core, iShares Morningstar Mid Growth, iShares Morningstar Mid Value, iShares Morningstar Small Core, iShares Morningstar Small Growth, iShares Morningstar Small Value, iShares MSCI KLD 400 Social (formerly iShares FTSE KLD 400 Social Index Fund) and iShares MSCI USA ESG Select Social (formerly iShares FTSE KLD Select Social Index Fund) Index Funds (each, a “Fund,” collectively, the “Funds”).

### ***1. SIGNIFICANT ACCOUNTING POLICIES***

S-1 1 g04054sv1.htm GREENHAVEN CONTINUOUS COMMODITY INDEX FUND

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AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON November 3, 2006

REGISTRATION NO. 333-\_\_\_\_\_  
REGISTRATION NO. 333-\_\_\_\_\_

**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, DC 20549

**FORM S-1**

REGISTRATION STATEMENT  
*UNDER*  
*THE SECURITIES ACT OF 1933*

**GREENHAVEN CONTINUOUS COMMODITY INDEX FUND**  
**GREENHAVEN CONTINUOUS COMMODITY INDEX MASTER FUND**

(Rule 140 Co-Registrant)  
(Exact Name of Registrant as Specified in its Charter)

Delaware  
(State of Organization)

6779  
(Primary Standard Industrial  
Classification Code Number)

00000000 (I.R.S. Employer  
Identification Number)

c/o GreenHaven Commodity Services  
3340 Peachtree Road, Suite 1910

c/o GreenHaven Commodity Services  
3340 Peachtree Road, Suite 1910

# Exemptions for mutual funds



Will the particular matter affect only the holdings of the mutual fund, not the fund as an entity?

# Exemptions for mutual funds



Is it diversified or sector?

Does the mutual fund have a **stated policy** of **concentrating** its investments in an **industry, business, single country** other than the United States, or **bonds of a single State** within the United States?

# Wells Fargo Advantage Endeavor Select Fund: STAEX

## Performance & Risk

YTD Return:	<b>6.88%</b>
5y Avg Return:	<b>2.89%</b>
Rank in Category (ytd):	<b>59</b>
% Rank in Category (ytd):	<b>3.44%</b>
Beta (3y):	<b>1.04</b>
Morningstar Risk Rating:	<b>4</b>

[Performance Details](#) | [Risk Details](#)

## Fund Summary

The investment seeks long-term capital appreciation. The fund normally invests at least 80% of total assets in equity securities and up to 25% of total assets in foreign securities through ADRs and similar investments. It principally invests in the equity securities of approximately 30 to 40 companies that offer the potential for capital growth. The fund selects equity securities of any size. It may use futures, options or swap agreements, as well as other derivatives, to manage risk or to enhance return. The fund is non-diversified. [View More](#)

[Fund Profile](#)

# Test *Your* Knowledge

---

The investment seeks long-term capital appreciation. The fund normally invests at least 80% of total assets in equity securities and up to 25% of total assets in foreign securities through ADRs and similar investments. It principally invests in the equity securities of approximately 30 to 40 companies that offer the potential for capital growth. The fund selects equity securities of any size. It may use futures, options or swap agreements, as well as other derivatives, to manage risk or to enhance return. The fund is non-diversified.

DIVERSIFIED OR SECTOR FUND?



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## Individual Investor

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- Research Our Funds
- Retirement
- College
- Investing Basics

- Money Market Funds
- Bond Funds
- Asset Allocation Funds
- Stock Funds**
  - Large Cap**
  - Small/Mid Cap
  - International
  - Specialty
  - Load Funds

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Symbol

**New**

**AdvantageVoice<sup>SM</sup>**

*Opening the door to investment conversations*

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 [Fund Profiles](#) > 
 [Stock Funds](#)

### Wells Fargo Advantage Endeavor Select Fund – STAEX

Class A

CUSIP	949915599
Share Price 06-27-11	9.82
Daily Change	0.12
YTD Return	0.82%
Morningstar Category	Large Growth
Inception Date	12-29-2000
Fund Number	3310
Net Fund Assets as of 05-31-2011	\$1,284,661,724.81
Overall Morningstar Rating™ (out of 1482 funds) as of 05-31-2011	★★ <a href="#">View Details</a>

**More Information**

- [View the sales charge guide.](#)
- [Learn how to reduce or eliminate sales charges.](#)
- [Download the fund's full prospectus or summary prospectus.](#)
- [View the fund's fact sheet.](#)

CLICK ON THE TABS BELOW FOR ADDITIONAL INFORMATION ON THIS FUND:

- Performance
- Fund Management
- Fund Holdings**
- Fund Facts

# JPMorgan Large Cap Value Select Fund: HLQVX

Fund Inception Date:	Mar 1, 1991
----------------------	-------------

## Morningstar Style Box

### Large Value

[View Category Definition]

### View Top Large Value Funds

About the Morningstar Style Box

			<b>Size</b> Large	
				Medium
				Small
<b>Value</b>	<b>Blend</b>	<b>Growth</b>	<b>Investment Valuation</b>	

## Management Information

### Alan Gutmann

Lead Manager since Sep 1, 2004

Alan Gutmann, vice president, is a portfolio manager in the large cap Active Value Strategy Team within the U.S. Equity Group. An employee since 2003, Alan was

## Fund Summary

The investment seeks capital appreciation with the incidental goal of achieving current income by investing primarily in equity securities. The fund normally invests at least 80% of assets in equity securities of large companies, including common stocks, and debt and preferred stocks which are convertible to common stock. Large companies are companies with market capitalizations equal to those within the universe of the Russell 1000® Value Index at the time of purchase. The fund invests primarily in common stocks.

## Fund Operations

Last Dividend (Jun 30, 2011) :	0.03
Last Cap Gain :	0.00
Annual Holdings Turnover (Jul 13, 2011) :	86.00%
Average for Category:	58.20%

## Fees & Expenses

Expense	HLQVX	Category Avg
Annual Report Expense Ratio (net):	0.85%	1.27%

# Test *Your* Knowledge

---

The investment seeks capital appreciation with the incidental goal of achieving current income by investing primarily in equity securities. The fund normally invests at least 80% of assets in equity securities of large companies, including common stocks, and debt and preferred stocks which are convertible to common stock. Large companies are companies with market capitalizations equal to those within the universe of the Russell 1000 Value Index at the time of purchase. The fund invests primarily in common stocks.

DIVERSIFIED OR SECTOR FUND?

# Vanguard Information Technology Index: VITAX

## **Strategy and policy**

### **Investment strategy**

The fund employs a “passive management”—or indexing—investment approach designed to track the performance of the MSCI US Investable Market Information Technology 25/50 Index, an index of stocks of large, medium-size, and small U.S. companies in the information technology sector, as classified under the Global Industry Classification Standard (GICS). This GICS sector is made up of companies in the following three general areas: technology software and services including companies that primarily develop software in various fields (such as the Internet, applications, systems, databases, management, and/or home entertainment), and companies that provide information technology consulting and services, data processing, and outsourced services; technology hardware and equipment, including manufacturers and distributors of communications equipment, computers and peripherals, electronic equipment, and related instruments; and semiconductors and semiconductor equipment manufacturers. The fund attempts to replicate the target index by investing all, or substantially all, of its assets in the stocks that make up the index, holding each stock in approximately the same proportion as its weighting in the index. The fund may also sample its target index by holding stocks that, in the aggregate, are intended to approximate the index in terms of key characteristics, such as price/earnings ratio, earnings growth, and dividend yield. Typically, the fund will use a sampling strategy only if regulatory constraints or other considerations prevent it from replicating the index.

### **Investment policy**

# Test Your Knowledge

---

The fund employs a “passive management”—or indexing—investment approach designed to track the performance of the MSCI US Investable Market Information Technology 25/50 Index, an index of stocks of large, medium-size, and small U.S. companies in the information technology sector, as classified under the Global Industry Classification Standard (GICS). This GICS sector is made up of companies in the following three general areas: technology software and services including companies that primarily develop software in various fields (such as the Internet, applications, systems, databases, management, and/or home entertainment), and companies that provide information technology consulting and services, data processing, and outsourced services; technology hardware and equipment, including manufacturers and distributors of communications equipment, computers and peripherals, electronic equipment, and related instruments; and semiconductors and semiconductor equipment manufacturers.

DIVERSIFIED OR SECTOR FUND?

# iShares Dow Jones U.S. Financial Sector Index Fund: IYF

## Principal Investment Strategies

The Underlying Index measures the performance of the financial sector of the U.S. equity market. The Underlying Index includes companies in the following industry groups: banks, non-life insurance, life insurance, real estate and general finance.

As of May 31, 2010, the Underlying Index was concentrated in the banks industry group, which comprised 41% of the market capitalization of the Underlying Index.

BFA uses a “passive” or indexing approach to try to achieve the Fund’s investment objective. Unlike many investment companies, the Fund does not try to “beat” the index it tracks and does not seek temporary defensive positions when markets decline or appear overvalued.

Indexing may eliminate the chance that the Fund will substantially outperform the Underlying Index but also may

variability and yield) and liquidity measures similar to those of the Underlying Index. The Fund may or may not hold all of the securities in the Underlying Index.

The Fund generally invests at least 90% of its assets in securities of the Underlying Index and in depositary receipts representing securities of the Underlying Index. The Fund may invest the remainder of its assets in securities not included in the Underlying Index but which BFA believes will help the Fund track the Underlying Index, and in futures contracts, options on futures contracts, options and swaps as well as cash and cash equivalents, including shares of money market funds advised by BFA or its affiliates.

The Underlying Index is sponsored by an organization (the “Index Provider”) that is independent of the Fund and BFA. The Index Provider determines the composition and relative weightings of the securities in the Underlying Index and publishes information regarding the

# Test *Your* Knowledge

---

The Underlying Index measures the performance of the financial sector of the U.S. equity market. The Underlying Index includes companies in the following industry groups: banks, non-life insurance, life insurance, real estate and general finance.

The Fund generally invests at least 90% of its assets in securities of the Underlying Index in depositary receipts representing securities of the Underlying index.

DIVERSIFIED OR SECTOR FUND?

August 25, 2000  
DO-00-030

# DO-00-030

MEMORANDUM

TO: Designated Agency Ethics Officials

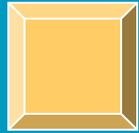
FROM: F. Gary Davis  
Acting Director

SUBJECT: Diversified and Sector Mutual Funds

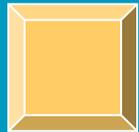
The Office of Government Ethics (OGE) is issuing this memorandum to provide guidance concerning the distinction between diversified mutual funds and sector mutual funds. This distinction is important for purposes of certain regulatory exemptions issued by OGE under the authority of 18 U.S.C. § 208(b)(2). OGE has received a number of requests from agency ethics officials for advice in this area. Moreover, OGE recently concluded a survey of agency experience and satisfaction with the regulatory exemptions, which are codified in subpart B of 5 C.F.R. part 2640. It was apparent from several of the responses that there was demand for legal and practical guidance concerning the application of the rules pertaining to diversified and sector mutual funds. The advice contained in this memorandum is an effort to meet that demand.

We note at the outset that this memorandum is intended only to provide general guidance. It is impossible not to take notice of the great number and variety of mutual funds on the market today.

# Exemptions for mutual funds



Wells Fargo Advantage  
Endeavor Select Fund



JPMorgan Large Cap Value  
Select Fund



Vanguard Information  
Technology Index



iShares Dow Jones U.S.  
Financial Sector Index Fund

status check

# Exemptions for mutual funds



Is the affected holding  
invested in the sector in which  
the fund concentrates?

# Test *Your* Knowledge

---

Vanguard Information Technology Index: VITAX

Apple stock

In the *Sector* or Not?

# Test *Your* Knowledge

---

iShares Dow Jones U.S. Financial Sector Index Fund

Apple, Motorola, Research in Motion....

In the *Sector* or Not?

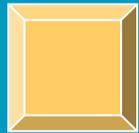
# Exemptions for mutual funds



Wells Fargo Advantage  
Endeavor Select Fund



JPMorgan Large Cap Value  
Select Fund



Vanguard Information  
Technology Index



iShares Dow Jones U.S.  
Financial Sector Index Fund

status check

# Exemptions for mutual funds



Is the **aggregate market value** of the employee's interests in all sector mutual funds that concentrate in the same sector and have one or more holdings that might be affected by the particular matter **\$50,000 or less**?

# Exemptions for mutual funds

\$12,000 invested in Vanguard Information  
Technology Index

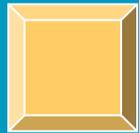
# Exemptions for mutual funds



Wells Fargo Advantage  
Endeavor Select Fund



JPMorgan Large Cap Value  
Select Fund



Vanguard Information  
Technology Index



iShares Dow Jones U.S.  
Financial Sector Index Fund

status check

# Presentation Overview

- OGE's interpretation of 18 U.S.C. 208
- De minimis exemptions for mutual funds
- De minimis exemptions for publicly traded securities

# § 2640.202 Exemptions for interests in securities.

- *(a) De minimis exemption for matters involving parties.* An employee may participate in any **particular matter** involving **specific parties** in which the disqualifying financial interest arises from the ownership by the employee, his spouse or minor children of **securities** issued by one or more entities affected by the matter, if:

## § 2640.202 Exemptions for interests in securities.

- (1) The securities are **publicly traded**, or are long-term Federal Government, or are municipal securities; and  
(2) The **aggregate market value** of the holdings of the employee, his spouse, and his minor children in the securities of all entities does not exceed **\$15,000**.

## § 2640.202 Exemptions for interests in securities.

- (c) *De minimis exemption for matters of general applicability.* (1) An employee may participate in any particular matter of general applicability, such as rulemaking, in which the disqualifying financial interest arises from the ownership by the employee, his spouse or minor children of securities issued by one or more entities affected by the matter, if:

## § 2640.202 Exemptions for interests in securities.

i) The securities are **publicly traded**, or are municipal securities, the market value of which does not exceed:

(A) **\$25,000** in any **one** such entity; **and**

(B) **\$50,000** in **all** affected entities; or

[...]

(2) For purposes of this paragraph (b), the value of securities owned by the employee, his spouse, and minor children must be **aggregated** in applying the exemption.

# Publicly Traded Securities

- De Minimus Securities
  - Specific party matters
    - No more than \$15,000 aggregate in all affected parties
    - No more than \$25,000 aggregate in all affected parties and non-parties.
  - Matters of General Applicability
    - No more than \$25,000 in one affected entity; no more than \$50,000 aggregate in all affected entities.

# Exemptions for publicly traded securities

Judy will be assigned to work on a regulation to set standards to reduce harmful bacteria at facilities that manufacture frozen dinners. Judy's husband and her 12 year old son inherited \$2,500 each in ConAgra stock last year when Judy's father-in-law died. Judy also has \$12,000 worth of stock in Nestlé.

- ConAgra Foods (manufacturer of Healthy Choice and Banquet frozen meals)
- Nestlé S.A. (manufacturer of Stouffers and Lean Cuisine frozen meals)

Scenario #1

# Exemptions for publicly traded securities



1

Does the employee, employee's spouse, or employee's minor child own securities issued by one or more entities affected by the matter?

# 1

## What is a *security*?

*Security* means common stock, preferred stock, corporate bond, municipal security, long-term Federal Government security, and limited partnership interest. The term also includes “mutual fund” for purposes of §2640.202(e) and (f) and §2640.203(a).



5 CFR § 2640.102(r)



# Exemptions for publicly traded securities



Are the affected securities publicly traded or long-term government securities or municipal securities?

# 1

## What is a *publicly traded security*?

A *security* (as defined in (r)) that is..."Registered with the Securities and Exchange Commission pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78 ) and **listed on a national or regional securities exchange or traded through NASDAQ**"

5 CFR § 2640.102(p)(1)



Note to paragraph (p): National securities exchanges include the American Stock Exchange and the New York Stock Exchange. Regional exchanges include Boston, Cincinnati, Intermountain (Salt Lake City), Midwest (Chicago), Pacific (Los Angeles and San Francisco), Philadelphia (Philadelphia and Miami), and Spokane stock exchanges.

Google finance

Get quotes

Example: "CSCO" or "Google"

Company

ConAgra Foods, Inc. (Public, NYSE:CAG) [Watch this stock](#)

Summary

**26.40** -0.12 (-0.45%)  
Real-time: 12:33PM EDT  
NYSE real-time data - [Disclaimer](#)  
Currency in USD

Range	26.26 - 26.60	Mkt cap	10.79B	Shares	408.89M
52 week	21.02 - 26.60	P/E	13.87	Beta	0.73
Open	26.26	Div/yield	0.23/3.48	Inst. own	69%
Vol / Avg.	1.43M/5.27M	EPS	1.90		

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Markets

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Zoom: [1d](#) [5d](#) [1m](#) [3m](#) [6m](#) [YTD](#) [1y](#) [5y](#) [10y](#) [All](#)

Jul 22, 2011 13:18 Price: 26.42 Vol: 33.84k



Volume (thous / 2min)

NSRGY.PK 46.82 +0.00 RYCEY.PK 42.03 +0.00 NSLYF.PK 11.50 +0.00 NESTLESL.BO 2,741.15 settings

NESTLE SA REG SHRS S (NSRGY.PK) May 5: 46.82 0.00 (0.00%)

More On NSRGY.PK

- Quotes
  - Summary
  - Real-Time
  - Options
  - Historical Prices

- Charts
  - Interactive
  - Basic Chart
  - Basic Tech. Analysis

- News & Info
  - Headlines
  - Financial Blogs
  - Company Events
  - Message Boards

- Company
  - Profile
  - Key Statistics
  - SEC Filings
  - Competitors
  - Industry
  - Components

NESTLE SA REG SHRS S (Other OTC: NSRGY.PK)

Last Trade:	<b>46.82</b>	Day's Range:	<b>N/A - N/A</b>
Trade Time:	<b>May 5</b>	52wk Range:	<b>34.02 - 51.63</b>
Change:	<b>0.00 (0.00%)</b>	Volume:	<b>0</b>
Prev Close:	<b>46.82</b>	Avg Vol (3m):	<b>559,316</b>
Open:	<b>N/A</b>	Market Cap:	<b>N/A</b>
Bid:	<b>N/A</b>	P/E (ttm):	<b>N/A</b>
Ask:	<b>N/A</b>	EPS (ttm):	<b>N/A</b>
1y Target Est:	<b>57.05</b>	Div & Yield:	<b>N/A (N/A)</b>

Quotes delayed, except where indicated otherwise. Currency in USD.

Online \$7 Trades! Click to find out more!



- + Add NSRGY.PK to Your Portfolio
- 🔔 Set Alert for NSRGY.PK
- 📄 Download Data
- 📱 Updates on your phone
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COMMUNITY

NEWSROOM

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- ▶ Welcome
- ▶ Nestlé at a Glance
- ▶ What's New at Nestlé
- ▶ Nestlé Timeline
- ▶ Investor Relations
- ▶ Frequently Asked Questions
- ▶ In the News

Learn more about Nestlé USA brands

-- select brand -- ▼



### Introduction

Nestlé S.A. ("Nestlé") is a Swiss stock traded in the United States in the form of American Depositary Receipts (ADRs). The ADRs are based on Nestlé registered shares that trade in Zurich. This site is intended to provide information related to Nestlé ADRs.

- [Nestlé Stock Ticker – ir.nestle.com](#)
- [Nestlé S.A. – Key Facts for ADR Holders](#)
- [Nestlé Stock Quotes – ADR Stock Quote Information](#)
- [Nestlé Purina PetCare Company – Key Facts for Purina Shareholders](#)

Disclaimer: The information on this page does not constitute advice by Nestlé USA, Inc. and does not constitute an offer to either sell or purchase Nestlé ADRs.

# Exemptions for publicly traded securities



Will the employee be participating in a particular matter involving specific parties or a particular matter of general applicability?

<b>Matters involving Specific Parties</b>	<b>Matters of General Applicability</b>
<ul style="list-style-type: none"><li>• No more than \$15,000 aggregate in all affected parties</li><li>• No more than \$25,000 aggregate in all affected parties and non-parties.</li></ul>	<ul style="list-style-type: none"><li>• No more than \$25,000 in one affected entity; no more than \$50,000 aggregate in all affected entities.</li></ul>

Summarized from 5 CFR § 2640.202

# Test *Your* Knowledge

---

Judy will be assigned to work on a regulation to set standards to reduce harmful bacteria at facilities that manufacture frozen dinners.

Is this...

1. A Particular Matter Involving Specific Parties
2. A Particular Matter of General Applicability
3. Not a Particular Matter

## **Matters involving Specific Parties**

- No more than \$15,000 aggregate in all affected parties
- No more than \$25,000 aggregate in all affected parties and non-parties.

## **Matters of General Applicability**

- No more than \$25,000 in one affected entity; no more than \$50,000 aggregate in all affected entities.

# Exemptions for publicly traded securities



4

Particular matters of  
general applicability

Is the market value of the publicly traded securities \$25,000 or less in any one such affected entity and \$50,000 or less in all affected entities?

Publicly Traded Securities  
De minimus exemption for matters of general  
applicability  
5 C.F.R. 2640.202(c)(i)

**\$5,000** in ConAgra stock

**\$12,000** in Nestlé stock



\$25,000 or less in any  
single affected entity



\$50,000 or less in all  
affected entities

# Exemptions for publicly traded securities

James, an attorney with the Department of Justice, is assigned to work on a government lawsuit against several pharmaceutical manufacturers for price-fixing. His portfolio includes stock in four of the 25 manufacturers named in the suit:

- \$4,500 in PharmaCorp stock
- \$8,000 in Stewart Holdings stock
- \$3,000 in Topeka Chemical Industries stock
- \$1,100 in KimCo Bio-Medical Solutions stock

Scenario #2

# 1

---



Does the employee, employee's spouse, or employee's minor child own **securities** issued by one or more entities affected by the matter?

# 2

---



Are the affected securities **publicly traded** or long-term government securities or municipal securities?

# Exemptions for publicly traded securities



Will the employee be participating in a particular matter involving specific parties or a particular matter of general applicability?

# Test *Your* Knowledge

---

James, an attorney with the Department of Justice, is assigned to work on a government lawsuit against several pharmaceutical manufacturers for price-fixing.

Is this...

1. A Particular Matter Involving Specific Parties
2. A Particular Matter of General Applicability
3. Not a Particular Matter

## **Matters involving Specific Parties**

- No more than \$15,000 aggregate in all affected parties
- No more than \$25,000 aggregate in all affected parties and non-parties.

## **Matters of General Applicability**

- No more than \$25,000 in one affected entity; no more than \$50,000 aggregate in all affected entities.

# 4



Is the aggregate market value of holdings of the employee, his spouse, and minor child in the securities of all entities that are *parties* \$15,000 or less?

\$4,500 (PharmaCorp) + \$8,000 (Stewart Holdings) + \$3,000 (Topeka Chemical) + \$1,100 (KimCo) =

# De Minimis Exemptions

Janet, a Special Agent with the United States Secret Service, is assigned to work on a mortgage fraud investigation. Her portfolio includes:

- \$200,000 invested in the JPMorgan Large Cap Value Select Fund. She knows that 6% of the Fund is invested in MegaBankCorp, one of the banks that is a target of the investigation.
- \$47,000 invested in the iShares Dow Jones U.S. Financial Sector Index Fund.
- \$4,500 in MegaBankCorp stock (publicly traded)

Scenario #3

# Test *Your* Knowledge

---

**\$200,000** in JPMorgan Large Cap Value Select Fund

**\$47,000** in iShares Dow Jones U.S. Financial Sector Index Fund

**\$4,500** in MegaBankCorp Stock

May Janet work on the investigation?

# Mutual Funds & Publicly Traded Securities

**\$200,000** in JPMorgan Large Cap Value Select Fund

**\$47,000** in iShares Dow Jones U.S. Financial Sector  
Index Fund

**\$4,500** in MegaBankCorp Stock

# Remedies

- Recusal

- Divestiture

- Regulatory Exemption

- Resignation

- Reassignment

- 208 Waiver



Telecommunication Sector Soars Amidst Global Economic Downturn

How to Profit on America's New Era of Turbulence

# A word of caution...

Bulls are back. Send in the bears?

Indexes have rallied strongly, but investor fears persist.





Does your agency regularly issue cautionary memos to financial disclosure filers who have financial interests that could create a conflict of interest?

# Resources

[www.oge.gov](http://www.oge.gov)

5 C.F.R. part 2640 ( 208 Interpretation, exemptions, waivers)

## DAEOgrams

DO-00-030 Diversified and Sector Mutual Funds

DO-06-029 “Particular Matter Involving Specific Parties,” “Particular Matter,”  
“Matter”

DO-07-006 Waivers Under 18 U.S.C. 208

## Financial Instruments

Public Financial Disclosure Reviewer’s Guide

Public Financial Disclosure: A Guide to Reporting Selected Financial  
Instruments

# Summary

- OGE's interpretation of 18 U.S.C. 208
- De minimis exemptions for mutual funds
- De minimis exemptions for publicly traded securities

# REAL ETHICS: TIPS and **Trends** in Ethics Enforcement

Diana Veilleux

Associate General Counsel

Office of Government Ethics

Justina Fugh

Senior Counsel for Ethics

US EPA

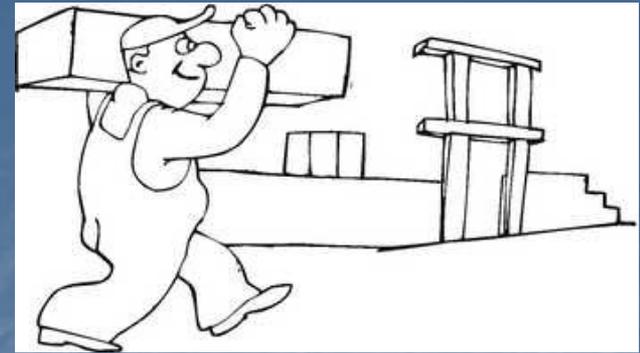


# OUR ROAD MAP



- The traditional ethics enforcement model
- Tips for dealing with *real life* ethics situations
- **Trends** in ethics enforcement

# ETHICS FRAMEWORK



All Federal employees are subject to:

- The Standards of Ethical Conduct
- Title 18 of the US Code
- Hatch Act
- Inspector General Act, 5 USC App, § 7a

# Deep Lawyer Thoughts



- Professional responsibility (see model rule 8.3)
- Who's your client?
  - The Agency? The employee?
- In ethics, there is no attorney-client privilege

# Managing Tension Between Employees and Your Duty



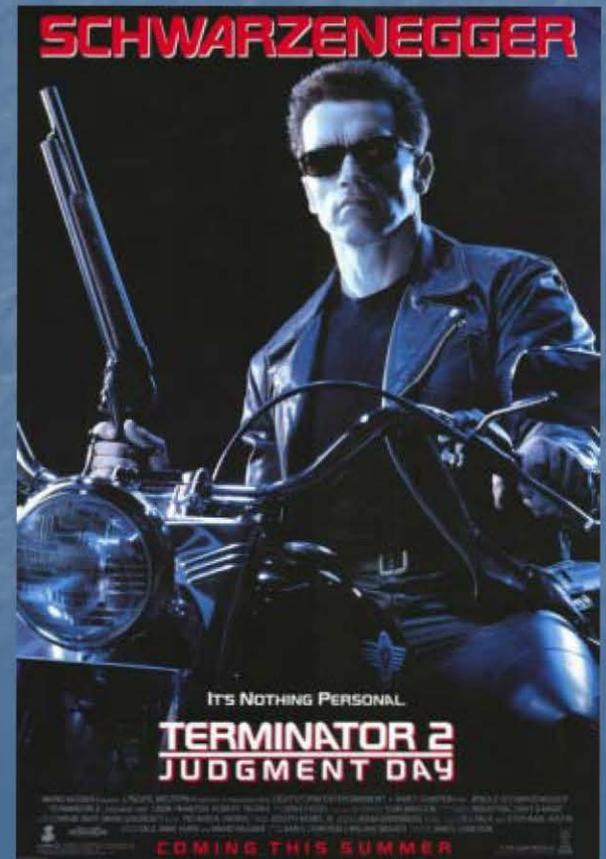
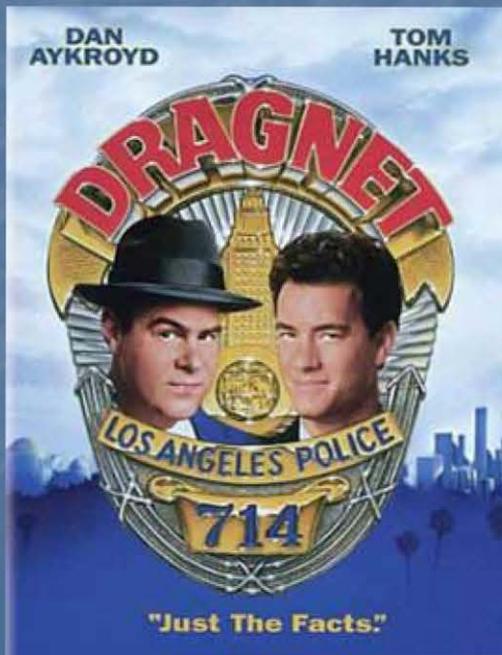
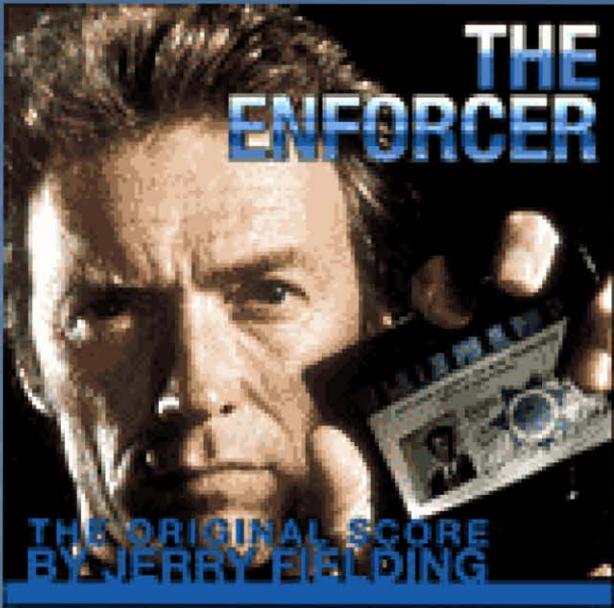
- Invite people to come to you with questions
- Elicit facts but don't investigate
- Deal appropriately with issues that arise (don't ignore them)

QUERY:



What is "ethics enforcement" ?

(Hmm, what do YOU think it means?)



# Traditional Role of Ethics Officials



- Administer the Agency's ethics program
  - Education
  - Counseling
  - Advice
- All are "enforcement" activities -- they assist in carrying out ethics laws and regulations

# Cast of Characters in Enforcement



- Ethics Officials
- Human Resources
- Office of General Counsel
- Office of Inspector General

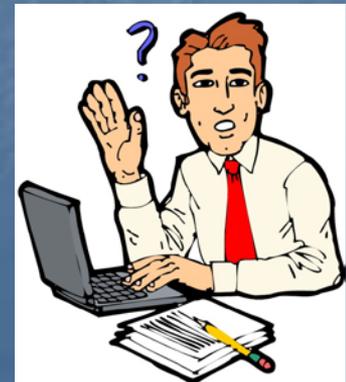
# TIP



- Establish relationships with other offices that also deal with ethics issues
  - leads to information sharing and consistency
- Include ethics charges on your agency table of penalties
  - inclusion shows that agency takes ethics violations seriously

# Real Ethics

- Someone shares facts with you that suggest an ethics violation
  - Example: Snooki, a current employee, calls because she is leaving the Agency to work for a contractor
- Let's vote on what to do



# TIP: How and When To Contact the IG?



- Obligated to report fraud, waste, abuse or corruption
- Provide the facts you know
- Explain the ethics violation clearly
- Go ahead and give your opinion
- The IG is not the enemy

# Trends in Ethics



- Ethics enforcement generates ...
  - Referrals to DOJ
  - Disciplinary actions
  - Cases at the Merit Systems Protection Board (MSPB)

# Let's Do the Numbers: DISCIPLINARY ACTIONS

Year	Related to Conflicts of Interest	Related to Standards of Conduct
2007	98	2,854
2008	38	3,149
2009	79	3,695
2010	95	2,711

SOURCE: OGE annual survey -- includes removals, demotions, suspensions and written reprimands

# Let's Do the Numbers: COI REFERRALS

Year	By Ethics Officials to OIG	By Agencies to DOJ
2007	102	76
2008	126	50
2009	140	64
2010	139	65

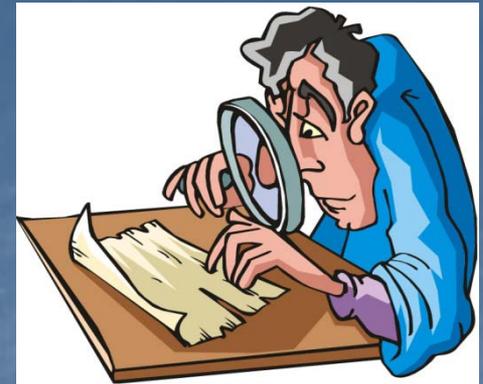
SOURCE: OGE annual survey

# Who Reports COI Referrals to DOJ?



1. DAEO
2. Tie: General Counsel / Inspector General
3. Agency Head
4. Agency Head
5. Other

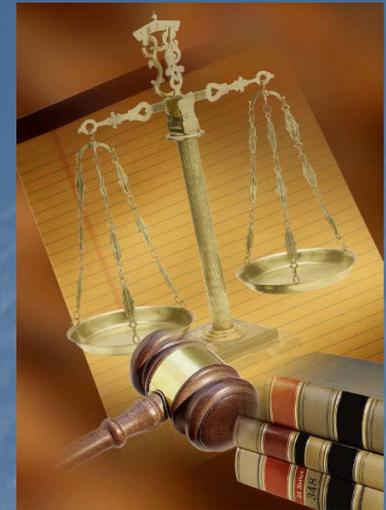
# Your scrutiny is useful!



- Determine on the merits what constitutes an ethics violation
- Provide information regarding ethics training that can mitigate or aggravate a penalty

# Trends at the MSPB

- Cases involving ethics issues may involve serious disciplinary actions
- Ethics charges are may be bundled with other charges
- Administrative discipline may flow from violations of conflict of interest laws



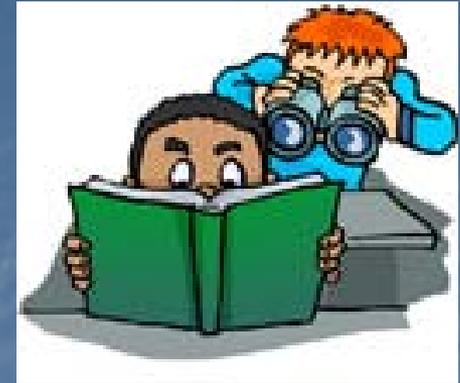
# Ethics Matters



- Even broad or general violations can lead to removal
  - Sanghi v. Principi (VA physician fired for violating § 2635.101(b)(5) [court case])
  - Suarez v. HUD (removal upheld for violating § 2635.101) [MSPB case]
- MSPB sustained removal based on finding of intent in case involving 18 U.S.C. § 209
  - Berman v. Dep't of Interior [MSPB case]

# We Know You Know

(or were supposed to know)



- MSPB frequently considers whether the employee received ethics training
- Knowledge of rules applies both to the merits of the charge and the penalty
- Examples: Sher v. VA, Callis v. DOJ

# Whistleblowing



- MSPB says: reporting an ethics violation is protected whistleblowing
- **Trend:** MSPB is hearing more whistleblowing cases on the merits

# Summing It All Up



- Enforce conflict of interest laws and ethics regulations
- Strive to continue to expand and refine your relationship with others in your Agency

# Questions?



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**EXCERPTS from  
US EPA ORDER 3120.1 (CONDUCT AND DISCIPLINE)  
APPENDIX -- Table of Offenses and Penalties**

This table should be used as a guide by supervisors in order to facilitate comparable action throughout the Agency, in comparable cases. While penalties for offenses will usually fall within the ranges indicated in unusual circumstances greater or lesser penalties may be applied unless otherwise provided by law. The list of offenses in this table is not meant to be all inclusive. For offenses not listed, penalties may be imposed which are consistent with penalties listed in the table for offenses of comparable gravity. Days always means calendar days.

Nature of Offense	1st Offense	2nd Offense	3rd Offense
<b>7. Conduct which is generally criminal, infamous, dishonest, immoral or notoriously disgraceful.</b>	Written reprimand to removal	30-day suspension to removal	removal
<b>10. Stealing, actual or attempted; unauthorized possession of Government property or property of others.</b>			
<b>a.</b> Where substantial value is not involved.	Written reprimand to 30-day suspension	14-day suspension to removal	removal
<b>b.</b> Where substantial value is involved.	Written reprimand to removal	removal	
<b>11. Using Government property or Government employees in duty status for other than official purposes</b> Penalty depends on the value of the property or amount of employees time involved, the nature of the position held by the offending employee, and other factors. (For misuse of Government vehicles, see 43 below.)	Written reprimand to removal	5-day suspension to removal	14-day suspension to removal
<b>12. Use of official authority or information for private gain</b>	14-day suspension to removal	removal	
<b>13. Failure to obtain required clearance of an official speech or article.</b>	Written reprimand to 5-day suspension	5-day to 14-day suspension	14-day suspension to removal
<b>14. Engaging in private business activities which result in or create the appearance of a conflict of interest</b>	Written reprimand to removal	20-day suspension to removal	removal
<b>15. Misuse of official Government credential</b>	Written reprimand to removal	5-day suspension to removal	1-day suspension to removal

Nature of Offense	1st Offense	2nd Offense	3rd Offense
<b>20. Insubordinate defiance of authority, disregard of directive, refusal to comply with proper order.</b>	Written reprimand to 14-day suspension	5-day suspension to removal	removal
<b>27. Forging or falsifying official Government records or documents.</b>	Written reprimand to removal	removal	
<b>30. Conducting personal affairs while in duty status.</b>	Written reprimand to 1-day suspension.	2-day to 10 day suspension.	30-day suspension to removal
<b>35. Reprisal against an employee for providing information to an Office of Inspector General (or equivalent) or the Office of Special Counsel, or to an EEO investigator, or for testifying in an official proceeding.</b>	Written reprimand to removal	14-day suspension to removal	30-day suspension to removal
<b>36. Reprisal against an employee for exercising a right provided under 5 U.S.C. Chap 71 (governing Federal labor-management relations).</b>	Written reprimand to removal	14-day suspension to removal	30-day suspension to removal
<b>37. Finding by MSPB of refusal to comply with MSPB order of violation of statute causing issuance of special counsel complaint. [5 U.S.C. 1206 (g) (1) and 1207 (b)]</b>	Written reprimand to removal, debarment from Federal Service not to exceed 5 years, or assessment of civil penalty not to exceed \$1,000.		
<b>38. Directing or rendering services not covered by appropriations. [5 U.S.C. 3103]</b>	removal		
<b>39. Prohibited political activity.</b>			
<b>a. Violation of prohibition against political contributions. [5 U.S.C. 7323]</b>	removal		
<b>b. Violation of prohibition against campaigning or influencing elections. [5 U.S.C. 7324 and 7325]</b>	30-day suspension to removal		
<b>41. Soliciting contributions for a gift for a superior; making a donation as a gift to a superior; accepting a gift from an employee receiving less pay. [5 U.S.C. 7351]</b>	removal		

Nature of Offense	1st Offense	2nd Offense	3rd Offense
<b>42. Action against national security. [5 U.S.C. 7532]</b>	Suspension to removal		
<b>43. Willfully using or authorizing the use of a government passenger motor vehicle or aircraft for other than official purposes. [31 U.S.C. 1344]</b>	30-day suspension to removal		
<b>44. Willful concealment, removal, mutilation or destruction of a public record. [18 U.S.C. 2071]</b>	removal		
<b>46. Resources Management</b>			
Initiating and deciding officials should be aware that actions taken in good faith and without negligence are not intended to be actionable.			
e. Any resources management decision or action or use of official authority or influence that results in a violation of the Standards of Ethical Conduct for Employees of the Executive Branch at CFR Part 2635 or in violation of the Federal Acquisition Regulation at 48 CFR Part 3.104.	Written warning to 3-day suspension	Written letter of reprimand to 30-day suspension	30-day suspension to removal

**NOTE: Any suspension action taken against a member of the Senior Executive Service must be for a minimum of 15 days. See Section 5 U.S.C. 7541 - 7543 and 5 CFR Part 752, Subpart F.**

**RECENT CASES INVOLVING  
ETHICS AND CONFLICTS OF INTEREST  
AT THE MERIT SYSTEMS PROTECTION  
BOARD**

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August 2011

## **A. DISCIPLINE FOR VIOLATIONS OF CONFLICT OF INTEREST STATUTES**

### **1. 18 U.S.C. § 208 – ACTS AFFECTING A PERSONAL FINANCIAL INTEREST**

#### **Fea v. Dep't of the Army, 2008 MSPB LEXIS 4233 (Sept. 15, 2008).**

The appellant, a Deployable Training Operations Specialist, was removed from his position for: conduct unbecoming a federal employee; and failure to follow administrative regulations, specifically 18 U.S.C. § 208(a), DOD 5500.7, Chapter 5 Section 4, 5-400, 5 C.F.R. § 2635.101(b)(14) and Federal Acquisition Regulations (FAR) part 3.101-1. The appellant was charged with forming a company with another federal employee and two local nationals, for the purpose of bidding on a government contract on which he served as the Technical Oversight Representative (TOR). He was also charged with manipulating/unduly influencing the contract solicitation process to favor his company, which was ultimately awarded the contract.

On appeal to the MSPB, an administrative judge found that the appellant's actions violated 18 U.S.C. § 208(a), 5 C.F.R. § 2635.101(b)(14) and Federal Acquisition Regulation (FAR) part 3.101-1. The administrative judge found significant that the agency proved, through testimony and documentary evidence that the appellant knew or should have known that his conduct was improper because he had completed ethics training as part of his Technical Oversight Representative training.

#### **Gregory v. United States Postal Service, 2006 MSPB LEXIS 2882 (June 1, 2006).**

The appellant was demoted from the position of Postmaster, EAS-20, to the position of Part-Time Flexible Clerk, PS-05, based on charges that he failed to follow Postal Service regulations concerning his wife's request for reinstatement into a position at his post office and circumvented the normal selection and evaluation process in a manner that benefitted him and his wife. The appellant was charged with violating 18 U.S.C. § 208 and 5 C.F.R. §§ 2635.101 and .502, as well as several provisions of the Postal Service Employee and Labor Relations Manual (ELM). The appellant was the officer-in-charge at a post office, and was responsible for hiring and approving reinstatement and transfer requests. When the appellant's wife applied for a transfer to his post office, he was warned by a supervisor that hiring his wife was not in the best interests of the Postal Service because it would raise an appearance of impropriety. The supervisor denied the transfer request. When the appellant's wife applied to transfer a second time, the appellant delegated his reinstatement responsibilities to an acting supervisor who was under his direct supervision. However, the appellant failed to inform the acting supervisor of the previous warnings about the appearance of impropriety related to his wife's transfer request. In addition,

the appellant knew that the acting supervisor was not qualified to make reinstatement or transfer decisions due to lack of training.

On appeal to the MSPB, an administrative judge found that the appellant knew or should have known that he was required to turn over his wife's reinstatement request to the next higher management level and that he violated the cited laws and regulations when he, instead, delegated the matter to an untrained subordinate.

## **2. 18 U.S.C. § 209 – SALARY OF GOVERNMENT OFFICIALS AND EMPLOYEES PAYABLE ONLY BY THE UNITED STATES**

**Berman v. Dep't of Interior, 2009 MSPB LEXIS 5299 (M.S.P.B. Aug. 18, 2009), aff'd, 112 M.S.P.R. 657 (2009).**

Appellant was a GS-15 Economist, who was removed from his position on charges that he used his public office for private gain when he accepted \$383,600 from a private organization, the Project on Government Oversight (POGO), for performing his official duties, in violation of 18 U.S.C. § 209(a). The agency determined that any reasonable person should assume that a federal employee could not accept an extremely large cash award from an outside entity for performing his job duties, and that such an action created an appearance of impropriety. Prior to the removal action, both POGO and the appellant were found civilly liable for a violation of 18 U.S.C. § 209(a) by a jury in a district court case.<sup>1</sup>

The appellant appealed his removal to the MSPB, arguing that the charge of using public office for private gain in violation of section 209 required a showing of intent. The agency argued that collateral estoppel precluded any review by the Board of the jury's finding in the district court case that the appellant violated 18 U.S.C. § 209(a). The Administrative Judge determined, that through the application of collateral estoppel, the appellant's violation of section 209 was established by the jury finding in the district court case. Nevertheless, she addressed the appellant's arguments regarding intent, and agreed that intent was an element of a claim of use of public office for private gain, relying on Burkett v. General Services Administration, 27 M.S.P.R. 119, 122 (1985) and Walker v. United States Postal Service, 10 M.S.P.R. 341 (1982). She then found that intent had been established with regard to the appellant's actions, based on the totality of the circumstances in the case. Specifically, the administrative judge found that the appellant's failure to ascertain the acceptability of the payment from POGO, (by, for example,

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<sup>1</sup> The civil litigation in this case continues. Notably, the Court of Appeals for the District of Columbia Circuit vacated the jury verdict and remanded the case for a new trial. See United States v. POGO and Berman, 616 F.3d 544 (D.C. Cir. 2010). The D.C. Circuit determined that intent is a necessary element of proving a section 209(a) violation. In addition, Berman's appeal of the personnel action is pending at the Court of Appeals for the Federal Circuit.

consulting an agency ethics official) demonstrated a reckless disregard for ascertaining the truth and demonstrated his intent to use public office for private gain.

## **B. DISCIPLINE FOR VIOLATIONS OF OGE STANDARDS OF CONDUCT**

### **1. SUBPART A -- VIOLATIONS OF STANDARDS OF CONDUCT IN GENERAL**

#### **Voorhis v. Dep't of Homeland Security, 2010 MSPB LEXIS 1521 (May 5, 2010)(misuse of position; use of nonpublic information).**

The appellant, a GS-13 Senior Special Agent with Bureau of Immigration and Customs Enforcement (ICE), was removed from employment based on charges of conducting unauthorized queries of individuals on an official government computer database; making unauthorized disclosures; misuse of position; and lack of candor. The Colorado Bureau of Investigations (CBI) received a complaint from the Bill Ritter Democratic Gubernatorial Campaign reporting possible misuse of the National Crime Information Center (NCIC) database in connection with a televised political advertisement by the Robert (Bob) Beauprez Gubernatorial Campaign for Governor. Prior to running for governor, Ritter had been the Denver District Attorney (DDA). The television advertisement accused Ritter of giving lenient treatment to an illegal alien arrested on drug charges in Denver and claimed that a plea deal allowed the illegal alien to avoid deportation, which freed him to commit a subsequent sexual assault on a minor in California. The complaint alleged that the information used in the political ad was not public information and could only have come from the NCIC database. After an investigation of the CBI complaint, it was determined that the appellant had accessed information about Ritter's tenure as the District Attorney through the NCIC database and had provided information obtained through his queries to the opponent's political campaign for the purpose of damaging Ritter's record. In taking the removal action, the agency cited 5 C.F.R. § 2635 generally for the proposition that federal employees are not permitted to misuse their positions by allowing improper use of non-public information, and observed that the standards of conduct are "vital to ensure that every citizen can have complete confidence in the integrity of the federal government."

On appeal to the MSPB, an administrative judge sustained the misuse charge.

**Elhashash v. Dep't of Homeland Security, 2010 MSPB LEXIS 5503 ( Sept. 22, 2010)(conflict with official government duties; importance of agency mission).**

The appellant was removed from her position as a Customs and Border Protection Agriculture Specialist GS-11, with the Bureau of Customs and Border Protection (CBP), Department of Homeland Security based, in part, on charges that she engaged in conduct that created the appearance of a conflict of interest. The appellant posted bond for her brother-in-law, who was charged with an immigration violation and testified on his behalf at his deportation hearing dressed in her CBP uniform. Under DHS Standards of Conduct, employees must “avoid any action, whether or not specifically prohibited by agency Standards of Conduct (which cite Standards of Ethical Conduct for Employees of the Executive Branch; 5 C.F.R. Parts 735, 2635, Employee Responsibilities and Conduct), which might result in, or reasonably create the appearance of: Using public service for private gain; Engaging in activities which conflict with official government duties and/or responsibilities.”

On appeal to the MSPB, an administrative judge sustained the appearance of conflict of interest specifications. With regard to the appellant’s testifying on behalf of her brother-in-law at his deportation hearing, the administrative judge found that the appellant’s actions created an appearance of a conflict of interest because they were not in furtherance of her official duties and she was not authorized to testify in her official uniform. With regard to the posting of bail for her brother-in-law, the administrative judge found that the appellant’s conduct created the appearance of a conflict of interest because it contravened both her duties and the agency’s mission to enforce immigration laws.

**Sanghi v. Principi, Secretary, Dep’t of Veteran’s Affairs, 2005 U.S. Dist. LEXIS 18903 (D.D.C. 2005)(honest effort in performance of duties).**

The plaintiff, a VA physician, was terminated from employment on the grounds that he violated 5 C.F.R. § 2635.101(b)(5) when he failed and refused to timely complete patient discharge summaries despite several warnings and a suspension. A VA disciplinary appeals board affirmed the discharge and the plaintiff filed a civil action under Title 18, alleging that his removal was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; obtained without procedures required by law, rule, or regulation having been followed; and unsupported by substantial evidence.

The district court held that the proper procedures were followed in terminating the plaintiff and that his termination was supported by substantial evidence. The court concluded that the plaintiff did not meet the requirement in 5 C.F.R. § 2635.101(b)(5) that he put forth an honest effort in the performance of his duties because, although he had a fiduciary duty to his patients to complete their discharge summaries prior to the time they were actually discharged, he failed to timely prepare the reports and refused to work evenings and weekends to complete his outstanding work.

**Suarez v. Dep't of Housing and Urban Development, 96 M.S.P.R. 213 (2004)(circumstantial evidence sufficient to support violations of ethics rules; engaging in financial transactions using non-public information and actions creating an appearance of a violation of law or ethical standards).**

The appellant was removed from her position as a GS-11 Single Family Housing Specialist on the basis of two charges. First, it was alleged that she used privileged information concerning HUD property, gained through her HUD employment, in order to aid her companion in the purchase of the property in violation of 5 C.F.R. §§ 2635.101(b)(3) and 2635.2635.703(engaging in financial transactions using non-public information), § 2635.101(b)(8)(giving preferential treatment to a private organization or individual) and § 2635.101(b)(14)(avoiding actions creating an appearance of violating the law or ethical standards in OGE's regulations), in addition to 5 C.F.R. § 7501.104(a)(4)(HUD supplemental standard of conduct regulation). Second, it was alleged that she falsified a financial disclosure form (450) by failing to disclose her ownership interest in the disputed property and a loan taken to assist her partner with the purchase and improvement of the property.

On appeal to the MSPB, an administrative judge did not sustain any of the charges and reversed the removal action, finding that there was no direct evidence proving that the appellant engaged in any misconduct. The agency appealed the initial decision to the full Board. The MSPB found that the agency proved the violations of OGE standards of conduct prohibiting financial transactions using non-public information and actions creating an appearance of a violation of law of or ethical standards "through a preponderance of circumstantial evidence" and reinstated the removal. The Board stated that taken as a whole, there was compelling circumstantial evidence of violations of ethical standards. The Board also found that the appellant had falsified her OGE 450. The Board did not sustain the charges of preferential treatment or violation of HUD's supplemental regulations.

## **2. SUBPART B -- GIFTS FROM OUTSIDE SOURCES**

**Fletcher v. Dep't of Veterans Affairs, 2007 MSPB LEXIS 8047 (Nov. 1, 2007), aff'd, 108 M.S.P.R. 604 (2008)(failure to promptly return improper gifts equates to acceptance).**

The appellant was removed from her position as a Police Officer, GS-6, with the Department of Veterans Affairs Police Service. The agency's action was based on charges of: 1) accepting gifts; 2) conduct unbecoming a federal employee; and, 3) failing to comply with orders of an Administrative Board of Inquiry (ABI). The appellant had formed a friendship with a volunteer Eucharist Minister who worked at the medical facility where the appellant was employed. The friendship was based on the appellant's interest in converting. The appellant was not aware initially that the minister was also a patient at the medical center, but became aware of this fact

later. The appellant was given several gifts by the minister before she became aware that he was a medical facility patient, including gifts of a religious nature and jewelry. After an investigation was initiated into her relationship with the minister and after she learned that he was a patient at the medical facility, the appellant returned all of the gifts she had received from him. The appellant was charged with, among other things, accepting gifts/loans in violation of 5 C.F.R. §§ 2635.202(a), 2635.101(b)(7) and 2635.

On appeal to the MSPB, an administrative judge sustained the gift charge. The administrative judge noted that the minister could be considered a “prohibited source” under the ethics regulations because he was seeking official action by the agency, *i.e.*, treatment. Further, the administrative judge found that even though the appellant did not initially know the minister was a patient when she received gifts from him, the appellant kept the gifts “long after” she became aware of this fact. Finally, though the appellant testified that she intended to return the gifts and eventually did so, the fact that she initially retained the gifts, without reporting her receipt of them to anyone at the agency or seeking legal advice about what to do with them, was enough to constitute “acceptance” in violation of the gift rules.

**Sher v. Dep't of Veterans Affairs, 97 M.S.P.R. 232 (2004)(soliciting and receiving gifts from prohibited source; knowledge of ethics rules a factor in penalty determination).**

The appellant was demoted from his position as a GS-13 Chief of Pharmacy Service to a position as a GS-12 Clinical Pharmacist and suspended for 45 days based on charges that he solicited and received free pharmaceuticals in violation of 5 C.F.R. § 2635, and refused to provide information relating to an administrative investigation in violation of Title 38. With regard to the Standards of Conduct violation, the agency determined that the appellant had solicited and received several hundred free samples of the drug Lipitor from a Pfizer salesman, and that these actions amounted to appellant soliciting and receiving a “gift” from a prohibited source in violation of 5 C.F.R. § 2635 of the Standards of Ethical Conduct for Employees of the Executive Branch, Subparts A and B, General Provisions and Gifts from Outside Sources.

On appeal to the MSPB, an administrative judge sustained both charges and the personnel actions taken by the agency. Although the appellant filed a petition for review with the full Board, he did not challenge the administrative judge’s findings with regard to the improper gift. Therefore, the Board sustained this charge without further analysis. The Board also looked at the ethics violations with regard to the penalties imposed because the appellant presented evidence that the agency had not adequately informed employees that accepting free samples of drugs was improper. The Board found that, although the agency could have done more to educate employees about this issue, the appellant was properly charged, the charges were correctly sustained and the penalty was appropriate because the appellant had attended ethics training and received a pamphlet explaining the Standards of Conduct.

### **3. SUBPART C -- GIFTS BETWEEN EMPLOYEES**

#### **Grossman v. Dep't of the Air Force, 2010 MSPB LEXIS 516 ( Jan. 12, 2010)(providing free professional services to superior meets definition of "gift").**

The appellant was suspended for 30 days and demoted from his position as a Command Post Manager, GS-13 to a GS-12 position on the basis of several allegations of misconduct, including misuse of government property in violation of 5 C.F.R. §§ 2635.704(a) and 2635.704(b), and DOD regulations, and giving an improper gift to his supervisor in violation of 5 C.F.R. § 2635.302(a)(1). With regard to misuse of government property, the agency alleged that the appellant, who was a licensed attorney, had used government communications systems and equipment to perform legal work for private clients. With regard to the gift charge, the agency alleged that the appellant had provided free legal services to his supervisor pertaining to the supervisor's divorce.

On appeal to the MSPB, an administrative judge sustained both ethics violation charges. With regard to the gift charge, the administrative judge found that provision of free legal services to the appellant's supervisor met the definition of "gift" under the regulations. Further, the administrative judge found that there was no evidence to support a finding that the relationship between the appellant and his supervisor constituted a friendship or a personal relationship that would justify the gift.

#### **Siozon-Petersen v. Dep't of the Air Force, 2005 MSPB LEXIS 2067 (April 27, 2005)(proof of improper "gift" from subordinate).**

The appellant was employed as a GS-13 Supervisory Contract Specialist with the Air Force. In 2003, she was arrested and charged with extortion relating to her acceptance of money from a subordinate employee. After a trial in the United States District Court for the District of Maryland, the appellant was acquitted of the criminal charges. Nevertheless, the agency subsequently proposed her removal for violating the Department of Defense Regulation (DODR) 5500.7-R (Joint Ethics Regulation) by accepting the money from her subordinate (a total of \$2820 over two occasions). The Joint Ethics Regulation incorporates by reference 5 C.F.R. Part 2635, the "Standards of Ethical Conduct for Employees of the Executive Branch."

In her appeal to the MSPB, the appellant argued, among other things, that her removal was improper because she was acquitted of the criminal charges, that she had not violated the ethics regulations by accepting money from an employee because she had a personal relationship with the employee involved, and that the employee involved was not her subordinate at the time of the events at issue. The administrative judge evaluated the case under 5 C.F.R. § 2535.302(b), which prohibits gifts from employees receiving less pay unless the employees are not in a supervisory subordinate relationship and there is a personal relationship that would justify the gift. The administrative judge found a violation was proven because the appellant had a supervisory role (either first or second level supervisor) over the employee when the "gifts" were given. The administrative judge also noted in a footnote that the appellant's assertions that she was unaware of the ethics regulations until after she accepted the money was not significant because the agency was only required to show that she violated the regulations, not that her violation was

willful.

#### **4. SUBPART D – CONFLICTING FINANCIAL INTERESTS**

**Callis v. Dep’t of Justice, 2009 MSPB LEXIS 3045 (May 27, 2009), aff’d, 112 M.S.P.R. 301(2009)(definition of prohibited financial interest taken from 5 C.F.R. § 2635.403(c)).**

The appellant was demoted from his position as a Clinical Psychologist (Drug Abuse Program Coordinator) GS-13 with the Bureau of Prisons (BOP) to the position of Clinical Psychologist (Staff Psychologist) GS-12, based upon charges that he had an inappropriate relationship with a subordinate. The appellant was found to have worked as an independent contractor at a group home owned and administered by a subordinate and to have jointly purchased a home for the subordinate’s non-profit.

In an appeal to the MSPB, the parties stipulated that the charge was really a conflict of interest or apparent conflict of interest charge, based on BOP Program Statement No. 3420.09, Standards of Employee Conduct, which states that, “[e]mployees shall . . . [a]void conflicts of interest in matters that affect their financial interests,” and “[o]utside employment, including self employment, must not result in, or create the appearance of, a conflict of interest.” The administrative judge sustained the charges using the definition of “prohibited financial interests” contained in 5 C.F.R. § 2635.403(c) because the BOP regulation does not define those terms. The administrative judge concluded that the appellant earned income from a business operated by his subordinate and entered into a joint business venture with his subordinate, both of which had a direct and predictable effect on or reasonably created an appearance of having an effect on his official duties. The administrative judge also concluded that the appellant was aware of the relevant prohibitions when he engaged in this misconduct.

#### **5. SUBPART E -- CREATING AN APPEARANCE OF A CONFLICT OF INTEREST**

**Wallace & Martin v. Dep’t of Commerce, 106 M.S.P.R. 12 (2007)(charge of creating an appearance of conflict of interest requires actual participation by employee).**

The appellants, Wallace and Martin are sisters. The agency removed Wallace from her position as a GS-15 Patent Examiner and canceled the appointment of Martin to a Human Resources Specialist position. The agency contended that, while detailed to a position in the agency’s Human Resources Office, Wallace acted improperly by making inquiries to a subordinate about the application process for a vacancy in which her sister was interested. Martin was subsequently selected for this same position. Among other allegations, the agency charged that Wallace engaged in conduct unbecoming a federal employee and violated 5 C.F.R. § 2635.502(a) by engaging in conduct that created an appearance of a conflict of interest.

In an initial MSPB decision, an administrative judge sustained both appellants' removals. With regard to the charge that Wallace violated section 2635.502, the administrative judge found that Wallace engaged in actions that amounted to advocating for her sister's hiring, and that her actions would cause a person with knowledge of the relevant facts to question her impartiality. Both appellants petitioned for review by the full Board, which reversed the initial decision. With regard to the charge that Wallace violated section 2635.502, the Board found that the lynchpin of the regulation is an employee's actual participation in a particular matter. Therefore, if an employee refrains from participating in the matter, the regulation is not implicated and the employee is not required to take the steps dictated in the regulation to seek out ethics advice and obtain approval from an agency ethics official. The Board further concluded that in this case, Wallace took steps to recuse herself from the actual selection process and the agency failed to show that Wallace actually participated in Martin's selection and appointment in any substantive manner. Therefore, no violation of section 2635.502 was proven.

## **6. SUBPART G – MISUSE OF POSITION**

### **Ellis v. Dep't of Defense, 114 M.S.P.R. 407 (2010)(off-duty ethics violation supported penalty of removal).**

The appellant was removed from his position as a Quality Assurance Specialist (Electronics), GS-11, based on charges of that he willfully forged or falsified a government document and misused his position. Specifically, the appellant was found to have created two documents, including one on agency letterhead, using an agency computer, falsely stating that he had been recalled to active military duty and would be relocating. The appellant was found to have created these false documents in order to vacate rental property before the end of his lease term. The appellant was charged with misuse of position in violation of 5 C.F.R § 2635.702 because he misused official government stationery and modified his orders from the Air Force. In his written response to the agency's charges, the appellant admitted to the misconduct at issue but argued he should not be disciplined because he did not receive any financial gain from his actions and because his inappropriate use of official government stationery was not related to performance of his job duties (off duty misconduct).

On appeal to the MSPB, an administrative judge sustained the misconduct and the removal action. With regard to the penalty, the administrative judge found that even though the appellant's misconduct was off-duty, nexus was established because the government had an interest in its employees not misusing their positions to forge government documents.

The full Board upheld the removal penalty on the grounds that the agency had provided evidence demonstrating a link between the employee's misconduct and its negative impact on the agency's trust in him.

**See also Suarez v. Dep't of Housing and Urban Development, 96 M.S.P.R. 213 (2004)(circumstantial evidence sufficient to support violations of ethics rules; engaging in financial transactions using non-public information and actions creating an appearance of a violation of law or ethical standards).**

A summary of this case is reported in section B.1, supra at p. 6.

## **7. SUBPART H – OUTSIDE ACTIVITIES**

### **a. Satisfaction of Just Financial Obligations**

**Wesley v. Dep't of Treasury, 280 Fed. Appx. 966 (Fed. Cir. 2008)(5 C.F.R. § 2635.809 mentioned).**

The appellant was removal from his position as an Information Technology Specialist with the IRS for failing to properly file his income tax returns and to timely pay his income tax liability for several years. The agency charged him with violating "Section 1203(b)(9) of the Restructuring and Reform Act of 1998" (RRA) and/or "other laws rules or regulations including [5 C.F.R.] section 2635.809 of the Office of Government Ethics (OGE) Standards of Conduct."

On appeal, to the MSPB, the board affirmed the removal, finding that the agency proved by a preponderance of the evidence that Wesley had violated section 1203(b)(9) of the RRA, and therefore removal was mandatory. The appellant's petition for review at the Court of Appeals for the Federal Circuit was denied.

**Jenkins v. Dep't of Treasury, 104 M.S.P.R. 345 (2007), aff'd, 244 Fed. Appx. 349 (Fed. Cir. 2007)(5 C.F.R. § 2635.809 sustained as an alternative charge).**

The appellant was removed his from position as GS-8 Contact Representative with the IRS on the grounds that he failed to timely file a personal income tax return for the 2002 tax year; and failed to properly file the return. On appeal to the MSPB, the administrative judge did not sustain the failure to timely file charge, finding that the appellant's actions were not willful. The administrative judge sustained the remaining charge, finding that the appellant willfully understated her tax liability, which constituting a failure to properly file her 2002 return.

On appeal to the full MSPB, the Board's sustained both charges. With regard to regard the failure to timely file charge, the Board found that in addition to violating section 1203 of the IRS Restructuring and Reform Act, the appellant was charged, in the alternative, with violating OGE regulation 5 C.F.R. § 2635.809, which states that "employees shall satisfy in good faith their obligations as citizens. . . especially those such as Federal, State, or local taxes that are imposed by law". Therefore, the full Board concluded that, contrary to the administrative judge's finding in the initial decision, the agency was not required to prove that the appellant acted willfully in

order to sustain the charge. Therefore, the Board upheld both charges as well as the removal action.

**Ledbetter v. Dep't of Treasury, 102 M.S.P.R. 598 (2006) (5 C.F.R. § 2635.809 mentioned).**

The appellant was removed from his position as a GS-11 Senior Associate Advocate with the Taxpayer Advocate Service at the IRS on the grounds that he failed to properly file a personal income tax return for the 2001 tax year and failed to timely and properly satisfy his tax obligations, in violation of section 1203 of the IRS Restructuring and Reform Act, 5 C.F.R. § 2635.809 of OGE's Standards of Ethical Conduct.

The Board affirmed the initial decision of the administrative judge, primarily based upon the 1203 violation under which removal was mandatory.

**C. WHISTLEBLOWING AND ETHICS/CONFLICT OF INTEREST VIOLATIONS**

**Ingram v. Department of Army, 2011 MSPB LEXIS 4527 (July 25, 2011)(unspecified ethics charges as basis for individual right of action appeal).**

The appellant sought corrective action from the MSPB under the Whistleblower Protection Act. He claimed negative personnel actions were taken against him after he made protected disclosures involving, among other things, violations of unspecified ethics regulations.<sup>2</sup> The appellant had obtained a legal opinion that allowing a department training event to proceed would violate ethics regulations and possibly compromise trade secrets of agency contractors. He was also concerned about a memorandum from the Deputy Secretary of the Army emphasizing the importance of avoiding these same ethical issues and stating there were penalties for doing so. Based on this information, the appellant disclosed to his supervisors that the program manager in charge of the event engaged in improper conduct, evidently, by planning and then holding the event. The appellant alleged that, after he made these protected disclosures, his project manager took away his job duties, denied his transfer request, involuntarily transferred him to another team, and lowered his performance appraisal.

Appellant's whistleblower reprisal appeal was initially dismissed by an administrative judge and remanded by the full Board for additional findings. After a second dismissal by an administrative judge, the full Board ruled on the merits in appellant's favor, concluding that the appellant had made protected disclosures, that the appellant's whistleblowing was a contributing factor in each of the challenged disciplinary actions, and the agency failed to show by clear and

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<sup>2</sup> Notably, the MSPB decision does not discuss the actual ethics violations raised by the appellant in any detail.

convincing evidence that the same disciplinary actions would have been taken against the appellant in the absence of his protected disclosures.

**Phillips v. Dep't of Transportation, 113 M.S.P.R. 73 (2010)(agency's concerns about ethics violations sufficient to support whistleblower's lateral reassignment).**

The appellant was reassigned from her position as a GS-14 Division Administrator based on findings by the agency's OIG that she violated several (unspecified) provisions of OGE's Standards of Conduct when she used her public office for the gain of a private business and maintained a close personal friendship with a principal of a carrier over which she was exercising the agency's regulatory authority. The agency laterally reassigned the appellant to a position in a different office based on its conclusion that her conduct damaged her relationships with her coworkers in the Division as well as the agency's reputation among motor carriers. While the OIG complaint was pending, the appellant released to the media and others a complaint filed by another regulated carrier.

The appellant sought corrective action at the MSPB under the Whistleblower Protection Act, arguing that her reassignment was really the result of her protected disclosures. On appeal to the MSPB, an administrative judge found in favor of the agency, holding that the while the appellant's disclosures were protected under the WPA and were a contributing factor in her reassignment, the agency proved by clear and convincing evidence that she would have been reassigned, even in the absence of the protected disclosures. The appellant filed a petition for review with the full Board, which upheld the initial decision, finding that the agency had legitimate reasons, i.e., concerns about the appellant's violations of ethical conduct rules, to reassign the employee notwithstanding her protected whistleblowing..

**Gaines v. Dep't of Navy, 2009 MSPB LEXIS 4101 (July 13, 2009)(disclosure of a violation of 5 C.F.R. § 2635.302(b) is whistleblowing).**

The agency alleged that the appellant physically threatened his supervisor and removed employee from his position. In an appeal to the MSPB, the appellant raised an affirmative defense of whistleblower reprisal, alleging that the agency's removal action decision was in reprisal for his disclosure that his supervisor borrowed money from him in violation of 5 C.F.R. § 2635.302(b)(improper gift from subordinate employee).

The administrative judge found that the appellant did disclose information prior to his removal that he reasonably believed constituted a violation of law, and that this disclosure was a contributing factor in the agency's removal action. Nevertheless, the agency, established by clear and convincing evidence that it would have removed the appellant notwithstanding his whistleblowing activities.

**Santos v. Dep't of Energy, 102 M.S.P.R. 370 (2006)(disclosure of 18 U.S.C. § 209 violation is whistleblowing).**

The appellant, a GS-5 Student Trainee, alleged that the agency took several personnel actions against him in retaliation for his disclosure to its Office of Inspector General that his supervisor had offered him a bribe, in violation of 18 U.S.C. § 209. Specifically, the appellant complained to the agency's Office of Inspector General that his supervisor offered him money in an attempt to gain his support as a witness in equal employment opportunity complaints filed by another employee.

The appellant sought corrective action for the personnel actions taken against him at the MSPB, but an administrative judge dismissed his appeal on jurisdictional grounds. On appeal to the full Board, the MSPB found that the appellant's claim constituted a non-frivolous allegation that he engaged in whistleblowing activity because his disclosure of a violation of section 209 was a protected disclosure; the appellant's allegations, if proven, could support a finding that a disinterested observer, with the information available to the appellant, could reasonably believe that he was disclosing a violation of law. Nevertheless, the Board upheld the initial decision, concluding that the agency proved by clear and convincing evidence that the agency would have taken the same personnel action absent the disclosure.

**Government Ethics and the Use of Social Media\***  
2011 Office of Government Ethics Conference  
Orlando, Florida

**SESSION DESCRIPTION:** This two part presentation will (1) introduce attendees to the terminology and background of social media software, (2) discuss how Government ethics principles are implicated in official and personal use of social media tools, (3) provide insight into best practices, recommendations, and lessons learned from other ethics officials; and (4) provide resources for practitioner’s reference. The first part will address initial ethics (and other legal) considerations when the Agency implements Social Media tools. The second part will address ethics considerations when employees use Social Media in both their official and personal capacity.

**I. OVERVIEW- ETHICS CONSIDERATIONS WHEN IMPLEMENTING SOCIAL MEDIA:** (Social Media 101—The Basics)

- A. **What** is “Social Media:” Anything online other than static content where the provider posts and the viewer absorbs (also referred to as “Web 2.0”).
  
- B. **Why** is the Government interested in the use of Social Media?
  - 1. Can serve the Government’s mission for outreach and public affairs.
  - 2. Public can participate in a conversation about relevant issues.
  - 3. Government efficiency – cost effective
  - 4. Great way for Government to be collaborative, transparent, and participatory
  
- C. **Examples** of Social Media Tools/Services (See *Appendix A* for more detailed examples & definitions)
  - **Blogs** – Short for “web log” is a type of website, usually maintained by a single individual/entity with regular entries of commentary, descriptions of events, or other material such as graphics or video. Entries are commonly displayed in reverse-chronological order, and usually with a particular topic or area of concentration.
  
  - **Wikis** - is a website that allows the easy creation and editing of any number of interlinked web pages via a web browser. Wikis are typically powered by wiki software and are often used to create collaborative websites, to power community websites, for personal note taking, in corporate intranets, and in knowledge management systems. E.g., Wikipedia.

***\* DISCLAIMER: Reference to any commercial products or services in this presentation is not an endorsement or Government sanction of those non-Federal entities, its services or products.***

#### D. **Ethics Considerations** in Implementation of Social Media

1. Selecting a tool. **Impartiality**. How do you select an effective social media tool? And ensure a fair competition—where acquisition rules are not triggered? 5 C.F.R. §2635.702 & 48 C.F.R. §3.101-1.
2. Terms of Service. **Misuse of government resources**. Beware of terms that mandate license to use Government seals/logos or otherwise imply endorsement.
3. Setting up a site. Avoid even the appearance of **preferential treatment** or government **sanction**. Use a disclaimer.
4. Publicizing Implementation. **Endorsement** issues.

#### E. **Other Legal Considerations** when implementing Social Media

1. Authority. What is the agency mission requirement to employ social media? What are the stated parameters of such an engagement—who is the champion, what is the purpose and intent? Should efforts be measurable to determine effectiveness?
2. Terms of Service Agreement
  - a. GSA or independently negotiated
  - b. Indemnification issue
  - c. Choice of law – sovereignty
3. Considerations for inclusion on .gov or .mil websites:
  - a. Consider Agency Branding to assist in the identification of official and unofficial efforts.
  - b. Include a goodbye page when linking to a non-Federal website. Such as a page with a disclaimer and notice that the user is leaving the Federal Site and how to return to Federal content.
  - c. Create a dedicated agency social media page. Where the agency notifies users of the policies and practices, as well as lists all the Agency’s social media presences with a disclaimer statement and a perhaps also a statement indicating the agency willingness to consider use of other social media (to avoid concerns of preferential treatment).
  - d. Provide as many share tools as possible. If you are going to provide options for users to share the information from your websites, include a full list of sharing options to avoid any implied endorsement and show impartiality, e.g., RSS, email, Facebook, Twitter.
  - e. Only include links that are determined as necessary to accomplish the agency social media mission, and avoid items that are commercial in nature.

## II. ETHICS IMPLICATIONS FOR USE OF SOCIAL MEDIA

A. GENERAL PRINCIPLE: The Standards of Ethical Conduct impact on use of social media, in official or personal capacities, does not have special treatment.

B. OFFICIAL USE:

1. **Conflicting financial interests** – employees are prohibited by criminal statute from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. (18 U.S.C. § 208; 5 C.F.R. §2635.401-403)
2. **Impartiality in performing official duties** - Employees must avoid the appearance of loss of impartiality in the performance of their official duties. (5 C.F.R. §§ 2635.501-502)
3. **Misuse of Government property & time** – Employees have a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes. Likewise, employees shall use official time in an honest effort to perform official duties. (5 C.F.R. §§ 2635.704–705)

*TIP*: Does your agency have other policy restrictions (e.g., limited use, operational security)?

4. **Misuse of position** (5 C.F.R. § 2635.702)
  - a. Inducement or coercion of benefits (5 C.F.R. § 2635.702(a)).
  - b. Appearance of a governmental sanction (5 C.F.R. § 2635.702(b))
  - c. Endorsements (5 C.F.R. § 2635.702(c)) (see discussion under pitfalls)
  - d. Performance of official duties affecting a private interest (5 C.F.R. §2635.702(d))
5. **Use of nonpublic information** – employees shall not allow the improper use of nonpublic information to further their own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure. (5 C.F.R. §2635.703)
  - a. Prohibition (5 C.F.R. §2635.703(a))
  - b. Definition of nonpublic information (5 C.F.R. §2635.703(b))
6. **Fundraising in an official capacity** – An employee may participate in fundraising in an official capacity if, in accordance with statute, Executive Order, regulation or otherwise as determined by the agency, he is authorized to engage in fundraising activity as part of his official duties. (5 C.F.R. §§2635. 808(b))

7. **Gifts to Agency** - Check whether your Agency has Gift Acceptance Authority for unsolicited offers of products, services, the product if the “gift” was unsolicited.

C. **PERSONAL USE:** Outside Activities (5 C.F.R. §§ 2635.801-809)

1. **Prohibition against assisting in the prosecution of claims against the Government or acting as an agent or attorney before the Government** (18 U.S.C. §§ 203 and 205)
2. **Outside employment or activity cannot conflict with employee’s official duties** (5 C.F.R. §2635.802)
  - Writing a private blog or video sharing which conflicts with an employee’s official position can create a problem, but must be also weighed against an employee’s 1<sup>st</sup> Amendment right.<sup>1</sup>
  - Consider availability of remedial action. Generally, there are few employment law avenues to reach beyond official action, and discipline an employee for activities in their personal capacity.
3. **Prior approval to engage in outside employment or activities** (5 C.F.R. § 2635.803) Check for any supplemental regulations requiring prior approval. E.g., EPA 5 C.F.R. § 6401.103; DoD 5 C.F.R. § 3601.107.
4. **Compensation for teaching, speaking, or writing** – With certain exceptions, employees generally shall not receive compensation from any source other than Government for teaching, speaking, or writing that relates to the employees’ official duties. (5 C.F.R. §§2635.807(a))
5. **Reference to official position** – Employees may include or permit the inclusion of his title or position as one of several biographical details when such information is given to identify him in connection with his teaching, speaking, or writing, provided that his title or position is given no more prominence than other significant biographical details. (5 C.F.R. §§2635.807(b)(1)) Applies to outside employment and outside activities (5 C.F.R. §§2635.807(b)) *See also OGE Advisory Opinion 10 x 1 at [http://www.usoge.gov/ethics\\_guidance/opinions/advop\\_files/2010/10x1.pdf](http://www.usoge.gov/ethics_guidance/opinions/advop_files/2010/10x1.pdf)*
6. **Fundraising in a personal capacity** – Employees may engage in fundraising in their personal capacities provided that they do not personally solicit funds or other support from a subordinate or from any person known to be a prohibited source. (5 C.F.R. §§2635.808(c))

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<sup>1</sup> Pickering v. Board of Education of Township High School District 205, Will County, 391 U.S. 563 (1968).

### **III. OTHER PITFALLS/LESSONS LEARNED:**

#### A. Tips for Using Web 2.0/Social Media Tools

1. **PURPOSE:** Ask yourself, why use social media? How does it relate to the agency's mission? There must be an identified mission need to expend appropriations towards this effort.
2. **SELECTION:** How do you select a tool? Must be impartial when selecting a social media tool – Approach all equivalent, similar parties.
  - Where appropriated funds are not expended there are no Federal Acquisition Regulation requirements.

E.g., If you want to post photographs, you should approach all available providers, not just Flickr or Picasa.

***Best Practice(BP):*** Consider including on your website a comment area to allow responders to identify other third party sites or new forms of communications tools.

#### B. Practical Tips

1. Terms of Service Agreements
  - a. GSA has negotiated Government-wide terms of service with several social media providers and is making those services/products available for agency use at [www.apps.gov/cloud/advantage/main/start\\_page.do](http://www.apps.gov/cloud/advantage/main/start_page.do)
  - b. Alternatively, agencies must negotiate the terms of service in accordance with government-wide rules and agency-specific restrictions.
  - c. Lessons Learned:
    - i. Most social media agreements are product licenses to permit public use free of charge, where income is derived from selling advertising space/resources.
    - ii. Negotiations for terms which change the product could result in a Contract or a Gift.
    - iii. A Contract would implicate the Federal Acquisition Regulation (FAR 48 C.F.R) and would require competition or sole source authority as per the FAR.
    - iv. Agencies with gift acceptance authority may be permitted to accept unsolicited gifts from terms of service agreements/negotiations.

- d. Use of Agency Name/Seal – Terms of service agreements usually include a clause which permits use of the agency’s name/seal for commercial purposes, which may raise improper endorsement issues.
  - i. Factual statements are permissible. Limit agency use of the agency’s name/seal to factual statement—that it is a service user
  - ii. Lessons Learned: Preferably, include an express provision stating that the company may not represent or imply that the Government endorses the product.

## 2. Setting Up a Site

- a. Include link to official government site. Might be preferable to re-direct users to your official government site for dissemination of official information to clearly delineate where official/authorized information can be received as opposed to social media interaction.

- b. Include a disclaimer or explanation on the social media site, like:

We are providing the following links to FEMA’s presence on other third party sites for your reference. FEMA does not endorse any non-government websites, companies or applications.

- c. Implement a comprehensive Comment Policy -
  - i. Moderate/monitor comments
  - ii. Include a clear statement of policy regarding what comments will be removed.
- d. Branding – Consider implementing agency branding to assist with validation of information, and protect the agency seal. This is the best way to create uniformity/recognition for the agency.
- e. Avoid Links to Third Party Site, Graphics or Trademarks – it raises concerns of improper endorsements. If they must be included, consider adding a bumper or similar style disclaimer, like:

“You are now exiting the Federal Emergency Management Agency (FEMA) web site...and entering the site: [www.youtube.com/fema](http://www.youtube.com/fema). We have provided a link to this site because it has information that may be of interest to our viewers. FEMA does not necessarily endorse the views expressed or the facts presented on this site. FEMA does not endorse *any commercial products* that may be advertised or on this site. The FEMA *Privacy Policy* does not apply on this site. Please check the site for its Privacy Notice. To easily return, make sure you have added [www.fema.gov](http://www.fema.gov) as a Bookmark or Favorite.”

- f. On official website, beware of raising concerns about impartiality in listing of social media tools/share software. Consider listing alphabetically.

### C. Other Legal Considerations:

#### a. The Anti-Lobbying Act (18 U.S.C. 1913)

- Prohibits the use of appropriated funds for indirect lobbying when federal employees are on duty
- Cannot make explicit statements asking the public to contact members of Congress in support of or in opposition to a legislative proposal

#### 2. The Hatch Act (5 USC §§ 7321-7326)

##### Official Restrictions

- Regulates the political activities of all federal employees in the Executive Branch of the Federal Government
- Political Activity is activity directed toward the success or failure of a political party, a candidate for partisan political office, or a partisan political group.”

##### Personal Restrictions

- May not solicit, accept or receive political contributions in general.
- May not permit the use of one’s name or title as a sponsor or host of a political fundraiser.

3. Records Management – How long do the social media interactions need to be retained?
4. Privacy Act, FOIA, and Freedom of Speech
5. Contractual Issues
6. FACA - Beware of interaction that triggers the Federal Advisory Committee Act. E.g., an agency seeking a consensus from a website to formulate a policy position.
7. Compliance with Section 508 of the Rehabilitation Act
8. Compliance with EO 13166 on Limited English Proficiency

### F. Other Tips & Issues To Consider

1. Consider whether you have the resources to maintain, monitor, and administer the social media tools under consideration
2. Identify the areas where you need a point of contact.
3. Establish a working group to develop Web 2.0 Strategy/Policy Creation/Interagency cooperation includes all relevant agency POCs, such as:
  - Ethics & other legal
  - Public Affairs
  - Information Technology
  - IT Security
  - Records Management
  - Management
  - Program Offices

4. Make sure the POCs use the technology before signing off on any web 2.0 technology
5. Set up a personal account and play with the applications.
6. Identify the issues and develop solutions
7. Be creative in your solutions – think outside of the box.
8. Develop employee training

G. Best Practices & Final Lessons Learned:

1. ***Learn more*** because it's happening, whether you "link in" or not.
2. Avoid blurring distinctions between official and personal use
3. Treat it the same as all other government equipment and communications – the Federal rules apply!
4. The law does not address this type of technology; agencies should act in the "spirit" of the law.

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## APPENDIX A

### DEFINITIONS/EXAMPLES OF SOCIAL MEDIA

1. Cloud Computing - Use and access of multiple server-based computational resources via a digital network (e.g., internet). Cloud users access the server resources using a computer, netbook, pad computer, smart phone, or other device. In cloud computing, applications are provided and managed by the cloud server and data is stored remotely. Users do not download and install applications on their own device or computer; all processing and storage is maintained by the cloud server. The data on the Cloud can move between servers based on the amount of data traffic. The user never really knows where the data is hosted; it could be in California one day and India the next.
2. Crowd Sourcing – Where data is mashed together on a map to allow users to visually see the location of different sources of information.
3. Blogs – Short for “web log” is a type of website, usually maintained by a single individual/entity with regular entries of commentary, descriptions of events, or other material such as graphics or video. Entries are commonly displayed in reverse-chronological order, and usually with a particular topic or area of concentration.
4. Mashups - is a web page or application that combines data or functionality from two or more external sources to create a new service. The term mashup is primarily used to describe a *remix* of digital data.
5. Mobile Applications or Apps - Mobile Apps are small applications on your mobile device that either connect to specific content or run an application such as a game, video player, or word processing software. E.g. <http://apps.usa.gov/>.
6. Mobile Friendly Websites - Web sites that provide content and functionality without clutter, and should be easily viewable in a mobile device (i.e. wireless PDA, smartphone, cell phone, etc.), as long as the mobile device is capable of viewing Web sites. E.g., [m.fema.gov](http://m.fema.gov).
7. Podcasting - is a series of digital media files (either audio or video) that are released episodically and downloaded through web syndication. The mode of delivery differentiates podcasting from other means of accessing media files over the internet, such as direct download, or streaming webcasting (webinars). A list of all the audio or video files currently associated with a given series is maintained centrally on the distributor's server as a web feed, and the listener or viewer employs special client application software that can access this web feed, check it for updates, and download any new files in the series. This process can be automated so that new files are downloaded automatically. Files are stored locally on the user's computer or other device ready for offline use, giving simple and convenient access to episodic content.
8. RSS – (short for "Really Simple Syndication") is a web feed format, which proactively pushes out updated to such social media sites—such as blog entries, news headlines, audio,

and video—in a standardized format. An RSS document includes full or summarized text. Web feeds benefit the public as a form of automatic syndication. They benefit readers who want to subscribe to timely updates from favored websites or to aggregate feeds from many sites into one place.

9. Social Networking – Is the act of building social networks or relations among people, e.g., who share interests and/or activities. A social network service essentially consists of a representation of each user (often a profile), his/her social links, and a variety of additional services. Most social network services are web based and provide means for users to interact over the internet, such as e-mail and instant messaging. Although online communities (LinkedIn, Facebook, MySpace etc) services are sometimes considered as a social network service in a broader sense, social network usually means an individual-centered service whereas online community services are group-centered.
10. Video/Photo Sharing – These online “social media” avenues permit users to keep videos/photos safe, organized and sharable in a web setting. E.g., Flickr, Shutterfly
11. Webinars – An interactive seminar conducted via the world-wide web. Usually a live presentation, it happens in real time as users participate through chats rooms, sharing audio and visual media file.
12. Widgets - A widget is a stand-alone application that can be embedded into third party sites by any user on a page where they have rights of authorship (e.g., a webpage, blog, or profile on a social media site). Widgets are fun, engaging, and useful applications that allow users to turn personal content into dynamic web apps that can be shared on just about any website. E.g., a "Weather Report Widget" could report today's weather by accessing data from the Weather Channel, it could even be sponsored by the Weather Channel. Should you want to put that widget on your own Facebook profile, you could do this by copying and pasting the embed code into your profile on Facebook.
13. Wikis - is a website that allows the easy creation and editing of any number of interlinked web pages via a web browser. Wikis are typically powered by wiki software and are often used to create collaborative websites, to power community websites, for personal note taking, in corporate intranets, and in knowledge management systems. E.g., Wikipedia.

## APPENDIX B

### OTHER GOVERNMENT REFERENCE MATERIAL

#### WEBCONTENT.GOV

Social Media and Web 2.0 in Government site:

[http://www.usa.gov/webcontent/technology/other\\_tech.shtml](http://www.usa.gov/webcontent/technology/other_tech.shtml)

#### DEPARTMENT OF DEFENSE

Directive-Type Memorandum (DTM) 09-026 - Responsible and Effective Use of Internet-based Capabilities <http://www.dtic.mil/whs/directives/corres/pdf/DTM-09-026.pdf>

#### AIR FORCE

Social Media site: <http://www.af.mil/socialmedia.asp>

Publication - Air Force & Social Media <http://www.af.mil/shared/media/document/AFD-091210-043.pdf>

#### ARMY

Social Media site <http://www.army.mil/media/socialmedia/>

#### NAVY

Social Media site: <http://www.chinfo.navy.mil/socialmedia.html>

Navy Command Social Media Handbook, Fall 2010:

[https://www.chinfo.navy.mil/socialmedia/Navy\\_Command\\_Social\\_Media\\_Handbook-Fall2010\\_print.pdf](https://www.chinfo.navy.mil/socialmedia/Navy_Command_Social_Media_Handbook-Fall2010_print.pdf)

#### DEPARTMENT OF STATE

Social Media site: <http://www.state.gov/media/>

#### DEPARTMENT OF HOMELAND SECURITY

Social Media site: [http://www.dhs.gov/xabout/gc\\_1238684422624.shtm](http://www.dhs.gov/xabout/gc_1238684422624.shtm)

#### FEMA

Social Media site: <http://www.fema.gov/news/newsrelease.fema?id=49302>

#### ENVIRONMENTAL PROTECTION AGENCY

Social Media site: <http://www.epa.gov/epahome/socialmedia.html>

#### GENERAL SERVICES ADMINISTRATION

GSA Order - GSA Social Media Policy

<http://www.gsa.gov/graphics/staffoffices/socialmediapolicy.pdf>



## FEMA Web 2.0 Policy

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### **I. Purpose**

Provide initial guidance regarding the use of emerging Web technologies to improve the Federal Emergency Management Agency's (FEMA's) communication with stakeholders, internal communication, and collaboration. (This policy includes, but is not limited to, all social media materials, e.g., Twitter, Facebook, and YouTube.)

The Directive follows the standards and guidelines for Federal government web usage and complies with the Department of Homeland Security (DHS) and FEMA policies. It ensures that FEMA is harnessing new technologies and makes Government transparent, participatory, and collaborative. This Directive is effective as of the date of signature and will be reviewed annually.

It provides a framework to maintain organizational functions and uphold regulatory and legal compliance for official FEMA use. Certain policies included in this Directive delineate responsibilities and processes to be followed by selected directorates or offices; others dictate general compliance for and expectations of Web 2.0 use by appropriate individuals, offices, and/or directorates.

### **II. Scope**

This Directive is intended for all FEMA employees, staff, offices, directorates, and supporting personnel using or considering use of Web 2.0 technologies in an official capacity.

### **III. Background**

"Web 2.0" refers to Web applications that facilitate and foster interactive information sharing, interoperability, and collaboration on the Internet, allowing users to interact with each other and serve as contributors to the website's content. Examples of Web 2.0 tools that exist in the private sector include social networking, video-sharing, wikis, and blogs.

The Agency endorses the secure use of Web 2.0 tools to enhance external communication, internal collaboration, and communication with stakeholders. Web 2.0 technologies have the ability to increase information exchange, streamline processes, and foster productivity improvements across the Agency in these three categories. The Agency will carefully consider the various types of tools and select those that are appropriate for Agency needs and the security environment. This Directive outlines the measures and procedures needed to ensure compliance with laws and regulations that govern the Agency's online activities.

Operating procedures regarding the use of Web 2.0 components are promulgated by the Office of External Affairs for public facing websites and by the Office of the Chief Information Officer (OCIO) for non-public facing websites in consultation with the Office of Chief Counsel (OCC), the Privacy Office, and the Records Management Division.

#### IV. Policy and Procedures

The process to establish a FEMA-authorized Web 2.0 application will depend on whether the tool will be hosted on a Government-operated server and website or on an external Federal Information Security Management Act (FISMA)/508-compliant server (outside of a Government firewall).

The general process to establish either a FEMA-hosted or a non-FEMA-hosted application follows similar criteria. Important considerations, such as cyber-security risks posed by on-network applications, will be of greater concern to participating FEMA stakeholders. Because of the legal and security restraints of Federal agencies, the following policies apply to all use of the Web 2.0 product by FEMA programs.

A. All public facing Web 2.0 technology must be authorized by the Office of External Affairs in consultation with:

1. OCC
2. Cyber Security Information Officer (CSISO)
3. Records Management
4. Privacy Office
5. FEMA OCIO (if a new application is being purchased)

Failure to receive authorization from External Affairs will result in the IT Security Branch's blocking all FEMA access to the unauthorized Web product.

B. All non-public facing Web 2.0 technology must be authorized by the Chief Information Officer (CIO) in consultation with:

1. OCC
2. CISO
3. Records Management
4. Privacy Office
5. FEMA OCIO (if a new application is being purchased)

Failure to receive authorization from the OCIO will result in the OCIO's removing the product from the FEMA network.

C. All third party Web 2.0 technology must have a Terms of Service or license agreement that has been reviewed and approved by OCC.

D. FEMA may not use on a DHS/FEMA contractor server any Web 2.0 product that uses tracking technology unless it is in compliance with OMB Memorandum 10-22.

E. All FEMA Web 2.0 products must contain a comment policy written in consultation with OCC. Posted comments must be relevant and must not contain racist, sexist, discriminatory, or foul language; privacy information; malicious links; or non-public information.

F. In compliance with the comment policy, FEMA must moderate all comments posted using Web 2.0 products prior to posting if technologically possible. If it is not technologically possible, the comments must be monitored by the sponsoring program at least three times a day.

G. If technologically possible, Web 2.0 products must allow for anonymous posting. FEMA will not use any Web 2.0 products on its public facing sites that require a user to give his or her full

name and/or email address. FEMA may not use third party products where the only purpose of the product is to obtain public feedback (no information is being presented to the public) that are hosted on the third party product's site (unless that site is a FEMA contractor) that require a log in to post. FEMA may not use a third party product that requires a user to pay for access to Government information.

- H. Web 2.0 products may not link to non-Government websites or products unless there is a mission-critical need to do so. If there is a mission-critical need to link to a non-Government product, the link should be made to the specific mission-critical content. The content should have limited commercial activity and should not imply an endorsement of any product or organization. If technologically possible, language should be included on a Web 2.0 product to disclaim any endorsement of non-Federal organizations or their products and services.
- I. FEMA may not link in any way to commercial entities other than media entities; individuals, unless the individuals are Federal, State, or local government employees acting in their official capacity (not for their campaign); or non-profits unless the organizations are members of the FEMA Voluntary Organizations Active in Disaster (VOAD) list, the organizations are Citizen Corps Affiliates, or if there is a mission-critical need to do so.
- J. All FEMA-produced content on third party websites, including videos and photos, must be available on a FEMA public website.
- K. All Web 2.0 products on public facing sites must be branded in accordance with the branding guidelines established by the Office of External Affairs.
- L. FEMA must obtain a Government use license for any non-Federal Government content other than links or comments posted on FEMA Web 2.0 products.
- M. All Web 2.0 content is a Federal record and must be retained per the Federal Records Act and National Archives and Records Administration (NARA) and FEMA records schedules. If a records schedule has not been created for the Web 2.0 content, the sponsor of the Web 2.0 product must retain all content until a records schedule is created and the content may be disposed of per the schedule. FEMA must retain control of all of its records and may not store them on third party products not under contract with FEMA to provide storage of records.
- N. All FEMA program sponsors will act impartially toward third party Web 2.0 technology. If multiple third party products may be used to accomplish the same mission goal, the sponsoring program must use all approved Web 2.0 products within time, budget, and manning constraints. For example, a program may not use Facebook without also using other approved tools that can accomplish the same goal.
- O. FEMA will not use Web 2.0 technology to conduct surveys or to ask questions that collect information from non-Federal employees without approval from OMB. FEMA programs may ask general questions such as "what do you think?" or "screen name."
- P. No FEMA employee will post any non-publicly releasable information on any public facing Web 2.0 product. Unless authorized by External Affairs, employees may not speak for the Agency or discuss the intricacies or development of Agency policies or programs unless the disclosure is protected by the Whistleblower Protection Act.
- Q. External Affairs will maintain a list of public facing Web 2.0 products on FEMA.gov. The list will include a disclaimer of any endorsement of non-Federal products and organizations and a statement of impartiality for products not in use by FEMA with an email address to contact the Agency about products.

- R. Web 2.0 products that are not public facing but are accessible to non-FEMA employees must contain rules of behavior, written in consultation with OCC, to which users must agree. These rules must include a statement prohibiting the release of non-publicly releasable information.
- S. FEMA may not use Web 2.0 technology to seek continual consensus, recommendations, or advice from non-Federal, State, or local government officials acting in their official government capacity except using technology that is open to the general public for comments.
- T. All Web 2.0 products require legal review by OCC, which provides advice and guidance to the product owner.
- U. Employee Use of Web 2.0
  - 1. An employee may use Web 2.0 applications on his or her own time. This implies that the employee will not engage in personal Web 2.0 use at his or her workplace during business hours and will not use Government equipment for personal Web 2.0 use.
    - a. There is a limited personal use exception that allows for the use of Government equipment, but it is limited to authorized use during “employee use in personal time.”
    - b. “Employee use in personal time” means times when the employee is not otherwise expected to be addressing official business. Employees may, for example, use Government office equipment during their own off-duty hours, such as before or after a workday (subject to local office hours), lunch periods, authorized breaks, or weekends or holidays (if their duty station is normally available at such times).
  - 2. In general, an employee may not state or imply that his or her personal use of Web 2.0 applications is official.
  - 3. During personal use, employees are discouraged from engaging in social media to respond to discussions about FEMA (even if erroneous or slanderous). This is the role of External Affairs, which has the responsibility of presenting a unified and on-target message for all of FEMA.
  - 4. Any employee who makes a public comment without prior authorization to speak officially for FEMA or while off-duty must disclose his or her relationship to FEMA (i.e., employee) and acknowledge that his or her response is not reflective of official FEMA policy, actions, etc. This requirement does not apply to social media interactions that are strictly personal, meaning the subject matter of the exchanges, public or private in nature, does not pertain to topics or issues relating to FEMA.
    - a. Referencing official FEMA statements or policy available to the public (i.e., by linking to a FEMA press release on FEMA.gov) is permissible and recommended, as appropriate and applicable.
  - 5. If an employee encounters a situation, either in an office location or in the field, in which public comment from FEMA appears warranted and the employee does not have prior authorization to communicate official FEMA information to the public or media, the employee should contact the appropriate local, State, tribal, regional, or Federal FEMA external relations representative.
  - 6. An employee may not release or discuss any non-public Government information as defined by Title 5, Code of Federal Regulations (CFR), Section 2635.703. Employees are free to discuss all public Government information, share all public information, and refer users to Government websites for additional guidance if it is available.

7. An employee may not use his or her Government email account for the personal use of Web 2.0 applications.
8. An employee may not send Web 2.0 personal correspondence to a Government email account for any purpose, including, but not limited to, invitations, chatting, and archiving.

## V. Responsibilities

- A. The Office of External Affairs, shall:
  1. Oversee all external communications on publicly accessible sites.
  2. With OCIO, edit, revise, amend, or otherwise maintain this Directive according to its review guidelines.
- B. The Office of Policy and Program Analysis, shall provide leadership, analysis, coordination, and decision-making support on Agency policies, plans, and key initiatives relating to websites and content.
- C. The Information Technology Branch, OCIO, shall provide guidance on IT risks, challenges (including cyber-security, etc.), and possible resolutions for issues relating to FEMA use of Web 2.0 technologies/applications.
- D. The Records Management Division and the Privacy Office, shall provide guidance and validate compliance of Web 2.0 technologies relating to privacy issues and records management.
- E. The Office of Chief Counsel (OCC), shall:
  1. Provide legal counsel for all technology-related initiatives.
  2. Identify legal challenges and possible resolutions.
  3. Validate that all use of Web 2.0 is legally compliant with pertinent laws and regulations.
  4. Negotiate any amendments to Terms of Service Agreements.
- F. Web Sponsors (or users, including offices and directorates), are responsible for overall compliance with all aspects of this Web 2.0 policy. Accordingly, Web Sponsors are also responsible for all budget, implementation, personnel, management, authorization, and content matters related to use of Web 2.0 technologies. The content owners on those sites and products are responsible for ensuring they conduct a reasonable review of the material to determine if there is any non-publicly releasable information, privacy information, or other restricted content being made available on their sites.

## VI. Authorities

- A. The Clinger-Cohen Act of 1996, Public Law 104-106, Title 41, United States Code (U.S.C.), Section 251 note, dated February 10, 1996.
- B. The E-Government Act of 2002, Public Law 107-347, 44 U.S.C. § 101 note, dated December 17, 2002.
- C. 5 CFR Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch."
- D. Executive Order 13526, *Classified National Security Information*, signed December 29, 2009, codified at 75 Federal Register (Fed. Reg.) Page 707, dated January 5, 2010.
- E. Presidential Memorandum, *Transparency and Open Government*, issued January 21, 2009, codified at 74 Fed. Reg. 4685, January 26, 2009.

- F. OMB Circular A-130, *Management of Federal Information Resources*, Revised Transmittal Memorandum No. 4, dated November 28, 2000.
- G. OMB Memorandum M-03-22, *OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002*, dated September 26, 2003.
- H. OMB Memorandum M-10-22, *Guidance for Online Use of Web Measurement and Customization Technologies*, dated June 25, 2010.
- I. OMB Memorandum M-10-23, *Guidance for Agency Use of Third-Party Websites and Applications*, dated June 25, 2010.
- J. DHS Management Directive (MD) 0007.1, *Information Technology Integration and Management*, dated March 15, 2007.
- K. DHS MD 0470.2, *Privacy Act Compliance*, dated October 6, 2005.
- L. DHS MD 4300A *DHS Sensitive Systems Policy Handbook*, dated August 9, 2010;  
<http://dhsconnect.dhs.gov/org/comp/mgmt/cio/iso/Pages/sspolicy.aspx>
- M. DHS MD 4400.1, *DHS Web (Internet, Intranet, and Extranet Information) and Information Systems*, dated March 1, 2003.
- N. DHS MD 11042.1, *Safeguarding Sensitive but Unclassified (For Official Use Only) Information*, dated January 6, 2005.
- O. FEMA Directive 136-2, *Web Site Development and Maintenance*.

**VII. Responsible Office**

Office of External Affairs

**VIII. Supersession**

This is a new Directive.

**IX. Questions**

Questions or concerns regarding this Directive should be directed to the Integrated Communications Branch Chief in the Public Affairs Division, External Affairs Office, at 202-646-4600.



---

Brent Colburn  
Director  
Office of External Affairs

Date: 12/16/10



**GOVERNMENT**  
**ETHICS AND**  
**THE USE OF**  
**SOCIAL**  
**MEDIA\***

**Office of Government Ethics Conference**  
**Orlando, Florida**  
**September 2011**

*\* DISCLAIMER: Reference to any commercial products or services in this presentation is not an endorsement or Government sanction of those non-Federal entities, its services or products.*

# **AGENCY ETHICS CONSIDERATIONS FOR ENGAGING WITH SOCIAL MEDIA**

**PART I**

---

# **WHAT IS SOCIAL MEDIA?**

---

- ❖ **Anything online other than static content where the provider posts and the viewer absorbs.**

# WHY?

---

- ❖ **Mission, mission, mission**
  - ❖ So keep using older tools, too
- ❖ **It's where the people are**
  - ❖ 200,000,000 daily Tweets.
  - ❖ 750,000,000 active Facebook users
- ❖ **It's where people are talking about us**
- ❖ **It's what the President wants:  
collaborative, transparent, participatory  
government**

# WHAT (TOOLS)?

---

## Examples of Social Media

- ❖ Mobile web/Mobile Apps
- ❖ Blogs
- ❖ Social networking
- ❖ Widgets
- ❖ Wikis
- ❖ Video/photo sharing
- ❖ Podcasting
- ❖ RSS
- ❖ Mashups
- ❖ Webinars

# BLOG



## Question of the Week: How do you protect children from mercury?

Posted on October 5th, 2009 - 10:30 AM

Exposure to mercury can result from misuse or overuse of mercury-containing products. Even something that seems as small as a broken thermometer needs to be [cleaned up and disposed of properly](#). [October is Children's Health Month](#).



### How do you protect children from mercury?

*Each week we ask a question related to the environment. Please let us know your thoughts as comments. Feel free to respond to earlier comments or post new ideas. [Previous questions](#).*

Join Greenversations. Read the [comment policy](#), [leave a comment](#).  
[Permalink](#) | [Comments \(5\)](#) | [TrackBack](#)

[ABOUT](#) | [EPA HOME](#)  
[CONTACT US](#)

[COMMENT POLICY](#)  
Comments submitted after hours or on weekends will be posted as early as possible the next business day.

### [FREQUENT QUESTIONS](#)

Subscribe to this blog by email:

[Subscribe to this blog's feed](#)

[Follow us on Twitter](#)

[Question of the Week](#)

# TWITTER

FEMA (fema) on Twitter - Windows Internet Explorer

http://twitter.com/FEMA

File Edit View Favorites Tools Help

Facebook | Federal Emergen... FEMA (fema) on Twitter

twitter

Have an account? [Sign in](#)

 **FEMA**

FEMA's mission is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards.

[www.fema.gov](http://www.fema.gov)

**Get short, timely messages from FEMA.**

Twitter is a rich source of instantly updated information. It's easy to stay updated on an incredibly wide variety of topics. **Join today** and **follow @fema**.

[Sign Up >](#)

Get updates via SMS by texting **follow fema** to **40404** in the United States  
Codes for other countries

 **fema**  
FEMA

Después de un desastre, ayudamos a sobrevivientes respondiendo a sus preguntas antes de que las hagan  
<http://bit.ly/aEEC9K>

3 minutes ago via HootSuite

After a disaster, we're putting survivors at ease by answering their questions even before they are asked: <http://bit.ly/aEEC9K>

8 minutes ago via HootSuite

Prepared yet? [www.ready.gov](http://www.ready.gov) // RT @okem More than 12 counties felt a 4.3 magnitude earthquake that occurred near Norman, OK

about 2 hours ago via HootSuite

Ve a cómo es trabajar en FEMA y las historias de empleados actuales en nuestra página de empleo: <http://go.usa.gov/abE>

about 2 hours ago via HootSuite

See what it's like to work for FEMA and watch stories from current employees at our careers page: <http://go.usa.gov/abE>

about 2 hours ago via HootSuite

 *Verified Account*

Name FEMA  
Location Washington, DC  
Web <http://www.fema.gov>  
Bio This channel provides FEMA mission-related information. For emergencies, call your local fire/EMS/police or 9-1-1.

278 following 21,019 followers 1,658 listed

Tweets 3,993

Favorites

Lists  
[@fema/state-em-offices](#)  
[View all](#)

Following



[View all...](#)

# FACEBOOK (FAN)

Department of Defense (DoD) | Facebook - Windows Internet Explorer

http://www.facebook.com/DeptofDefense?ref=mf

File Edit View Favorites Tools Help

Department of Defense (DoD) | Facebook

facebook

Keep me logged in Forgot your password?

peperino@aol.com Password Login

**Sign Up** Department of Defense (DoD) is on Facebook  
Sign up for Facebook to connect with Department of Defense (DoD).

**Department of Defense (DoD)**

Wall Info Live RSS/Blog Discussions Notes

Filters

RECENT ACTIVITY

- Department of Defense (DoD) discussed WHAT ABOUT on the Department of Defense (DoD) discussion board.
- Department of Defense (DoD) discussed ROMANIAN LANGUAGE AGAIN on the Department of Defense (DoD) discussion board.
- 4 more similar stories

**Department of Defense (DoD)** <http://www.defense.gov/releases/release.aspx?releaseid=13354>

 **Defense.gov News Release: Pentagon Statement on Metro Entrance Shooting**  
www.defense.gov  
A shooting incident has occurred at the Pentagon Metro Entrance this evening at approximately 6:40 p.m. EST. Two Pentagon Force Protection Agency (PFPA) officers were injured when an unknown ...

March 5 at 5:45am · Comment · Like

Giorgio, Satya, Ivan and 19 others like this.

View all 40 comments

**Department of Defense (DoD)** <http://socialmedia.defense.gov/index.php>

Fan page only

No advertising

# LINKEDIN

White House | LinkedIn - Windows Internet Explorer  
http://www.linkedin.com/groups/White-House-2199632?gid=2199632&trk=hb\_side\_g

Account Type: Basic | Jodi Cramer | Add Connections

Home Profile Contacts Groups Jobs Inbox 4 Companies News More | Groups Search...

## White House

Discussions Members Search More... | Share group

**NEW** Restart your old discussions with one click. [Browse your archived discussions >](#)

Start a discussion or share something with the group...  
Maximum length is 200 characters.  
Attach a link | Share

My Activity | What's Happening **NEW** | Show all RSS discussions ▾



### President Obama to Travel to the Midwest on a Three-Day Economic Bus...

whitehouse.gov • 44 minutes ago  
WhiteHouse.gov is the official web site for the White House and...

Like | Comment | Flag | More

### Most Popular Discussions



**Economy Grows at Sluggish 1.3%; Consumers Pull Back**  
The U.S. economy grew less than expected in the second quarter as consumer spending barely rose, and growth braked sharply in the prior ...  
posted 11 days ago

**David Bisenius** 24 minutes ago • An average of 43.3 million people, more than an eighth of the population, will get food stamps each month in the year that began last ... >

See all 667 comments >



### What are Your Questions for the President's Council on Jobs and Competitiveness?

On Tuesday, August 2nd, the President's Council is holding the next in a series of Listening and Action Sessions about how the public ...

### Manager's Choice



#### Myths and Facts About the Debt-Ceiling Compromise

Kori Schulman | See all >

### Updates: Last 7 Days



**Kris Ramabadran and 5 more** commented on:  
**What are Your Questions for the President's Council on Jobs and Competitiveness?**  
21 minutes ago • 242 comments



**David Bisenius and 4 more** commented on:  
**Economy Grows at Sluggish 1.3%; Consumers Pull Back**  
24 minutes ago • 664 comments



**8 people** have joined the group, including **Ward Strosser, Yael Lehmann and John Stappers**  
36 minutes ago

See all updates >

### Top Influencers This Week



**Debra Jones**

# YOUTUBE

The screenshot shows a Windows Internet Explorer browser window displaying the FEMA YouTube channel. The address bar shows the URL <http://www.youtube.com/fema>. The browser's menu bar includes File, Edit, View, Favorites, Tools, and Help. The toolbar contains various icons for navigation and utility, including a search bar with the Google logo and a 'Go' button. The channel header features the FEMA logo (U.S. Department of Homeland Security) and the slogan 'Prepared, Responsive, Committed'. Below the header are navigation links for Videos, Playlists, Groups, and Friends. The channel information section on the left identifies the channel as 'The Federal Emergency Management Agency' and provides details: 'FEMA', 'Joined: March 04, 2006', 'Last Sign In: 1 day ago', 'Subscribers: 28', and 'Channel Views: 2,440'. A description of FEMA's mission is provided, along with a video player showing a scene at Robertson Stadium in Houston, TX.

YouTube - FEMA's Channel - Windows Internet Explorer

<http://www.youtube.com/fema>

File Edit View Favorites Tools Help

Google G Go Bookmarks 17 blocked Check AutoLink AutoFill Send to Settings

YouTube - FEMA's Channel

**FEMA** Prepared, Responsive, Committed

[Videos](#) | [Playlists](#) | [Groups](#) | [Friends](#)

**The Federal Emergency Management Agency** [Edit Channel](#)

**FEMA**  
Joined: **March 04, 2006**  
Last Sign In: **1 day ago**  
Subscribers: **28**  
Channel Views: **2,440**

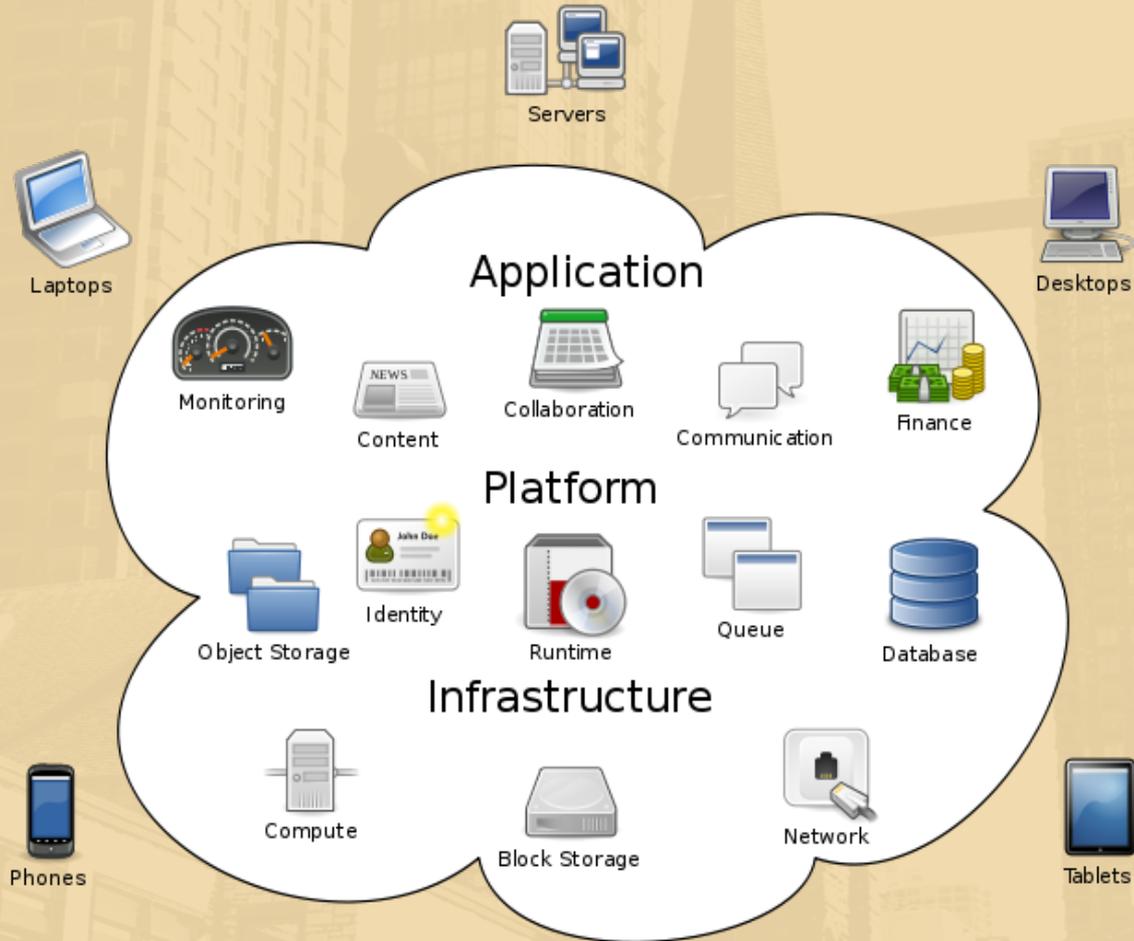
**DIRECTOR**

DISASTER. It strikes anytime, anywhere. It takes many forms -- a hurricane, an earthquake, a tornado, a flood, a fire or a hazardous spill, an act of nature or an act of terrorism. It builds over days or weeks, or hits suddenly, without warning. Every year, millions of Americans face disaster, and its terrifying consequences.

On March 1, 2003, the Federal Emergency Management Agency (FEMA) became part of the U.S. Department of Homeland Security (DHS). The primary mission of the Federal Emergency

Robertson Stadium  
Houston, TX

# CLOUD



## Cloud Computing

Image created by Sam Johnston

# MOBILE

The screenshot shows a Windows Internet Explorer browser window displaying the FEMA Mobile website. The address bar shows the URL <http://m.fema.gov/>. The page content includes the FEMA logo, a notice about Hurricane Paula, and sections for finding assistance and disaster preparedness.

**FEMA** [Español](#)

We're monitoring Hurricane Paula - tropical storm watch for parts of southern Florida. Know what to do [before, during and after a hurricane](#).

Be prepared, check your local weather forecast at [mobile.weather.gov](http://mobile.weather.gov) or [hurricanes.gov/mobile](http://hurricanes.gov/mobile).

**How can I find assistance after a disaster?**

- [Apply Online for FEMA Assistance](#) or Apply/Check your status by phone [1-800-621-3362](tel:1-800-621-3362)
- [What do I need to file a claim for federal assistance?](#)
- [Where can I get assistance?](#)
- [How do I keep my family safe?](#)
- [How can I help others?](#)

**What should I do in a disaster?**

- [Hurricanes](#)
- [Floods](#)
- [Tornadoes](#)
- [Earthquakes](#)
- [Terrorism](#)
- [Thunderstorm](#)
- [Tsunami](#)
- [Wildfires](#)
- [Winter Storms](#)

**[How do I return home safely?](#)**

U.S. Department of Homeland Security |  
Federal Emergency Management Agency

[www.fema.gov](http://www.fema.gov) (full site)

# **ETHICS ISSUES IN IMPLEMENTATION**

---

## **How do you meet the spirit of the law?**

- ✘ Decision-maker's personal conflicts of interest (18 USC 208; 5 CFR 2635.502)
- ✘ Impartiality in selecting social media tool
- ✘ Terms of Service raise Misuse of Govt Equipment/Resources concerns
- ✘ Preferential Treatment – Improper endorsement or sanction(?)

# ETHICS ISSUES IN IMPLEMENTATION

---

## Considerations for .gov or .mil websites:

- ✘ Only include external links that are necessary!
- ✘ Create a dedicated agency social media page.
- ✘ Agency Branding?
- ✘ Include a goodbye page when linking to a non-Federal website.
- ✘ Provide as many share tools as possible.

# **OTHER TIPS/PITFALLS**

---

- ❖ **Terms of Service Agreement**
  - ❖ Indemnification
  - ❖ Confidentiality
  - ❖ Choice of Laws
  - ❖ Persistent Cookies
- ❖ **Beware of use of Agency name/seals**
- ❖ **Use disclaimers/bumpers**

# **OTHER TIPS/PITFALLS**

---

## **❖ Coordinate early and often**

- ❖ Get all impacted parties together to coordinate
- ❖ Identify concerns
- ❖ Determine plan for implementation/deployment

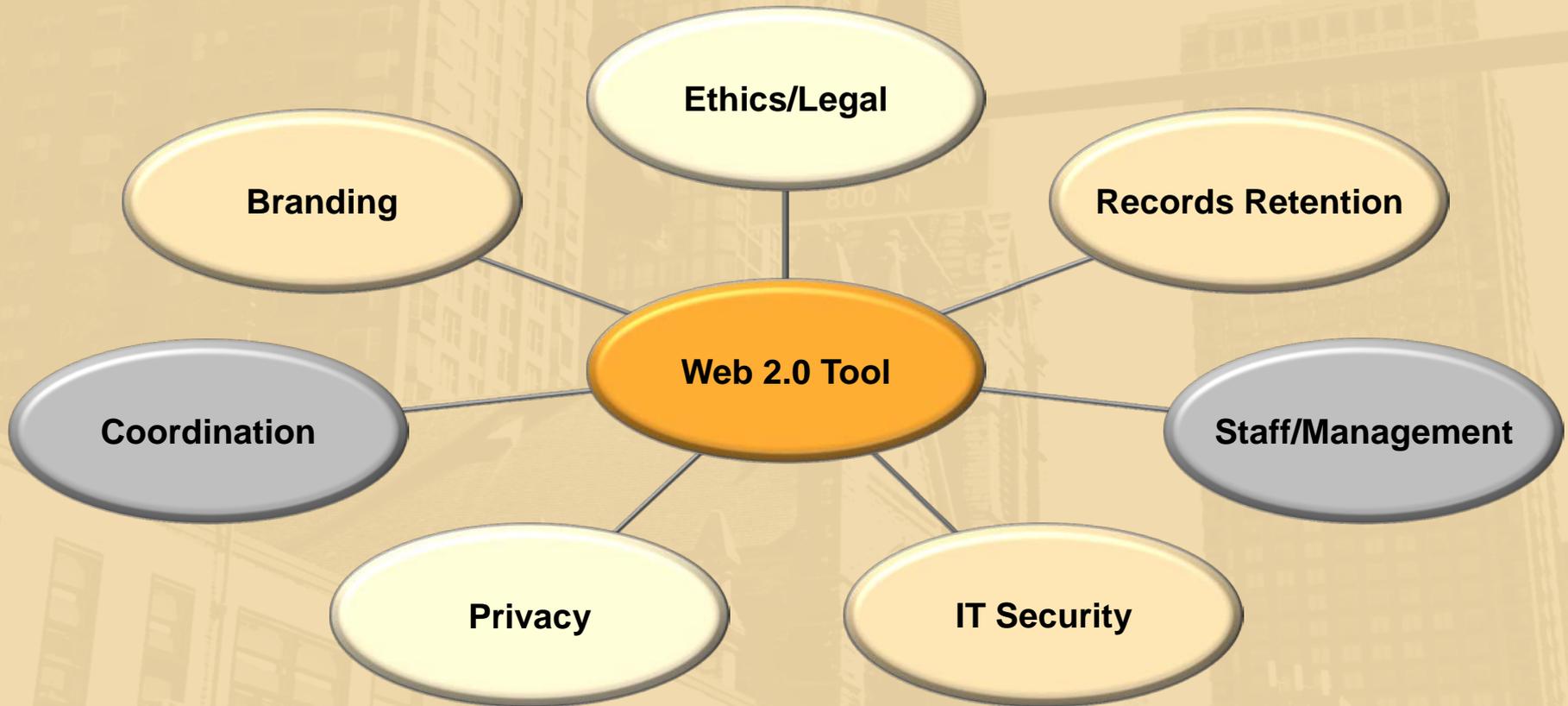
## **❖ Create clear policies**

- ❖ Who speaks for the agency
- ❖ What comments will be removed

## **❖ Consider developing employee training**

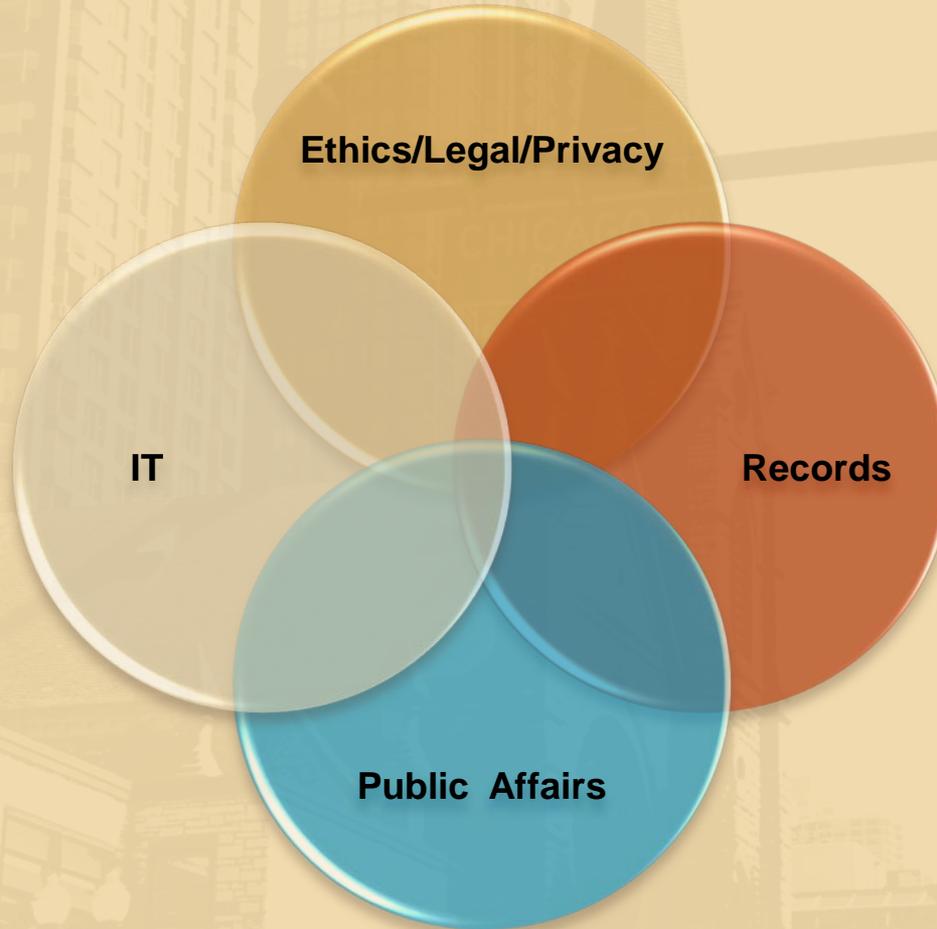
# OTHER TIPS/PITFALLS

---



# **COORDINATION IS KEY**

---



## **DEALING WITH WEB 2.0 ISSUES:**

---

- 1. Identify the areas where you need a point of contact.**
- 2. Establish a working group that includes those POCs.**
- 3. Make sure the POCs use the technology before signing off on any web 2.0 technology**
  - ❖ Set up a personal account and play with the applications.
- 4. Identify the issues and develop solutions**
  - ❖ The law does not address this type of technology; agencies should act in the “spirit” of the law.
  - ❖ Be creative in your solutions – think outside of the

## **DEALING WITH WEB 2.0 ISSUES: (CONT'D)**

- 5. Make sure the POCs use the technology before signing off on any web 2.0 technology**
  - ❖ Set up a personal account and play with the applications.
- 6. Identify the issues and develop solutions**
  - ❖ The law does not address this type of technology; agencies should act in the “spirit” of the law.
  - ❖ Be creative in your solutions – think outside of the box.

# ETHICS CONSIDERATIONS FOR SOCIAL MEDIA USERS:

## *Personal vs. Official*

### PART II

---

# **ETHICS ISSUES**

---

## **OFFICIAL USE**

- ❖ **Must be Acting in an Official Capacity:**
  - ❖ Authorized to speak for the Agency.
  - ❖ Identified as an Agency Official & Representative.
  - ❖ Releasing only Authorized Information.

# **ETHICS ISSUES**

---

## **OFFICIAL USE**

- × Conflict of Interest (18 USC 208)**
- × Impartiality (5 CFR 2635.502)**
- × No fundraising (5 CFR 2635.808)**
- × Acceptance of gifts only with Agency specific authority.**
- × No solicitation of gifts.**

# **ETHICS ISSUES**

---

## **OFFICIAL USE**

- × Misuse of Position (5 CFR 2635.702-705)**
  - + No use of public office for private gain
  - + No improper endorsements or implied Govt sanction
  - + Misuse of Government resources – property/time
  - + No unauthorized disclosure of non-public information

# **ETHICS ISSUES**

---

## **OFFICIAL USE**

- ❖ **No fundraising (5 CFR 2635.808)**
- ❖ **No solicitation of gifts**
- ❖ **Acceptance of gifts only with Agency specific authority.**

# **ETHICS ISSUES**

---

## **PERSONAL CAPACITY**

- ❖ **Acting in A Personal Capacity:**
  - ❖ Using a personal account.
    - ❖ Beware of mixed official/personal accounts.
  - ❖ Not on Government time/equipment.
    - ❖ Limited personal use exception.
    - ❖ Agency Policy(?)
  - ❖ Expressing a personal opinion or speaking as a private citizen.
  - ❖ Not discussing non-public government

# **ETHICS ISSUES**

---

## **PERSONAL CAPACITY**

### **❖ Examples:**

- ❖ Personal Blogs
- ❖ Social Network postings
- ❖ Profession Network postings
- ❖ Comments on other social media postings
  
- ❖ Beware of activities that relate to official duties

# **ETHICS ISSUES**

---

## **PERSONAL USE**

- ❖ **Prohibition against assisting in the prosecution of claims against the Government or acting as an agent or attorney before the Government (18 U.S.C. §§ 203 and 205)**

# **ETHICS ISSUES**

---

## **PERSONAL USE**

- ❖ **Outside employment or activity cannot conflict with employee's official duties (5 C.F.R. §2635.802) .**
- ❖ **Prior approval to engage in outside employment or activities (5 C.F.R. § 2635.803) Check for agency supplemental rules requiring prior approval. E.g., 5 C.F.R. 6401.103 (EPA); 5 C.F.R. 3601.107 (DoD)**

# **ETHICS ISSUES**

---

## **PERSONAL USE**

- ❖ **Compensation for teaching, speaking, or writing – With certain exceptions, employees generally shall not receive compensation from any source other than Government for teaching, speaking, or writing that relates to the employees' official duties. (5 C.F.R. 2635.807(a))**

# **ETHICS ISSUES**

---

## **PERSONAL USE**

- ❖ **Reference to official position (5 C.F.R. 2635.807(b)(1)).**
  - ❖ Applies to outside employment and outside activities (5 C.F.R. 2635.807(b)). *See also OGE Advisory Opinion 10 x 1.*
  - ❖ Check for Agency supplemental rules
- ❖ **Fundraising in a personal capacity (5 C.F.R. 2635.808(c)).**

# **ETHICS ISSUES**

---

## **PERSONAL USE**

- ❖ **Release of non-public information (5 C.F.R. 2635.703) - Pickering v. Board of Education of Township High School District 205, Will County, 391 U.S. 563 (1968).**
- ❖ **Misuse of Government time/equipment (5 C.F.R. 2635.704-705).**

# OTHER TIPS/PITFALLS

---

## LEGAL CONSIDERATIONS

- ❖ **1<sup>st</sup> Amendment – Right to Free Speech**
- ❖ **Anti-Lobbying Act**
- ❖ **Hatch Act – Partisan Political Activities Restrictions**

# OTHER TIPS/PITFALLS

---

## ❖ **Cyber Security:**

- ❖ Social Engineering
- ❖ Hacking of personal accounts

## ❖ **Responding to Comments:**

- ❖ Avoid identifying Agency where they work (esp. to bolster position)
- ❖ Do not discuss non-public information
- ❖ May link to public information

## **CONSIDERATIONS FOR POLICY DEVELOPMENT:**

- ❖ **Require official users to identify themselves as official users.**
  - ❖ Use the Agency name on the account.
- ❖ **Require users in their personal capacity to identify themselves as Agency employees when discussing Agency public information and to link to official Agency material.**

## **CONSIDERATIONS FOR POLICY DEVELOPMENT:**

- ❖ **Prohibit employees from using their government e-mail to sign up for social media sites.**
  - ❖ Including sending invitations to social media sites to government e-mail addresses.
- ❖ **Limited use of government time/equipment for social media sites.**
  - ❖ Investigation of abuse of government time/equipment.

# HOW SHOULD AGENCIES DEAL WITH WEB 2.0

## GUIDANCE:

- ❖ **Develop policy**
- ❖ **Provide guidance to employees on how to use social media safely.**
  - ❖ Cyber security issues
  - ❖ How to respond to comments made about the Agency.

# OTHER TIPS/PITFALLS

## LEGAL CONSIDERATIONS

- ❖ **Anti-Lobbying Act**
- ❖ **Hatch Act**
- ❖ **Privacy Act/FOIA**
- ❖ **FACA**
- ❖ **Records Management**  
... etc.

# **CONTACT INFORMATION**

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- ❖ **Jodi Cramer: FEMA Office of Chief Counsel  
(202) 646-4095, [jodil.cramer@dhs.gov]**
- ❖ **Erica Dornburg, Standards of Conduct Office, Department of Defense  
(703) 695-3422, [soco@osd.mil]**
- ❖ **Steven Jawgiel: EPA Office of Regional Counsel, Region IX  
(415) 972-3876 [jawgiel.steven@epa.gov]**

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EPA Classification No.: CIO 2184.0	CIO Approval Date: 06/20/2011
CIO Transmittal No.: 11-0006	Review Date: 6/2014

*Issued by the EPA Chief Information Officer,  
Pursuant to Delegation 1-19, dated 07/07/2005*

## SOCIAL MEDIA POLICY

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### 1. PURPOSE

This policy establishes the principles for the use of social media at EPA. For purposes of this policy, "social media" is a term for a wide-spectrum of user-driven content technologies.

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### 2. SCOPE AND APPLICABILITY

This policy applies to EPA employees, contractors, and other personnel acting in an official capacity on behalf of EPA when using social media for official EPA purposes on the Intranet and the Internet, whether such use occurs on the EPA Website or third-party sites.

This policy does not apply to EPA employees using social media tools for personal use while using government-owned office equipment; such use is covered by EPA Order 2100.3 A1, "Limited Personal Use of Government Office Equipment Policy."

This policy does not apply to EPA employees using social media in their personal capacities; however, employees are always required to follow the Standards of Ethical Conduct and the Hatch Act.

This policy does not supersede or replace existing legal responsibilities and policies in effect.

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### 3. AUDIENCE

The audience for this policy includes any EPA employee, contractor, or other person who uses social media on behalf of EPA.

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### 4. BACKGROUND

Much like the Internet transformed information during the 1990's, social media is a 21<sup>st</sup> century phenomenon that offers a new and constantly emerging range of opportunities for networking, collaborating, and information-sharing. EPA is using social media tools to create a more effective and transparent government, to engage the public and EPA's partners, and to facilitate internal collaboration. Social media provides another set of tools to help EPA accomplish its mission.

The benefits of using social media in support of EPA's mission include increased ability for the Agency to engage and collaborate with partners, notably the American public. With the benefits and opportunities of social media come risks for security and privacy. It is important that EPA weigh both the benefits and the risks before using social media tools. In addition, there are legal issues and federal requirements that are unique to the government, such as privacy, Section 508 compliance (accessibility), records management, procurement rules, and staff participation on external sites that directly impact EPA employees' use of social media tools. EPA will use these tools only in support of

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its mission.

It is important to note that many laws, regulations, and policies were written before the inception of social media tools. EPA procedures, standards, and guidance will ensure that EPA follows existing laws, regulations, and policies while launching social media applications; at the same time, EPA will work with appropriate federal government entities to revise laws and policies as necessary.

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## 5. AUTHORITY

President Barack Obama memorandum, "Transparency and Open Government," January 21, 2009 [http://www.whitehouse.gov/the\\_press\\_office/TransparencyandOpenGovernment/](http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/)

Director Peter R. Orszag memorandum, OMB M-10-06, "Open Government Directive," December 8, 2009 [http://www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf)

Director Peter R. Orszag memorandum, OMB M-10-23, "Guidance for Agency use of Third-party Websites and Applications," June 25, 2010 [http://www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-23.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-23.pdf)

Administrator Cass R. Sunstein memorandum, Office of Information and Regulatory Affairs, Office of Management and Budget "Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act," April 7, 2010 [http://www.whitehouse.gov/omb/assets/inforeg/SocialMediaGuidance\\_04072010.pdf](http://www.whitehouse.gov/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf)

Administrator Lisa P. Jackson memorandum, "Transparency in EPA's Operations," April 23, 2009 <http://www.epa.gov/administrator/operationsmemo.html>

Chief Information Officer Molly A. O'Neill memorandum, "EPA and Web 2.0 Technologies," December 17, 2007 [http://yosemite.epa.gov/OEI/webguide.nsf/policy/web20\\_memo](http://yosemite.epa.gov/OEI/webguide.nsf/policy/web20_memo)

US EPA Information Access Strategy, January 2009 <http://epa.gov/nationaldialogue/FinalAccessStrategy.pdf>

US EPA Public Involvement Policy, May 2003 <http://www.epa.gov/publicinvolvement/policy2003/index.htm>

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## 6. POLICY

It is EPA's policy to use social media where appropriate in order to meet its mission of protecting human health and the environment.

Agency product review processes in place for regional and program offices apply to EPA's use of social media.

EPA will only use third-party sites that have been approved for Agency use, and such use must be in accordance with approved Terms of Service (ToS) agreements. A listing of all TOS agreements in place are found at:

[http://yosemite.epa.gov/OEI/webguide.nsf/socialmedia/social\\_media\\_tos\\_agreements](http://yosemite.epa.gov/OEI/webguide.nsf/socialmedia/social_media_tos_agreements)

EPA will not use third-party social media sites to collect personally identifiable information.

EPA must comply with applicable federal laws, regulations, and requirements including but not limited to records management, Section 508 access for persons with disabilities, privacy, and information security in its social media use.

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When using social media tools and third-party sites, whether on behalf of EPA or on their own time, EPA employees are bound by the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635.

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## 7. RELATED DOCUMENTS

Information Technology Management Reform Act of 1996 (absorbed under Clinger-Cohen Act of 1996) (40 U.S.C. § 1401)

Records Management by Federal Agencies (44 U.S.C. Chapter 31)

Section 508 of the Rehabilitation Act (29 U.S.C. § 794(d)), as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998

Privacy Act - Records maintained on individuals (5 U.S.C. § 552(a))

Paperwork Reduction Act (PRA) of 1980, as amended; Paperwork Reduction Reauthorization Act of 1995 (44 U.S.C. Chapter 35)

EPA Order 2100.3 A1, "Limited Personal Use of Government Office Equipment Policy," 04/02/2004  
<http://intranet.epa.gov/rmpolicy/ads/orders/2100.3A1.pdf>

CIO Policy 2180.0 "Web Governance and Management," 09/07/2006  
<http://www.epa.gov/irmpoli8/policies/21800.pdf>

CIO Policy 2100.1 "Accessible Electronic and Information Technology," 04/05/2006  
<http://www.epa.gov/irmpoli8/policies/2130.pdf>

CIO Policy 2150.0 "Agency Network Security Policy," 11/27/2007  
<http://www.epa.gov/irmpoli8/policies/21500.pdf>

CIO Policy 2151.0 "Privacy Policy," 09/27/07 <http://www.epa.gov/privacy/policy/2151/>

CIO Policy 2155.1 "Records Management," 06/08/2009  
[http://www.epa.gov/records/policy/2155/rm\\_policy\\_cio\\_2155\\_1\\_2.pdf](http://www.epa.gov/records/policy/2155/rm_policy_cio_2155_1_2.pdf)

CIO Policy 2182.0, "Children Privacy and Children's Copyright Issues," 10/25/2007  
<http://intranet.epa.gov/oei/imitpolicy/qic/ciopolicy/2182.p.pdf>

CIO Policy 2181.0, "Posting Copyrighted Works on EPA Web Site," 10/25/2007  
<http://www.epa.gov/irmpoli8/policies/2181p.pdf>

CIO Policy 2171.0, "Information Access Policy," 01/24/2008  
<http://intranet.epa.gov/oei/imitpolicy/qic/ciopolicy/2171.0.pdf>

IRM Policy Manual 2100: Chapter 9 - Information Collection, 2/29/96  
<http://intranet.epa.gov/ohr/rmpolicy/ads/manuals/Chaptr09.PDF>

EPA FOIA Regulations <http://www.epa.gov/foia/foiaregs.htm>

EPA Web 2.0 Whitepaper, February 2008  
[http://intranet.epa.gov/webgroup/meetings/02-08/presentations/web20/Web\\_2/web20whitepaper.pdf](http://intranet.epa.gov/webgroup/meetings/02-08/presentations/web20/Web_2/web20whitepaper.pdf)

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## 8. ROLES AND RESPONSIBILITIES

The Chief Information Officer/Assistant Administrator, Office of Environmental Information, and the Associate Administrator for External Affairs and Environmental Education are jointly responsible for monitoring compliance with this policy.

Office of Environmental Information (OEI) applies the requirements of this policy in its functions of providing appropriate Agency-wide web technology services and security, policy, guidance, and technical assistance to Program and Regional offices. OEI develops policy and procedures for social media use in consultation with OEAE.

Office of External Affairs and Environmental Education (OEAE) applies the requirements of this policy in its functions of managing communications and product review. OEAE also develops Terms of Service agreements with third-party sites in consultation with OEI and the Office of General Counsel. OEAE develops and implements social media awareness training in conjunction with OEI.

Office of General Counsel (OGC) provides legal guidance relating to the Web, reviews and approves terms of service, and oversees ethics requirements for EPA employees.

Office of Policy (OP) - applies the requirements of this policy in its function of setting Agency-wide standards and guidance for the rulemaking process and coordinating EPA rulemakings.

Office of the Inspector General (OIG) will adhere to the Social Media Policy to the extent that it is not inconsistent with the Inspector General Act of 1978, as amended, or with the policies, procedures, and guidelines established by the Office of Inspector General.

Senior Information Officials (SIOs) serve as the primary point of accountability for the effective oversight, coordination, and management of information and information technology (IT) within their respective organizations and are responsible for ensuring that their office is in compliance with EPA's Social Media Policy, procedures and supporting documents.

Information Management Officers (IMOs) support their respective SIO in implementing the SIO's information technology and information management functions and responsibilities.

Communication Directors in program offices are responsible for managing communications from their organizations, including Web efforts.

Public Affairs Directors at Regional Offices are responsible for managing communications from their organizations, including Web efforts.

Web Content Coordinators, as members of the Web Council, are responsible for working with their respective regional and program offices to discuss appropriate social media usage for that office in accordance with OEAE and OEI web policy and web practices. A listing of the coordinators is found at: <http://www.epa.gov/webgovernance/leadership.html>

Web Infrastructure Coordinators, as members of the Web Council, are responsible for working with their respective regional and program offices to discuss appropriate social media usage for that office in accordance with OEAE and OEI web policy and web practices. A listing of the coordinators is found at: <http://www.epa.gov/webgovernance/leadership.html>

Agency Privacy Officer - National program manager for Agency's National Privacy Program. Develops Agency level privacy policies, procedures, standards, and guidelines; leads Agency efforts to protect PII; provides direction and oversight of Agency's privacy responsibilities, reports to the Senior

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Agency Official for Privacy and the Office of Management and Budget on privacy compliance and administration activities.

Information Security Officer (ISO) - Designated by the Assistant Administrator (AA), Regional Administrator (RA), Inspector General (IG), or General Counsel for their respective organizations. The ISO ensures that information resources under his/her purview are managed and protected appropriately. The primary role of an ISO is to ascertain that a current information security program is in place for his/her respective organization and that the information is properly managed from an information security perspective.

Records Liaison Officer (RLO) - A person responsible for overseeing a records management program in a headquarters or field office in cooperation with the agency records management officer.

Regional and program offices provide quality content and appropriate infrastructure and resources to communicate the Agency's work and mission on the web. Regional and program offices may provide additional procedures and guidance as needed to meet their respective priorities, provided they do not conflict with those that apply to the Agency as a whole. Ultimate accountability for Region and program areas on the web is at the most senior level, typically at the Assistant Administrator or Regional Administrator level.

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## 9. DEFINITIONS

Social Media - any online tool or application that goes beyond simply providing information, instead allowing collaboration, interaction, and sharing. Examples of social media include: blogs; microblogs; wikis; photo and video sharing; podcasts; virtual worlds; social networking; social news and bookmarking; web conferencing and webcasting.

Third-party website – for purposes of this policy, any website that is not owned, operated or co-sponsored by EPA. Refers to sites as a whole; EPA accounts on such sites are still third-party, even though EPA controls the content of those accounts.

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## 10. WAIVERS

There are no waivers from this policy.

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## 11. RELATED PROCEDURES, STANDARDS AND GUIDANCE

Using Social Media Internally at EPA Procedure, CIO 2184.0-P01.1  
(<http://intranet.epa.gov/oeiintra/imitpolicy/policies.htm> June 20, 2011)

Using Social Media to Communicate with the Public Procedure, CIO 2184.0-P02.1  
(<http://intranet.epa.gov/oeiintra/imitpolicy/policies.htm> June 20, 2011)

Representing EPA Online Using Social Media Procedure, CIO 2184.0-P03.1  
(<http://intranet.epa.gov/oeiintra/imitpolicy/policies.htm> June 20, 2011)

Requirements for creating, customizing, and maintaining Web products on the Agency's Public Access and Intranet servers are found at: <http://www.epa.gov/webguide>

Procedures and processes for creating, customizing, and maintaining EPA products using social media are found at <http://yosemite.epa.gov/OEI/webguide.nsf/socialmedia>

Requirements for creating, customizing, and maintaining Web products on the Agency's Public Access and Intranet servers are found at <http://www.epa.gov/webguide> including all design

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requirements for public access EPA web pages at:  
<http://yosemite.epa.gov/oei/webguide.nsf/standards-guidance>

Terms of Service agreements can be found on the EPA Webguide at:  
[http://yosemite.epa.gov/OEI/webguide.nsf/socialmedia/social\\_media\\_tos\\_agreements](http://yosemite.epa.gov/OEI/webguide.nsf/socialmedia/social_media_tos_agreements)

EPA Order CIO2101.0 A1, "Policy on Limited Personal Use of Government Office Equipment," covers limited personal use of government-owned office equipment.  
<http://intranet.epa.gov/oei/imitpolicy/qic/ciopolicy/2101-0.pdf>

Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635,  
[http://www.usoge.gov/ethics\\_docs/publications/reference\\_publications/rfsoc\\_02.pdf](http://www.usoge.gov/ethics_docs/publications/reference_publications/rfsoc_02.pdf)

Interim Guidance, "Representing EPA Online Using Social Media", 01/26/2010  
[http://yosemite.epa.gov/OEI/webguide.nsf/socialmedia/representing\\_epa\\_online](http://yosemite.epa.gov/OEI/webguide.nsf/socialmedia/representing_epa_online)

Best practices and general information about EPA and social media can be found on the Social Media @ EPA blog: <http://blog.epa.gov/socialmedia/>

All Office of Environmental Information (OEI) Information Management and Information Technology (IM/IT) policies are located at: <http://intranet.epa.gov/oei/imitpolicy/policies.htm>

EPA's administrative policies issued through the Office of Administration and Resources Management (OARM) Directives Clearance Review Process are located at: <http://intranet.epa.gov/policy/index.htm>

Federal Web requirements, best practices, and guidance are found at Webcontent.gov  
<http://www.usa.gov/webcontent/>

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## 12. MATERIAL SUPERSEDED

Not applicable.

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## 13. ADDITIONAL INFORMATION

For further information about this policy, please contact the Policy and Program Management Branch, Office of Information Analysis and Access, in the Office of Environmental Information.

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*Malcolm D. Jackson*  
*Assistant Administrator*  
*and Chief Information Officer*  
*Office of Environmental Information*

# OGE 2011 Annual Conference – Online Training Tools

## **PART ONE: Getting Started with Xtranormal.com**

**Step One:** Pick an ethics topic (WAG, Outside Activities, Gifts, etc...) What are the rules that you want to cover? Or what is this year's theme for training?

**Step Two:** Pick a set: (usually an office -- see "SUITZ" set collection).

**Step Three:** Pick 1 or 2 actors (cartoon characters) and make notes about them.

Actor one (name, relationship with others, how does the character feel? what does it want? what does it need to do to get what it wants?).

Actor two (name, relationship with others, how does the character feel? what does it want? what does it need to do to get what it wants?).

**Step Four:** Story (dialogue). Write dialogue so that the characters answer the questions above, and bring up the applicable ethics rules. Answer one question: How does the character get what it wants?

**Step Five:** Edit the dialogue; add gestures, pauses between sentences to allow for laughter, etc...

**Step Six:** Publish to xtranormal.com's own site (what I do) or youtube.com or elsewhere.

## **TIPS FOR SUCCESS:**

Reference your office – be specific.

Be super clean in language – no EEOC violations please.

No Jokes – unless you know what you are doing or if they are really bad but presented ironically.

Let the ethics rule dictate the "story".

Shoot for about 5 minutes long.

Plan on spending more time editing and especially cutting dialogue.

Don't worry about "plot" consistency.

## **GET STARTED -- HOW TO OPEN AN ACCOUNT:**

Go to [www.xtranormal.com](http://www.xtranormal.com) and click on Movie Maker Product (not the product entitled Slate).

Create educational account.

Await email response from Xtranormal.

Xtranormal will approve your educational status and they will send you back an email giving you points.

Xtranormal works on points system: actors, sets and publishing all cost points.

Otherwise: all new accounts get 300 points.

Enough for 3 movies of unlimited length.

## **PART TWO: OTHER ONLINE TOOLS**

(1) Teach-nology.com. Example -- ethics bingo cards:

[http://www.teach-nology.com/web\\_tools/materials/bingo/](http://www.teach-nology.com/web_tools/materials/bingo/)

(2) armoredpenguin.com: Example -- ethics word search.

<http://www.armoredpenguin.com/wordsearch/>

(3) Online relevant ethics news clips:

<http://news.discovery.com/tech/robot-makes-ethical-decisions.html>

(4) Ujam.com: Make custom music without any musical talent.

(5) Microsoft SharePoint -- Survey employees after ethics training.

## **QUESTIONS?**

Feel free to contact me:

Greg Walters, Attorney, HUD Region VIII, [Gregory.S.Walters@hud.gov](mailto:Gregory.S.Walters@hud.gov), (303) 672-5377

# 2008 HUD Ethics Word Search

Note: words may appear vertically, horizontally, and diagonally, reading forwards or backwards.



Divestiture  
 Management  
 Personal  
 Barred  
 Twenty  
 TroyTulowitzki

RealEstate  
 Written  
 Commercial  
 Employment  
 Principal  
 California

Prior  
 Waiver  
 Impartial  
 Prohibited  
 FHA  
 MesaVerde

Annually  
 Fundraising  
 Appearance  
 Ten  
 Reform

# B I N G O

Swanky	Hospitality	Seattle	Brain	Hannah
Freddie Mac	Promiscuity	Girl Scout	Representational	Boss
Rigged	E-Discovery	Shower	FREE BINGO SPACE!	Hatch
FHA	Hamilton	Obama	Pen	Gas
Mortgage	Nuggets	Corruption	Brangelina	Ponzi

**Directions:** Cross out the words in the spaces above as you hear them *spoken* during the presentation. Once you cross-out a set of words that collectively form a **straight** line under **all** the letters B, I, N, G, and O, yell out “BINGO!” The first person to get a BINGO wins candy!

- *An official “BINGO” can ONLY be formed with a straight horizontal or straight diagonal grouping of words (no vertical or random combinations).*
- *Crossing out a word when you read it on the screen does not count (the word must be spoken by the presenters before it counts)*
- *Facilitators will determine who yells “BINGO” first, and will also determine whether it’s a legitimate BINGO.*

# B I N G O

Hamilton	Promiscuity	Rigged	Representational	Ponzi
Swanky	Mortgage	Seattle	Hatch	Obama
Shower	Brangelina	Corruption	Gas	Broncos
Boss	Hannah	Hospitality	Pen	FREE BINGO SPACE!
E-Discovery	Brain	Girl Scout	FHA	Nuggets

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# B I N G O

Shower	Rigged	Freddie Mac	Hamilton	Pen
Brain	Nuggets	Obama	Seattle	Broncos
E-Discovery	Representational	Hannah	FHA	Gas
Swanky	Corruption	Ponzi	Girl Scout	Hatch
Promiscuity	Mortgage	Brangelina	FREE BINGO SPACE!	Boss

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# B I N G O

Ponzi	Brangelina	Hannah	Shower	Obama
Nuggets	Freddie Mac	Corruption	Hospitality	Representational
Swanky	Pen	Boss	Rigged	E-Discovery
FHA	Mortgage	Hatch	Broncos	Hamilton
Promiscuity	FREE BINGO SPACE!	Brain	Seattle	Gas

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# B I N G O

Promiscuity	Hatch	FHA	Mortgage	Brangelina
Brain	Shower	Hannah	Rigged	Girl Scout
FREE BINGO SPACE!	E-Discovery	Boss	Pen	Nuggets
Broncos	Obama	Gas	Freddie Mac	Corruption
Hamilton	Ponzi	Representational	Swanky	Seattle

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# How to use Free Online Tools to Create a Powerful, State of the Art Ethics Training Program

*Hint ... Think inside the box*

# HUD Office of Counsel

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**Greg Walters, Attorney-Advisor**



# AGENDA

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- I. Introduction
- II. Xtranormal.com
- III. Two Videos
- IV. Ethics Cartoon Maker
- V. Other Tools
- VI. Quiz
- VII. World Premiere Video (possibly)

# Goals of Ethics Training

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- Employees Learn Rules
- Want to Ask You for Advice

# Elements of Training

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- ◉ Presentation must be entertaining
- ◉ Have meaningful content
- ◉ Contain an invitation

# Ethics Training

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- ◉ What Works
- ◉ What Doesn't Work

# My Story

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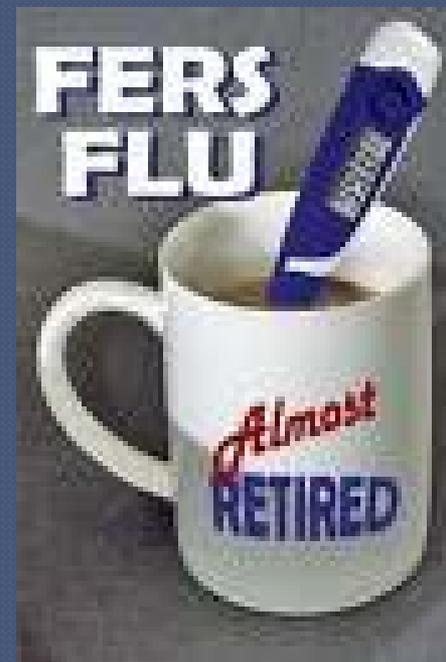
- From Ethics Hell to Heaven



# What doesn't work

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- “Live Training:” Hundreds in large chilly hotel conference room, two and a half hours of mandatory training with no breaks, reading regulations



# Life after “Live” Training

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- ⦿ Problem with Live Training . . . often not Lively:
- ⦿ (1) Ethics material is not dramatized; (2) Employees expect video for information and entertainment – so reading isn't fundamental

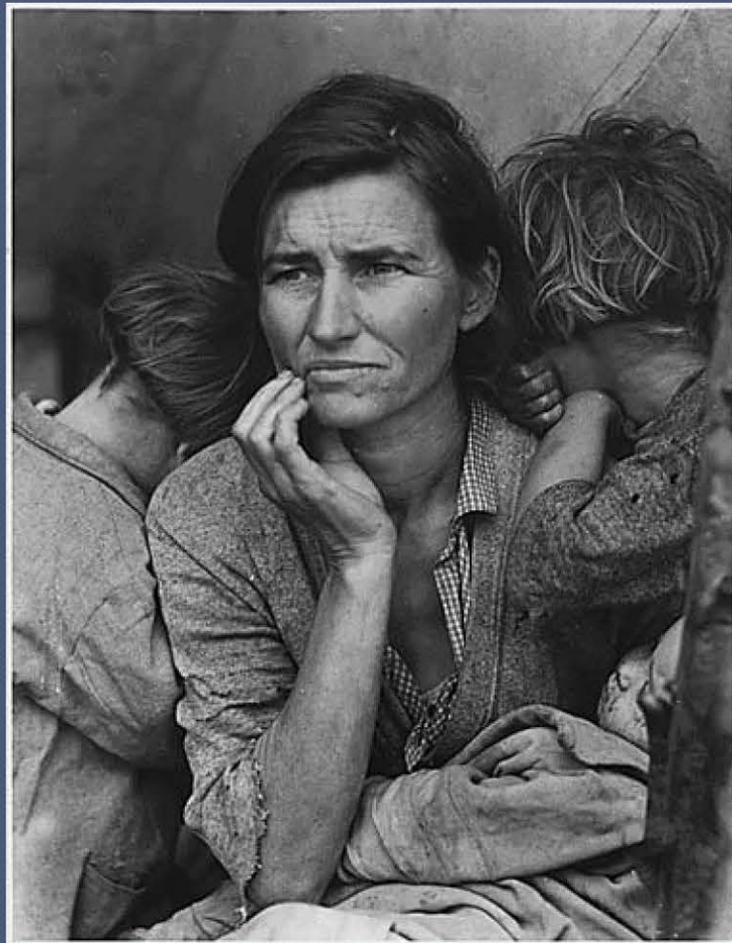
Without Drama, Federal folks  
either “Rest” or...

---



# Don't lecture me on Ethics

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# Premise

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- ◉ Give people what they want so that they want what you give to them.
- ◉ What do they want?



# What Does Your Audience Do In Their Free Time?

---

- ◉ Recite Federal Regulations?
- ◉ Surf the Internet? Update Facebook?
- ◉ Watch TV?
- ◉ Do endless things with “smart phones”?

# 2 Hours A Day On The Internet

---

- ◉ Expect to receive information from a screen. Work and Entertainment
- ◉ “You mean some people can actually work without being online?” Pranay Manocha 20-something commentary

# Your Audience

---

- Average Federal Employee – 46.9 years old; 16.5 years service; 52% male; 47% female



# I Want My MTV

---

- ◉ Older Gen Xer -- Younger Boomer.
- ◉ Visual Generation: Majority of working years (1990s to present) with computers.
- ◉ Sex, Lies and Videotape

# Audience, Continued

---

- ◉ Two More Factors:
- ◉ (1) Attention Span
- ◉ (2) Trends in Media Consumption

# Question

---

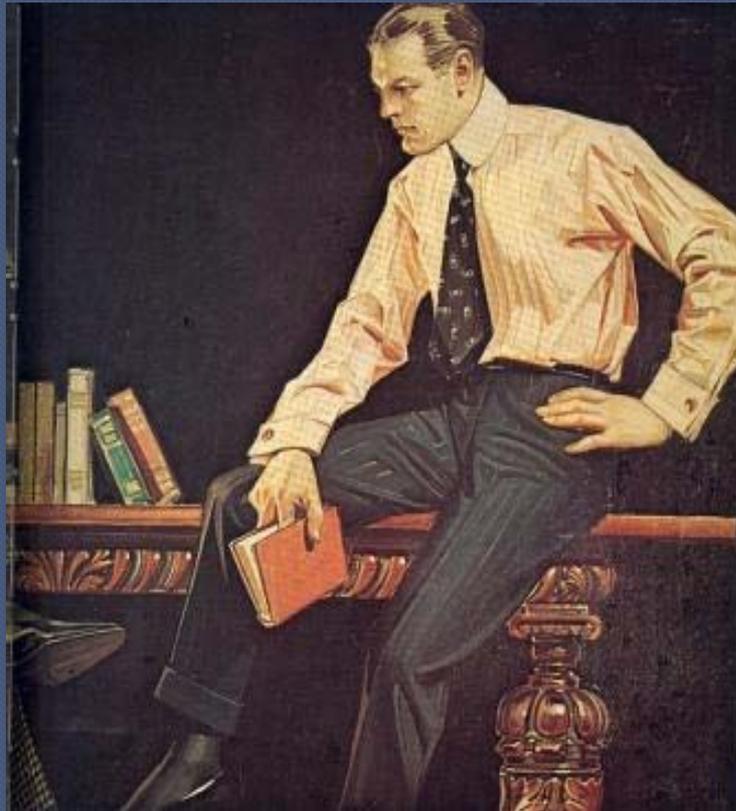
- What is the average attention span of an Adult? (Federal adult or otherwise)



# Answer

---

- ◉ 20 minutes (if they are at all interested!)



# How do you increase attention span?

---

- ⦿ Answer: refocus attention every twenty minutes, either voluntarily or otherwise
- ⦿ Variety: cartoons, Q and A, Bingo, stretching exercises, etc...

# How many hours of TV do people watch PER DAY?

---

- No need to get up.



# TV

---

- 4 hours per day; TV is on 6 hours 47 minutes (2009 data from A.C. Neilson)

# 2010 TV Viewing reached Record Highs without any Depths

---

- Cable hits like “Jersey Shore” on MTV and “The Walking Dead” on AMC were showered with media attention and affection, but the most popular new show was CBS’s Hawaii Five-0, a revival of a 40-year old drama. NY Times, 1/2/2011

# “Best Screen Available” Question

---

- The amount of time that an average adult watches video on the internet is increasing by how much per year? 5% 10%, 25% or more?

# Answer

---

- Increasing by 50% per year. By comparison, TV watching is merely increasing by about 1 percent per year.
- Of the three “best available screens” (TV, internet and cell phone videos) watching video on the internet is increasing the most (Youtube.com, Hula, etc....)

# What is the Big Picture?

---

- What is the end result of all this watching?



# TV Question

---

- Percentage of Americans who can name at least three justices of the U.S. Supreme Court?



# Answer

---

17 %

# TV Question Two

---

- Percentage of Americans who can name The Three Stooges



# Answer

---

59%

# Conclusion

---

- Any Questions about the priorities of our audience?



# Video #1: Charitable Solicitation

---

Think about how inoffensive it is,

Then perhaps we will view the  
uncensored version ...

# Video Number 2 HUD's rules

---

Think about how these rules were weaved into the narrative.

*I Believe In* HUD

# HUD Ethics Rules

---

## 5 C.F.R. Part 7501

### Prohibited Outside Activities

### Outside Employment Requiring HUD Approval

# Use the Xtranormal Tool

---

- ◉ Common ethics situations: How would we dramatize them?
- ◉ Gift Rules, Financial Conflict of Interest, WAG, Outside Activities - Writing, Speaking...
- ◉ Seeking Outside Employment, Use of Government Resources, Particular Agency Ethics Rules...

# Step by Step Cartoon Making

---

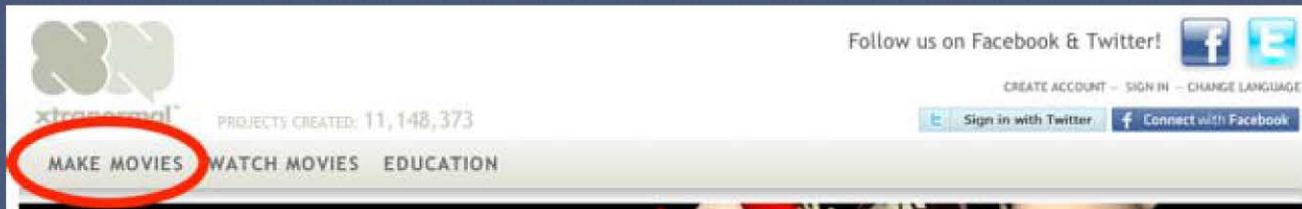


# Open Account

---

- ◉ [www.xtranormal.com](http://www.xtranormal.com)
- ◉ Sign up for an Educational Account
- ◉ They will review your account information and allow you extra access for free.

# Click “Make Movie”



The screenshot shows the top navigation bar of the Xtremepop! website. On the left is the Xtremepop! logo, which consists of three stylized speech bubbles. To the right of the logo, the text "PROJECTS CREATED: 11,148,373" is displayed. Further right, there are social media links for Facebook and Twitter, with the text "Follow us on Facebook & Twitter!". Below these links are buttons for "CREATE ACCOUNT", "SIGN IN", and "CHANGE LANGUAGE". At the bottom of the header, there are three main navigation links: "MAKE MOVIES", "WATCH MOVIES", and "EDUCATION". The "MAKE MOVIES" link is circled in red.

 PROJECTS CREATED: 11,148,373

Follow us on Facebook & Twitter!  

CREATE ACCOUNT - SIGN IN - CHANGE LANGUAGE

 Sign in with Twitter  Connect with Facebook

**MAKE MOVIES** WATCH MOVIES EDUCATION

# Choose a Collection of Actors

Choose a collection to start making movies!



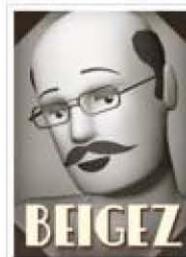
1 ACTOR 2 ACTORS



1 ACTOR 2 ACTORS



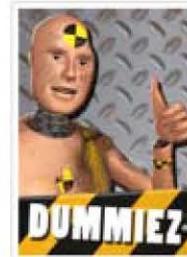
1 ACTOR 2 ACTORS



1 ACTOR 2 ACTORS



1 ACTOR 2 ACTORS



# You Will First Choose Suits

## THE SUITZ COLLECTION

WORK SUCKS? NOT ANYMORE! NOW YOU CAN MAKE YOUR OWN OFFICE SPACE,  
BANTER NINE TO FIVE, OR EVEN BLACKMAIL YOUR BOSS!



CHOOSE FROM 6 SETS AND 40 CHARACTERS!



MAKE A MOVIE WITH THIS COLLECTION NOW!

choose: 1 **ACTOR** 2 **ACTORS**

# Chose “CelebZ” for EZ Audience Bonding

---

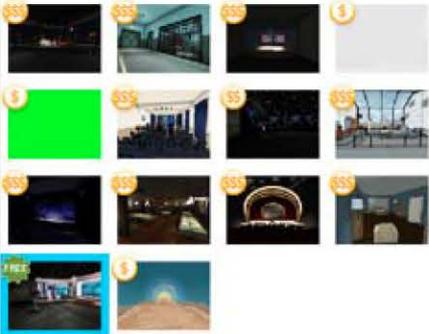


# Control Page With 4 Tasks

You have 1943xp It will cost 400xp to buy the stuff that you're using and publish this movie. [Learn about Xtranormal Points](#) [Buy points!](#)

1: Sets 2: Actors 3: Sounds 4: Story [?](#) Enter a title for your movie here.

Choose a location for your movie:



00:00 00:00

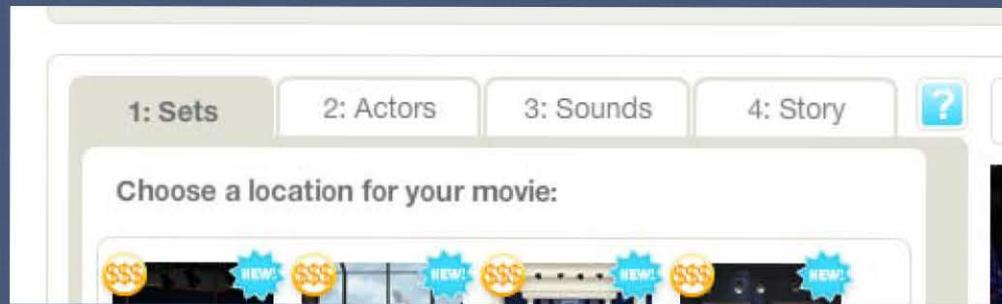
**Listen**  
Listen to your latest dialog changes.  
[Listen](#)

**Preview**  
Generate a full-motion preview.  
[Preview](#)

**Save**  
Take a break and come back later.  
[Save](#)

**Publish**  
Check-out and post your movie online.  
[Publish](#)

# Pick a Set (Background)



# Pick Background Sounds



# You Can Even Choose the Voices of the Actors!

---



# Write Dialogue



# You can save it for editing later

---

<p><b>Listen</b> Listen to your latest dialog changes.</p>  <p>Listen</p>	<p><b>Preview</b> Generate a full-motion preview.</p>  <p>Preview</p>	<p><b>Save</b> Take a break and come back later.</p> <p>Save</p>
--	--	--

# Publish

---

- Xtranormal.com's own site
- Youtube.com



# Remember that 20 Minute Rule

---

- Break everything into 20 minute segments.
- You don't want to play videos only during live training -- mix it up with interactive games, and passionate readings of relevant passages from the Code of Federal Regulations pertaining to Ethics if possible.

# Other Online Resources - Bingo

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- ◉ Teach-nology.com
- ◉ Bingo
- ◉ [http://www.teach-nology.com/web\\_tools/materials/bingo/](http://www.teach-nology.com/web_tools/materials/bingo/)

# Word Search

---

- ◉ Armoredpenguin.com
- ◉ Word Search
- ◉ <http://www.armoredpenguin.com/wordsearch/>

# Topical Online News

---

- Online Relevant Local News clips
- <http://news.discovery.com/tech/robot-makes-ethical-decisions.html>

# Ujam

- Ujam.com
- Make music without any musical talent.



# Use Online Survey

---

- Microsoft SharePoint
- Survey after ethics training

# Quiz



What grade in elementary school used xtranormal.com?



Answer: 6<sup>th</sup> Grade

---



# Nielsen Ratings Question

---

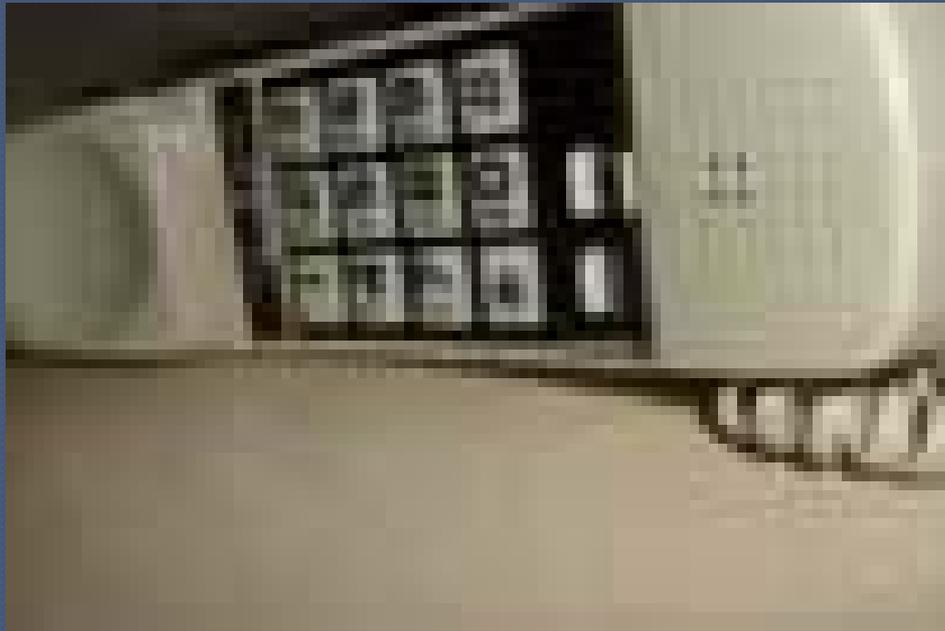
- What are the three screens used to consume video?



# Best Screen Available

---

- ◉ TV, Internet and Mobile video



# One More Question

---

- What are the two goals of ethics training?



# 2 Goals of Ethics Training

---

- ◉ Inform
- ◉ Invite



# Final Question

---

- What is the average age of Federal employees?



# Answer

---

- 46.8 years
- Bonus Question: If an average American watches 4 hours of TV per day, at age 65, how much time will they have spent in front of a TV?

# Bonus Answer

---

- ◉ In a 65-year life, that person will have spent 9 years in front of a TV screen.
- ◉ Children routinely spend more hours in front of a TV than in school.
- ◉ If you want to reach people, you must go where they are – using video.

# Conclusions

---

- ◉ Recap of tools and how to use them.
- ◉ Good Live training requires Drama.
- ◉ To connect with your audience think inside the boxes (TV, internet, cell phones).

# THANK YOU!



# World Premiere

# Invitation

---

- Any Questions? Greg Walters
- [Gregory.S.Walters@hud.gov](mailto:Gregory.S.Walters@hud.gov)
- (303) 672-5377



# **WHISTLEBLOWER DISCLOSURES:**

## **REPORTING ALLEGATIONS OF AGENCY WRONGDOING TO THE OFFICE OF SPECIAL COUNSEL**

Catherine A. McMullen  
CHIEF, DISCLOSURE UNIT

Karen P. Gorman  
DEPUTY CHIEF, DISCLOSURE UNIT

U.S. OFFICE OF SPECIAL COUNSEL  
SEPTEMBER 13 - 15, 2011

**5 U.S.C. 1213**

**THE OFFICE OF SPECIAL COUNSEL  
PROVIDES A SAFE CHANNEL FOR  
WHISTLEBLOWER DISCLOSURES BY  
FEDERAL EMPLOYEES, FORMER  
FEDERAL EMPLOYEES, AND  
APPLICANTS FOR FEDERAL  
EMPLOYMENT**

# WHAT IS WHISTLEBLOWING?

- **DUTY TO REPORT**

- Federal employees may satisfy their duty to disclose waste, fraud, abuse, and corruption to appropriate authorities under 5 CFR 2635.101(b)(11), by filing with OSC.

# WHAT CAN BE DISCLOSED?

- A VIOLATION OF ANY LAW, RULE, OR REGULATION
- GROSS MISMANAGEMENT
- GROSS WASTE OF FUNDS
- ABUSE OF AUTHORITY
- SUBSTANTIAL AND SPECIFIC DANGER TO PUBLIC HEALTH AND/OR SAFETY

# JURISDICTION

1. COVERED AGENCY

2. COVERED POSITION

# COVERED AGENCIES

- MOST EXECUTIVE BRANCH AGENCIES
- INCLUDING FEDERAL AVIATION ADMINISTRATION, TRANSPORTATION SECURITY ADMINISTRATION, AND CENTRAL INTELLIGENCE AGENCY

# NON-COVERED AGENCIES

- U.S. POSTAL SERVICE AND POSTAL RATE COMMISSION
- MEMBERS OF THE ARMED FORCES OF THE U.S. (i.e. NON-CIVILIAN MILITARY EMPLOYEES)
- STATE EMPLOYEES OPERATING UNDER FEDERAL GRANTS
- EMPLOYEES OF FEDERAL CONTRACTORS

# COVERED POSITION

DISCLOSURE MUST BE MADE:

- BY AN EMPLOYEE, FORMER EMPLOYEE, OR APPLICANT, IN THE AGENCY WHICH THE INFORMATION CONCERNS, OR
- BY AN EMPLOYEE WHO OBTAINED THE INFORMATION IN CONNECTION WITH THE PERFORMANCE OF THE EMPLOYEE'S DUTIES AND RESPONSIBILITIES

# WHAT DOES OSC DO AFTER RECEIVING THE DISCLOSURE?

THE SPECIAL COUNSEL SHALL MAKE A DETERMINATION WITHIN 15 DAYS AFTER RECEIVING THE INFORMATION FROM THE WHISTLEBLOWER.

5 U.S.C. § 1213(b)

# SUBSTANTIAL LIKELIHOOD DETERMINATION

SUBSTANTIAL LIKELIHOOD IS  
DEFINED AS THE DETERMINATION  
THAT THE AGENCY IS *MORE LIKELY*  
*THAN NOT* TO FIND THE ALLEGATION  
SUBSTANTIATED AT THE  
CONCLUSION OF ITS INVESTIGATION

# FACTORS REVIEWED IN MAKING SUBSTANTIAL LIKELIHOOD DETERMINATION

- IS THE WHISTLEBLOWER RELIABLE?
- IS THE WHISTLEBLOWER IN A POSITION TO KNOW THE FACTS?
- IS THE DISCLOSURE PLAUSIBLE?
- DOES THE WHISTLEBLOWER HAVE FIRST HAND KNOWLEDGE OF FACTS ALLEGED?
- HAS THE WHISTLEBLOWER PROVIDED RELIABLE INFORMATION TO OSC IN THE PAST?

# **SUBSTANTIAL LIKELIHOOD**

**IN MAKING THE SUBSTANTIAL LIKELIHOOD DETERMINATION, DU FOLLOWS THE MERIT SYSTEMS PROTECTION BOARD DEFINITIONS OF A GROSS WASTE OF FUNDS, GROSS MISMANAGEMENT, AND AN ABUSE OF AUTHORITY**

# REFERRALS FOR INVESTIGATION

5 U.S.C. § 1213(c)

- IF SUBSTANTIAL LIKELIHOOD DETERMINATION IS POSITIVE, THE SPECIAL COUNSEL REQUESTS THE AGENCY HEAD TO CONDUCT AN INVESTIGATION AND SUBMIT A REPORT

5 U.S.C. § 1213(c)(1)

# WHO INVESTIGATES?

OSC DOES NOT HAVE INVESTIGATIVE  
AUTHORITY

SPECIAL COUNSEL REQUIRES  
AGENCY HEAD TO CONDUCT AN  
INVESTIGATION

5 U.S.C. 1213(c)

# HOW LONG DOES THE AGENCY HAVE TO INVESTIGATE AND REPORT?

- THE REPORT IS DUE IN 60 DAYS
  - EXTENSION REQUESTS
  - PENDING CRIMINAL MATTERS

# WHAT DOES THE SPECIAL COUNSEL DO AFTER RECEIPT OF THE REPORT?

- THE SPECIAL COUNSEL REVIEWS THE AGENCY REPORT AND DETERMINES WHETHER IT CONTAINS THE INFORMATION REQUIRED BY STATUTE AND WHETHER THE FINDINGS APPEAR REASONABLE
- 5 U.S.C. § 1213(d) and (e)(2)

# STATUTORY REQUIREMENTS

5 U.S.C. § 1213(d)

- AGENCY HEAD MUST SIGN OR DELEGATE AUTHORITY TO SIGN
  
- THE REPORT MUST INCLUDE:
  - SUMMARY
  - DESCRIPTION
  - EVIDENCE
  - LIST OF VIOLATIONS
  - ACTION TAKEN OR PLANNED

# IS THE REPORT REASONABLE?

- THE SPECIAL COUNSEL DETERMINES WHETHER THE FINDINGS OF THE AGENCY HEAD APPEAR REASONABLE.
- 5 U.S.C. § 1213(e)(2)(a)

# WHISTLEBLOWER'S COMMENTS

- WHISTLEBLOWER REVIEWS REPORT AND PROVIDES COMMENTS
- COMMENTS ARE SENT TO OSC
- COMMENTS ARE PLACED IN THE PUBLIC FILE WITH THE WHISTLEBLOWER'S CONSENT

5 U.S.C. § 1213(e)(1)

# WHAT DOES OSC DO WITH THE REPORT?

THE REPORT AND COMMENTS ARE SENT TO THE PRESIDENT AND THE CONGRESSIONAL OVERSIGHT COMMITTEES WITH JURISDICTION OVER THE AGENCY THAT THE DISCLOSURE INVOLVES

5 U.S.C. § 1213(e)(3)

# OSC'S PUBLIC FILE

A LIST OF NONCRIMINAL MATTERS REFERRED TO THE AGENCY HEADS, TOGETHER WITH REPORTS FROM AGENCY HEADS, SHALL BE MAINTAINED AND MADE AVAILABLE TO THE PUBLIC

5 U.S.C. § 1219

# NO SUBSTANTIAL LIKELIHOOD. WHAT NOW?

THE SPECIAL COUNSEL INFORMS THE  
WHISTLEBLOWER:

- THE REASONS WHY THE DISCLOSURE MAY NOT BE FURTHER ACTED ON AND
- DIRECTS THE WHISTLEBLOWER TO OTHER OFFICES AVAILABLE FOR RECEIVING DISCLOSURES

1213 U.S.C. §1213(g)(3)

# REASONS FOR CLOSURE

- NO JURISDICTION
- NO FIRST HAND INFORMATION
- DE MINIMIS
- WITHDRAWAL OF DISCLOSURE
- DISCLOSURE ALREADY INVESTIGATED

# OTHER OPTIONS FOR HANDLING DISCLOSURES

# REFERRAL TO OFFICE OF INSPECTOR GENERAL

- IF NO POSITIVE SUBSTANTIAL LIKELIHOOD DETERMINATION, OSC MAY REFER MATTER TO THE OFFICE OF THE INSPECTOR GENERAL
- REQUEST THAT THE IG ASSIST OSC IN ITS DETERMINATION
- NO STATUTORY REQUIREMENT THAT IG COMPLY

# HOW TO FILE A DISCLOSURE WITH OSC

VISIT [WWW.OSC.GOV](http://WWW.OSC.GOV)

FILE IN WRITING OR USE FORM OSC-12,  
DISCLOSURE OF INFORMATION

Disclosure Unit  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
Tel: (800) 572-2249  
(202) 254-3640



# FDIC: Building Relationships in an Ever-Changing Agency

*Michael Korwin Kimball Johnson*

*Jack McGarry Marsha Martin*

**FDIC Senior Ethics Specialists**



# FDIC: Building Relationships in an Ever-Changing Agency

**Growth & Change: FDIC Headquarters**

*Michael Korwin*

# FDIC Ethics Program Headquarters

Robert E. Feldman  
Executive Secretary  
Designated Agency Ethics Official (DAEO)

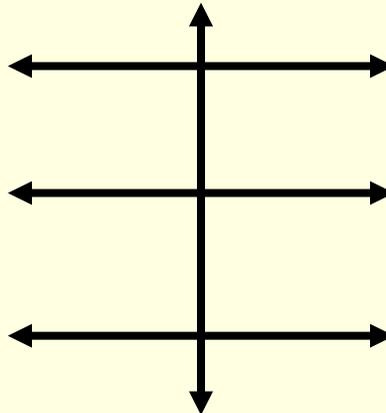


Robert Fagan  
Ethics Program Manager  
Alternate Agency Ethics Official

Michael Korwin  
Sr. Ethics Program Specialist

Mary Pat Donals  
Program Assistant

Marsha Martin  
Sr. Ethics Program Specialist



Mariaelena Apuzzo  
Sr. Ethics Program Specialist

Rich Romero  
Sr. Ethics Program Specialist

Jack McGarry  
Sr. Ethics Program Specialist

Kimball Johnson  
Sr. Ethics Program Specialist



# FDIC: Ethics View from HQ

---

## Program Structure:

- 70 Deputy Ethics Counselors

- 5 Full Time Ethics Officials

- 3 Full Time Satellite (Term) Officials

- 62 Collateral-Duty Ethics Counselors

## Allocated to:

- Washington DC Headquarters

- 5 Regional offices

- 3 Satellite Offices

- 89 Field Offices



# Ethics a Part of Corporate Culture

---

- Necessity of Building a Strong Relationship with Chairman
- PAS Financial Disclosure Vetted through Ethics Program for Conflicts of Interest
- Rules/Ethical Culture Emphasized from First Contact – *¡Carpe Diem!*
- Emphasize Role of Board in Setting Ethical Tone in Corporation Culture

# Relationship-Building at the Top

---

- Chairman Committed to Ethical Leadership
- Relationships Built with Board through:
  - PAS Vetting
  - Ethics Agreements
  - Ethics Pledge
  - Lobbyist Gift Restrictions

# Relationships Built Become Part of Management Fabric

---

- Division Directors – Additional Ethics Restrictions along Business Lines (i.e. limitation on assuming liabilities from FDIC regulated entities)
- Assistant Regional Directors – Automatically Assume Ethics Leadership Role by becoming Deputy Ethics Counselors
- Ethics Becomes Fabric of Corporate Culture as DEC's Move from DEC role into Upper Management

# Ethics Officers – Who are They?

---

- Assistant Regional Directors as DEC
  - Symbol of Knowledge and Leadership
  - A sign of added Respect and Integrity ascribed to Position
- Deputy Division Directors
  - Management and Leadership Role
- Corporate Grade (CG) 14/15 and Corporate Management (CM) Grades are base grades for Ethics Counselors

# Ethics – Integral Part of Agency Business Line by Law

---

- 18 USC 212 - Offer of a Loan or Gratuity to a Financial Institution Examiner
- 18 USC 213 – Acceptance of a Loan or a Gratuity by a Financial Institution Examiner
- Statutory Limitations on Extension of Credit
- Limitations on Outside Activities
  - Real Estate
  - Brokerage
  - Finance/Accounting
  - Banking and Affiliates



# FDIC: Building Relationships in an Ever-Changing Agency

**An Ethics Challenge:  
New Office, New Relationships**  
*Kimball Johnson*

# Building a Relationship with a New Staff

---

- The Hiring Process
- Introducing Rules & Regulations
- The Training Process
- Management Endorsement
- Ethics Visibility in the Workplace
- Set the Ethics Bar High
- What is Most Important
- It's a Full Time Job
- Teamwork is a Key Ingredient



# Building a Relationship with a New Staff (cont.)

---

- FDIC Ethics Program Headquarters
- Easy Communication
- Work Together
- Make Ethics “Essential”



# The Hiring Process ...

---

- First, New Employee Orientation
- Welcome and Introductions
- Taking the Oath of Office
- Give your Ethics Program a face with a name



# Introducing Rules & Regs ...

---

- Orientation is the first introduction
- The standards of conduct promotes your agency mission and goals
- Make the ethics program fit your office



# Building Relationships through Training ...

---

- Training begins at orientation but continues on indefinitely
- Invite inquiries
- Provide prompt, courteous replies and cite the regulations – legal basis
- Encourage meetings for further discussions



# Relationships Improve Through Management Endorsement ...

---

- Posters
- Pamphlets
- Ethics notices and reminders

These elements are critical throughout the workplace and reflect management's support of your program



# Relationships Improve through Visibility in the Workplace ...

---

- Attend staff meetings
- Schedule one on one meetings
- Attend department meetings



# Set the Ethics “Bar” High ...

(How do we behave when we think no one is watching?)

---

- Holding ourselves to a higher standard
- Making it achievable and believable
- Provide Vivid/Real Life Examples – both Right and Wrong
- Appearance (the “Washington Post” test)



# The Relationship is Solid if Everyone Knows ...

---

- They have a fiduciary responsibility
- They have someone to go to for questions
- Ethics is a full time job with a full time officer
- We are not the ethics “cops” but provide “ethics assists”



# The On Going Relationship is a Full Time Job ...

---

- Keep ethics out in the open
- Maintain open lines of communication
- Continually introduce ethics in the work environment



# In any Relationship, Communication and Teamwork is Key ...

---

- Provide a List of Contacts to Make Ethics Accessible
- Always provide your name and contact information
- Establish a Hot Line Number
- Always say “Thank You” for the inquiry



# Relationships Going Forward include Working Together ...

---

- Build pride in “doing the right thing”
- Stress the importance of Ethics in Government



# A Good Relationship Is “Essential” to a New Office...

---

- Essential to build the Public’s Confidence in Government
- Essential to your Organization’s Performance
- Essential to your Management’s Performance
- Essential to your Employee’s Performance
- Essential to Success of your Entire Program





# FDIC: Building Relationships in an Ever-Changing Agency

**Maintaining Momentum**

*Jack McGarry*

# FDIC: Daily Ethics Challenges

---

- Evolving Relationships
- Financial Disclosures
- Contractor Interactions
- Supplemental Standards
- After the FDIC ...



# Evolving Relationships

---

- Private sector professional to federal government employee
- Leadership engagement
- Annual, periodic & *in situ* training
- Counseling
- Building and Maintaining Trust



# Financial Disclosures

---

- Understanding Requirements
- Full Disclosure
- NEETS
- Training
- Technical assistance



# Contractor Interactions

---

- Impartiality
- Chain of command
- Meetings & Notices
- Social events
- Contractor hiring practices



# Supplemental Standards

---

- 5 CFR Part 3201
  - Extensions of credit
  - Bank securities
  - Purchase of FDIC-owned assets
  - Former employers, associates & clients
  - Employment of family members
  - Outside employment & activities



# After the FDIC ...

---

- TSO sunsets
- Intra- and inter-agency transfers
- Seeking employment
- Post-government employment restrictions
- Out-briefings





# FDIC: Building Relationships in an Ever-Changing Agency

**Downsizing:  
Leveraging Investment in Working Relationships**  
*Marsha Martin*

# Relationships with Executives

---

- Approach Deputy Director to request agenda time
- Ability to seize a key moment to speak with all employees
- Catch all 600 employees with same basic message
- Provided promise of opportunity to receive more information and ask questions
- Broadcast dates and times of workshops



# Relationships with Mid-Managers

---

- Followed meeting with personal emails to Department Managers offering to address their departments individually
- Gave option of sending employees to the global workshops
- Provided a “desk drop” with a pamphlet entitled *Seeking Employment and Post Employment: Answers to Some Commonly Asked Questions*



# Relationships with Employees

---

- Relationship begins in new employee orientation
- Builds yearly when Form 450s are filed (more than 90% of office are filers)
- Regular contact with annual ethics training
- Employees know the Ethics Officer and are more likely to come ask questions or seek counsel before acting



# The Relationship Advantage

---

- While the vast majority of our employees had no prior knowledge of the *Standards of Conduct for Federal Employees of the Executive Branch* before entering onto duty, in a very short period they became very knowledgeable and cognizant of the regulations



# The Relationship Advantage

---

- Their growth in understanding and observance of the regulations was no small matter. Most were mid- or late-career individuals who had worked in the private sector where some of our prohibitions were actually actions for which they received praise in their old employment life. (e.g. gifts regulations)



# The Relationship Advantage

---

- Having heard and seen so much from the Ethics office during their short tenure, as employees are now departing Federal service, they now more readily and freely seek counsel and understand the importance of knowing what the job seeking and post-employment regulations say



# Results

---

- Having a transient workforce which:
  - is knowledgeable about the *Standards of Conduct*,
  - knows where to go with questions
  - comprehends the dangers of ignoring the criminal conflict of interest provisions
  - requires little monitoring or “policing”
  - allows Ethics Officers to sleep at night



UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



Preventing Conflicts of Interest  
in the Executive Branch

# How Alternative Pay Systems Impact Financial Disclosure

# Panelists



Elaine Newton, Office of Government  
Ethics (OGE)

Gretchen Weaver, Department of Health  
and Human Services (HHS)

Wilsie Minor, Corporation for  
National & Community Service (CNCS)

# OGE Opinion 81 x 3 (1/23/81)



Based on the wording of the statute and a 1977 Senate Report (S. Rep. No. 95-170, at 110 (1977)), OGE concluded that the level of responsibility is the determining factor in deciding who should file a public report.

# Ethics in Government Act

## 5 U.S.C. app. 101(f)

---



Persons required to file public financial disclosure reports include individuals who occupy the position of President, Vice President, Postmaster General, Director of OGE, DAEOs, etc.

# 101(f)(3) lists four categories of positions

---



- Employees in positions classified above GS-15 of the General Schedule;
- Uniformed service members whose pay grade is 0-7 or above;



- Employees in positions outside the General Schedule for which the rate of basic pay is equal to or greater than 120% of the minimum rate of basic pay payable for GS-15; and
- Employees in any other pay position determined by the Director of OGE to be of equal classification.



Employees in positions outside the  
General Schedule

rate of basic pay

equal to or greater than 120% of the  
[minimum rate of basic pay] payable  
for GS-15

# OGE Opinion 81 x 22 (7/20/81)



- OGE stated that the “basic rate of pay” means the lowest step authorized for a position’s pay grade. The opinion explains that the basic rate that an individual receives is GS-16, Step 1 and while a GS-15, Step 7 receives a salary higher, the basic rate of his or her grade is a GS-15 Step 1.

# OGE Opinion 98 x 2 (2/11/98)



- OGE reiterated that the term “rate of basic pay” for public financial disclosure purposes means the lowest step or entry level pay authorized for a particular pay grade or range. OGE further stated that it is the pay grade or range that defines the level of responsibility.

# Alternate Pay Plans: An HHS Experience

Gretchen H. Weaver  
Senior NIH Ethics Counsel  
DHHS/OGC/ Ethics Division

# Recruit and Retain

Four administratively determined pay plans in use at HHS:

- Senior-Level and Scientific/Professional Positions (ST/SL):  $\geq$  120% GS-15, Step 1 to  $<$  \$155,500
- Senior Biomedical Research Service (RS):  $\geq$  GS-15, Step 1 to  $<$  \$199,700
- Title 42 (AD):  $\geq$  GS-13, Step 1 to \$250,000+

# NIH Headline News

David Willman, Los Angeles Times, December 7, 2003, at A16, cols. 1, 2, and 5

- “The NIH has shifted many of its high-salaried employees into pay plans with minimums that dip below the threshold”
- “From 1997 through 2002, the number of NIH employees filing public reports...dropped by about 64%”
- “While making it easier for employees to cut consulting deals, the NIH has made it harder for the public to find out about them”

## Where secrecy reigns

The Ethics in Government Act has generally required highly paid federal workers to file annual financial disclosure reports that are open to public review. Many National Institutes of Health employees make or exceed the threshold salary of \$102,168. Most of them have been exempted by changes made to their payroll status.

**Out of a total of 18,000 NIH employees:**

Those making more than \$102,168: 2,259

Those subject to public disclosure of outside income: 127



Sources: NIH records and interviews

Los Angeles Times

# Equivalency Determination

NIH-wide review of positions –

- January 2004: 93 “Top 5” employees  
Granted February 2004
- May 2004: 504 Additional positions  
Granted September 2004 (as to 498)

# Today

- ~ 625 filers at NIH
  - 14 categories of positions
  - A few individuals
  - Employees defined as filers (SES, Comm. Corps)
- Periodic Updates to Equivalency Determination
  - Good working relations with OGE
  - Internally challenging to examine agency with 18,000 employees under 28 different management structures continuously being revised.

# OGE DAE Ogram, DO-07-029 (8/20/07)



OGE reviewed various alternates to the current approach of determining filing status by defining "rate of basic pay" as the "lowest step or entry level pay authorized for a particular pay grade or range." OGE decided to keep the current approach at this time.



Corporation for  
**NATIONAL &  
COMMUNITY  
SERVICE** ★★★



# How Alternative Pay Systems Impact Financial Disclosure

Corporation for National and  
Community Service

Wilsie Y. Minor, DAEO

Corporation for  
NATIONAL &  
COMMUNITY  
SERVICE ★★★



# Mission of the Corporation for National and Community Service

The mission of the Corporation for National and Community Service is to improve lives, strengthen communities, and foster civic engagement through service and volunteering.

\*\*\*

The Corporation is the nation's largest grant maker supporting service and volunteering. Through our Senior Corps, AmeriCorps, and Learn and Serve America programs, we provide opportunities for Americans of all ages and backgrounds to express their patriotism while addressing critical community needs.

# What We Do

## **The Corporation for National and Community Service:**

- Acts as a catalyst to volunteer organizations that, in turn, deliver much-needed services to communities throughout the country.
- Promotes a healthy, vibrant non-profit volunteer sector.
- Builds character and creates career and educational opportunities through the volunteer experience.
- Develops and cultivates knowledge to enhance the overall success of volunteer and service programs.
- Cultivates the growth of a culture of citizenship and service.

# Our History

- **1990: National and Community Service Act of 1990:** Created a new independent federal agency, the Commission on National and Community Service.
- **1992: National Civilian Community Corps (NCCC):** A bipartisan group of Senators drafted legislation to create NCCC as a demonstration program to explore the possibility of using post-Cold War military resources to help solve problems here at home. It was enacted as part of the 1993 Defense Authorization Act.
- **1993: The National and Community Service Trust Act of 1993:** The Corporation for National and Community Service was established. It merged the work and staffs of two predecessor agencies, ACTION and the Commission on National and Community Service.

# The Authority for Our Personnel System

The Chief Executive Officer may designate positions, may make appointments, and may determine compensation, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions relating to classification and General Schedule pay rates. *Section 195, National and Community Service Act of 1990, as amended*

# 2011

## Corporation Pay Bands and Salary Ranges

Pay Band	Base Salary	GS Grades
NY-1	\$17,803 - \$45,049	GS 1- ~GS 8/5
NY-2	\$33,978 - \$60,701	~GS 7/1- ~GS 11/7
NY-3	\$50,288-\$95,033	GS 11/1 - ~GS 14/4
NY-4/NX-1	\$84,697 -\$129,521	GS 14/1-~GS 15/10
NX-2	\$129,521- \$155,500*	Executive Level III

### \*Statutory Cap = Executive Level IV

The statutory threshold to determine which officers and employees must file public financial disclosure reports under title I of the Ethics Act, *see* 5 U.S.C. app. § 101(f)(3), 120% of the minimum rate of the basic pay for grade GS-15 of the General Schedule. For 2011, that level will continue to be \$119,553.60.

# SALARY TABLE 2011-GS

Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
1	17803	18398	18990	19579	20171	20519	21104	21694	21717	22269
2	20017	20493	21155	21717	21961	22607	23253	23899	24545	25191
3	21840	22568	23296	24024	24752	25480	26208	26936	27664	28392
4	24518	25335	26152	26969	27786	28603	29420	30237	31054	31871
5	27431	28345	29259	30173	31087	32001	32915	33829	34743	35657
6	30577	31596	32615	33634	34653	35672	36691	37710	38729	39748
7	33979	35112	36245	37378	38511	39644	40777	41910	43043	44176
8	37631	38885	40139	41393	42647	43901	45155	46409	47663	48917
9	41563	42948	44333	45718	47103	48488	49873	51258	52643	54028
10	45771	47297	48823	50349	51875	53401	54927	56453	57979	59505
11	50287	51963	53639	55315	56991	58667	60343	62019	63695	65371
12	60274	62283	64292	66301	68310	70319	72328	74337	76346	78355
13	71674	74063	76452	78841	81230	83619	86008	88397	90786	93175
14	84697	87520	90343	93166	95989	98812	101635	104458	107281	110104
15	99628	102949	106270	109591	112912	116233	119554	122875	126196	129517



# Contact Information



- Elaine Newton, Office of Government Ethics, [enewton@oge.gov](mailto:enewton@oge.gov), 202-482-9265
- Gretchen H. Weaver, Department of Health & Human Services, [weaverg@od.nih.gov](mailto:weaverg@od.nih.gov), 301-594-8166
- Wilsie Y. Minor, Corporation for National & Community Service, [wminor@cns.gov](mailto:wminor@cns.gov), 202-606-6673

# A Vision for Ethics Program Management: *Benchmarking Success*

Karen Rigby

Jack MacDonald

Jorge Guzman

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



Preventing Conflicts of Interest  
in the Executive Branch

# Agenda

- I. Introduction and History of OGE's Benchmarking Projects
- II. What Do the Cabinet Agencies Look Like?
- III. Categories of Concrete Actions Taken by the Cabinet Agencies
- IV. What Do the Regulatory Agencies Look Like?
- V. Categories of Concrete Actions Taken by the Regulatory Agencies
- VI. Audience Self-Assessment Survey and Discussion

# Successful Ethics Program



# Self-Assessment Rankings

## Level 1

- Concrete actions are not taken or inconsistently taken to address the success factor.

## Level 2

- Concrete actions are consistently taken to address the success factor in one or two program elements, but not all three.

## Level 3

- Concrete actions are consistently taken to address the success factor in all three program elements.

# Benchmarking Projects

Developed Self-Assessment  
Questionnaire

Distributed Self-Assessment  
Questionnaire

Conducted Interviews and  
Compiled Data

Analyzed Results

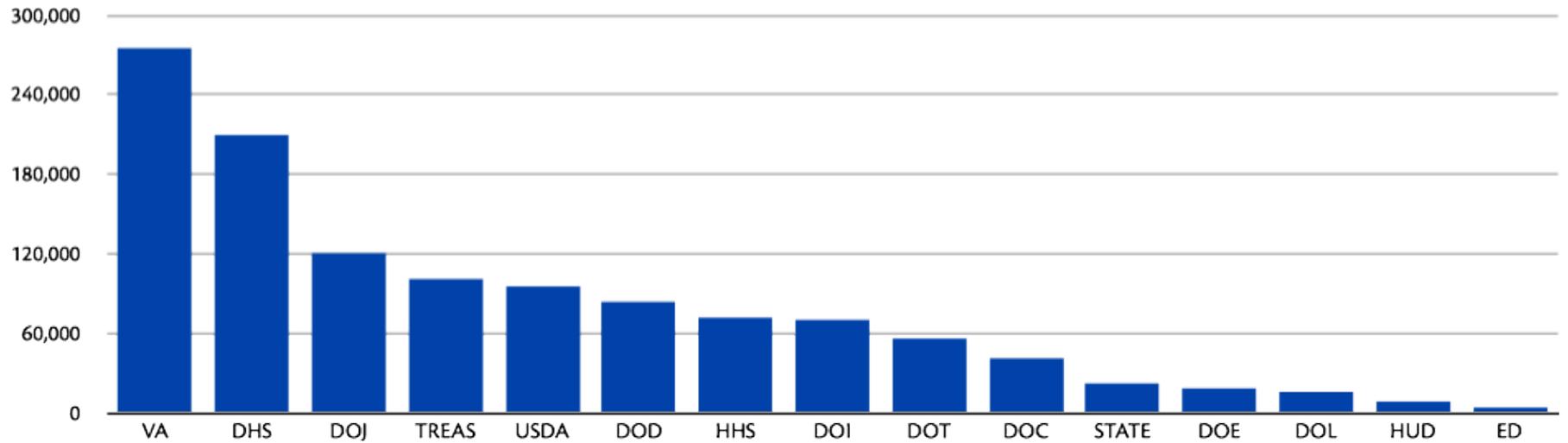
Issued Report

Consulted with Agencies

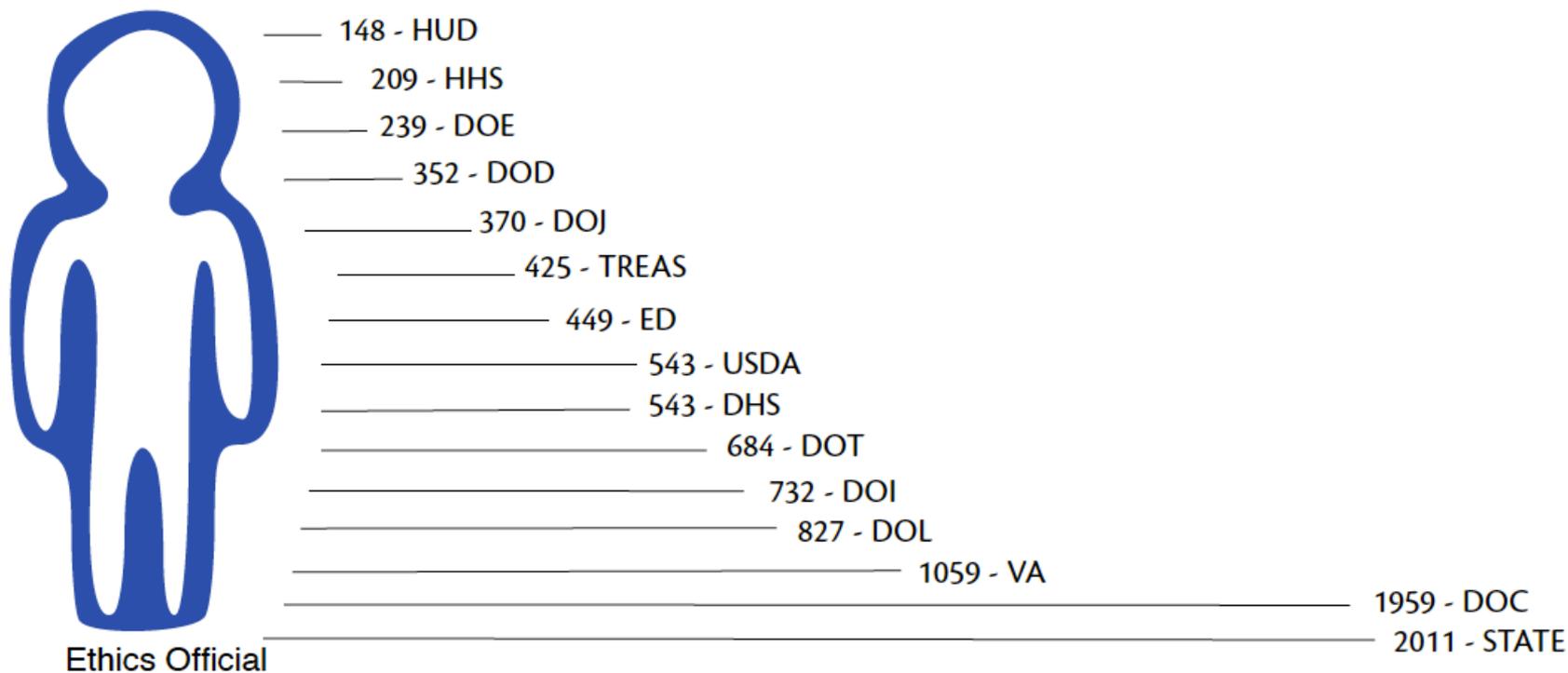
# What do the Cabinet Agencies Look Like?



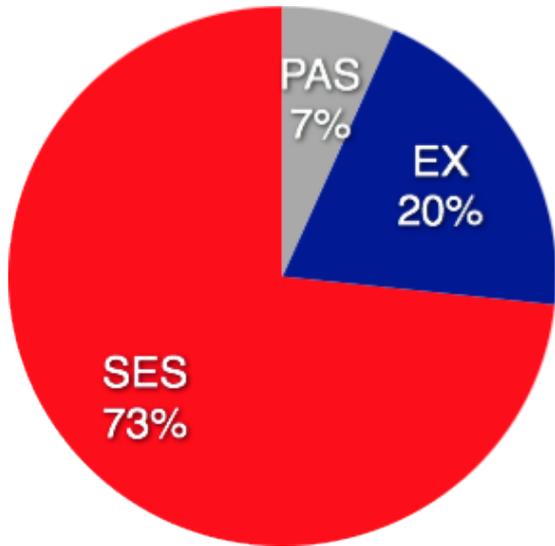
# Number of Full-time Employees



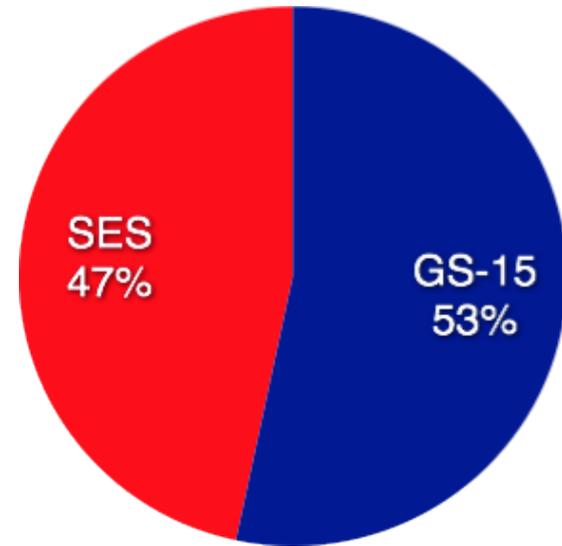
# Number of Employees per One Ethics Official (Includes Full-Time and Part-Time Ethics Officials)



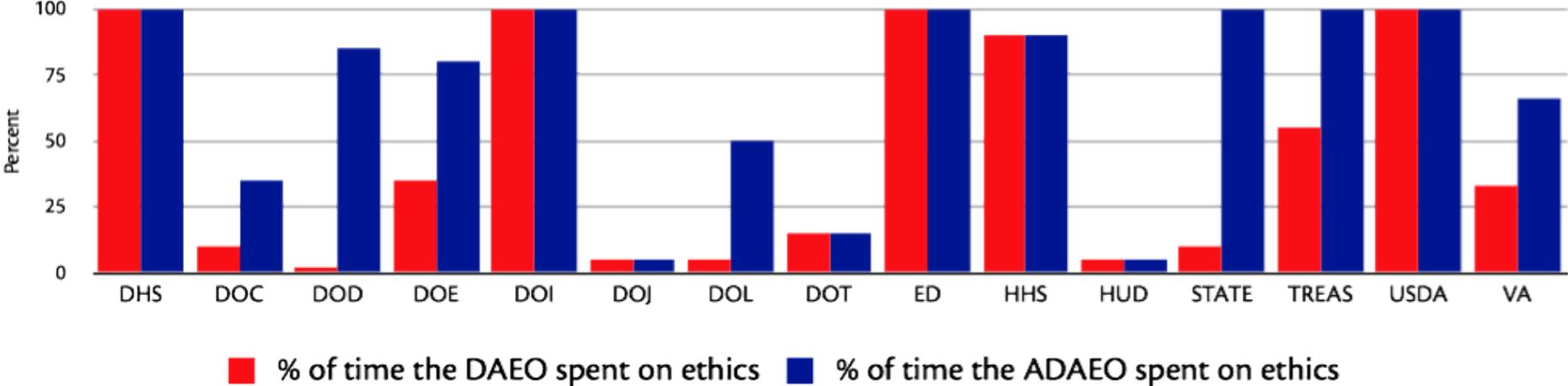
DAEO' s Grade Level



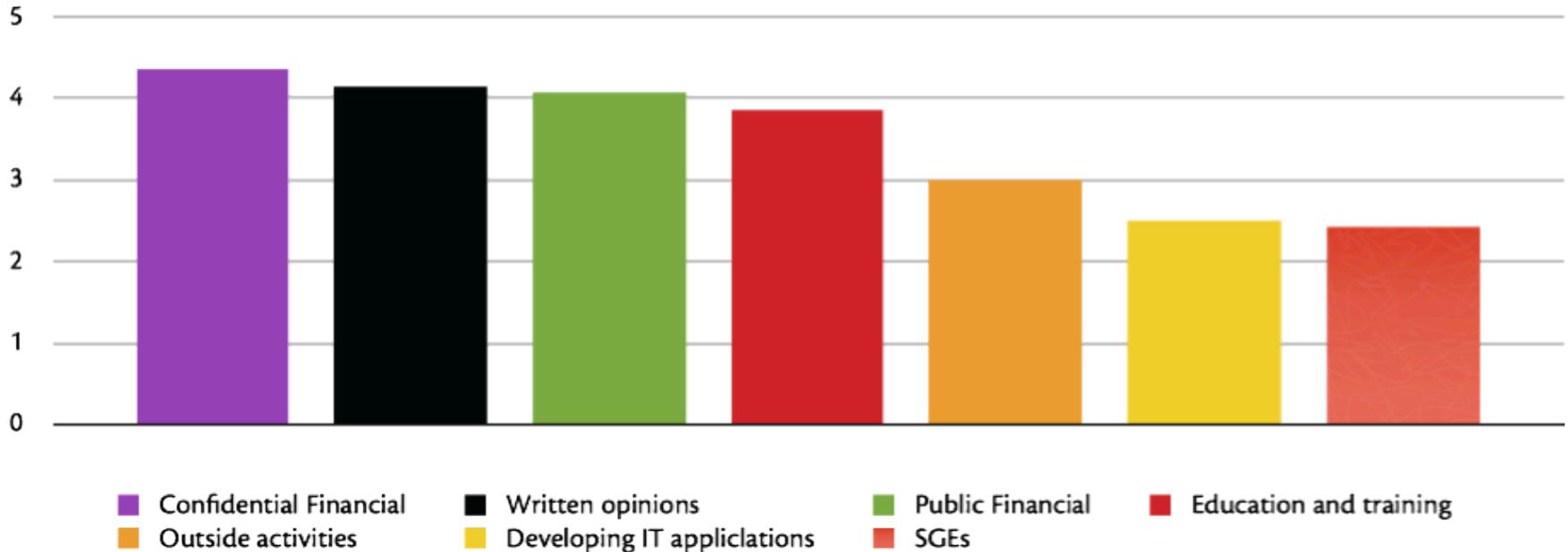
ADAEO' s Grade Level



# Percentage of Time DAEO and ADAEO Spends on Ethics



# Average Time Spent on Aspects of the Ethics Program



**Time Spent Scale:** 1= No time, 2= Limited amount of time, 3= Moderate amount of time, 4= Considerable amount of time, 5= Extreme amount of time.

# Cabinet Benchmarking Project Results

Leadership	Awareness	Resources	Oversight
Visible Support	Distribution of Ethics-Related Information	Participation in Ethics-Related Events	Financial Disclosure and Training Tracking Systems
Access	Marketing the Ethics Program	Collaboration within the Ethics Community	Standard Operating Procedures
Involvement in Managing the Ethics Program	Training	Relationships within the Agency	Program Reviews
Budgetary Support		Searchable Advice and Counsel Databases	Peer Reviews
Awards and Ratings Linked to Compliance with Ethics Requirements		Electronic Filing Systems	Customer Feedback

# Cabinet Benchmarking Project Results

Leadership	Awareness	Resources	Oversight
	Distribution of Ethics-Related Information	Participation in Ethics-Related Events	Financial Disclosure and Training Tracking Systems
Access		Collaboration within the Ethics Community	
Involvement in Managing the Ethics Program	Training	Relationships within the Agency	

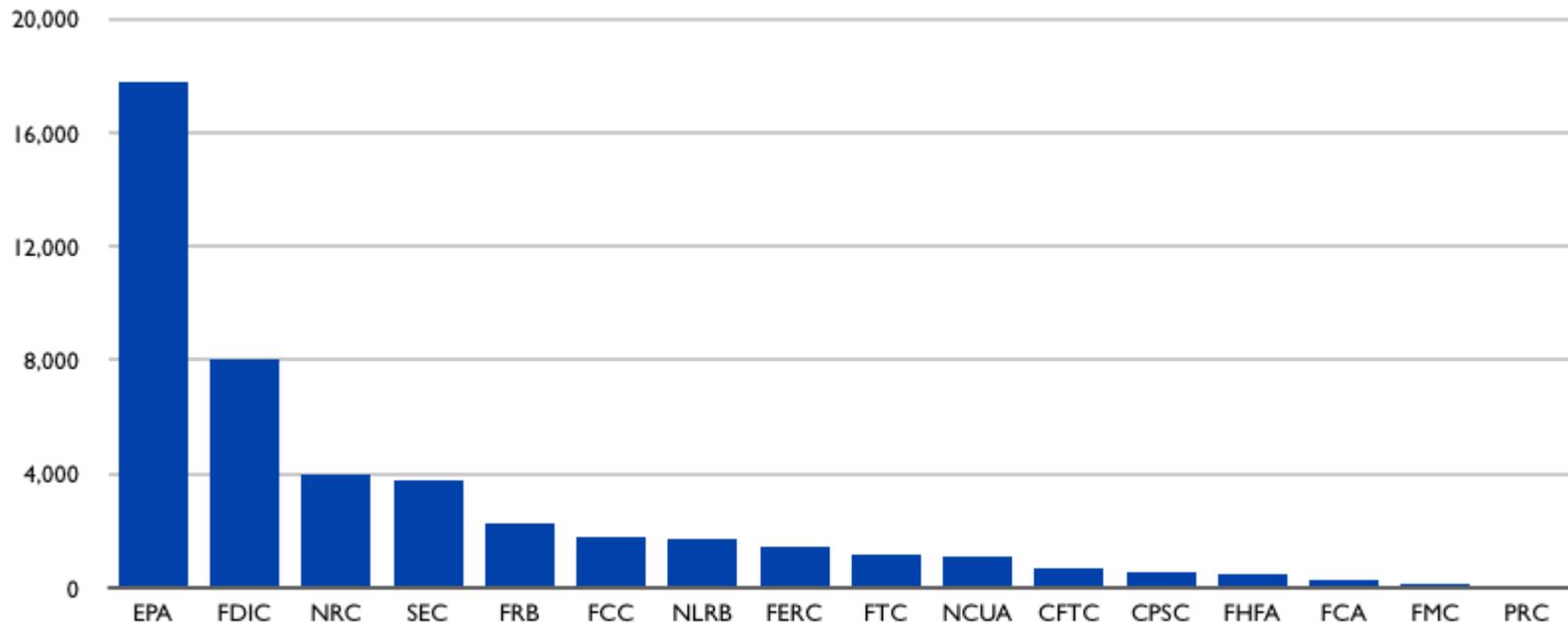
# Cabinet Benchmarking Project Results

Leadership	Awareness	Resources	Oversight
	Marketing the Ethics Program		
			Program Reviews
Budgetary Support			
Awards and Ratings Linked to Compliance with Ethics Requirements			Customer Feedback

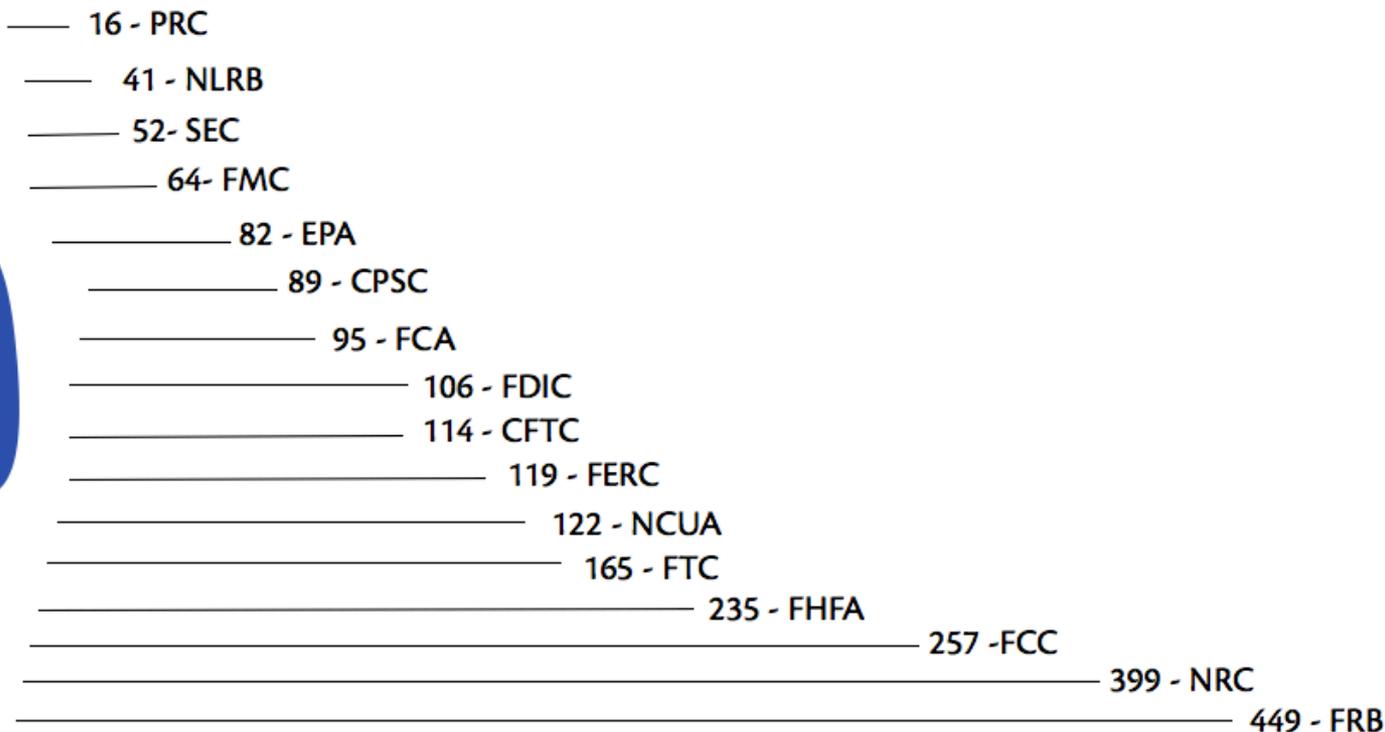
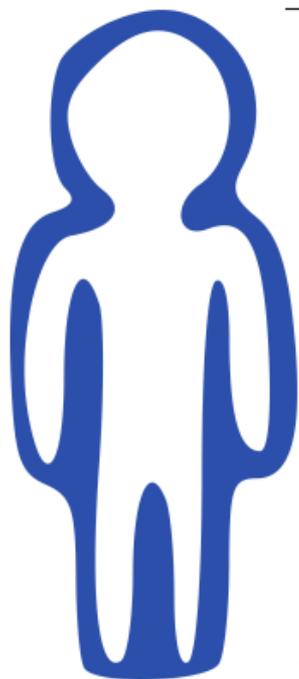
# What do the **Regulatory** Agencies Look Like?



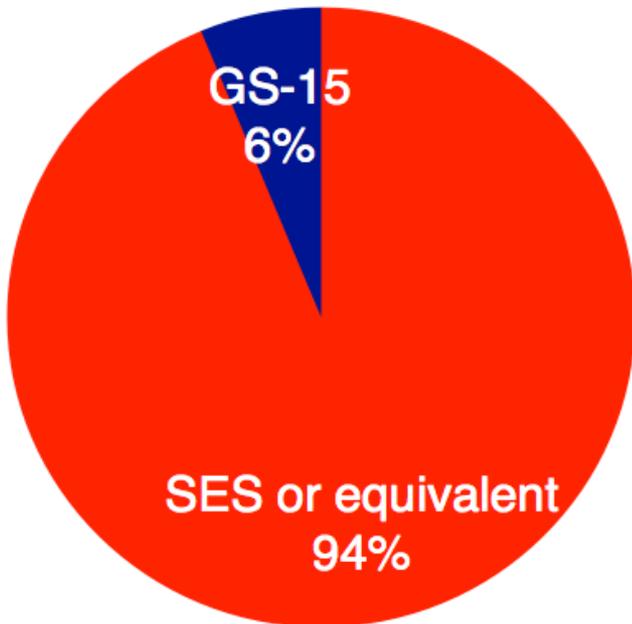
# Number of Full-time Employees



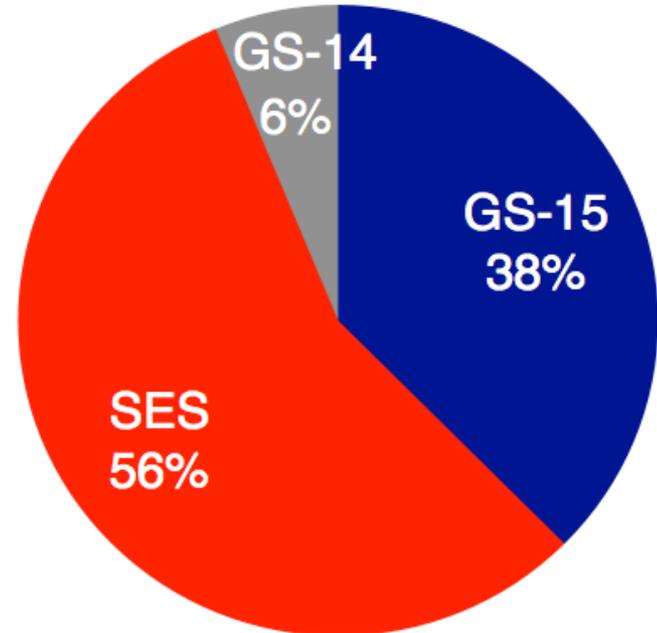
# Number of Employees per One Ethics Official (Includes Full-Time and Part-Time Ethics Officials)



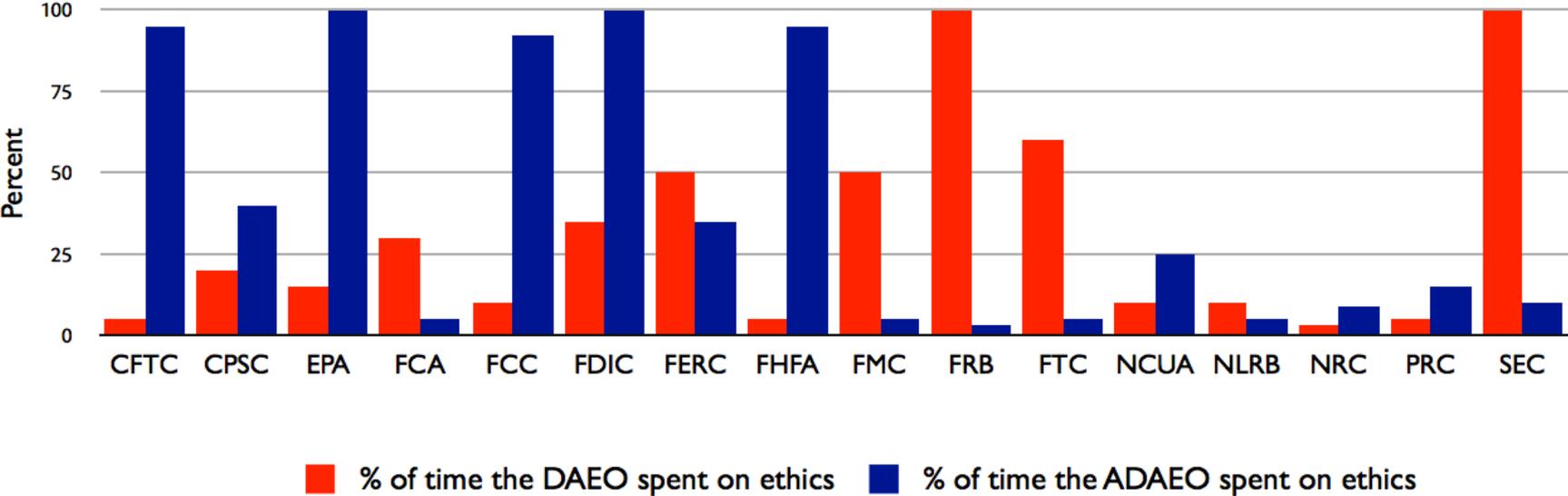
DAEO' s Grade Level



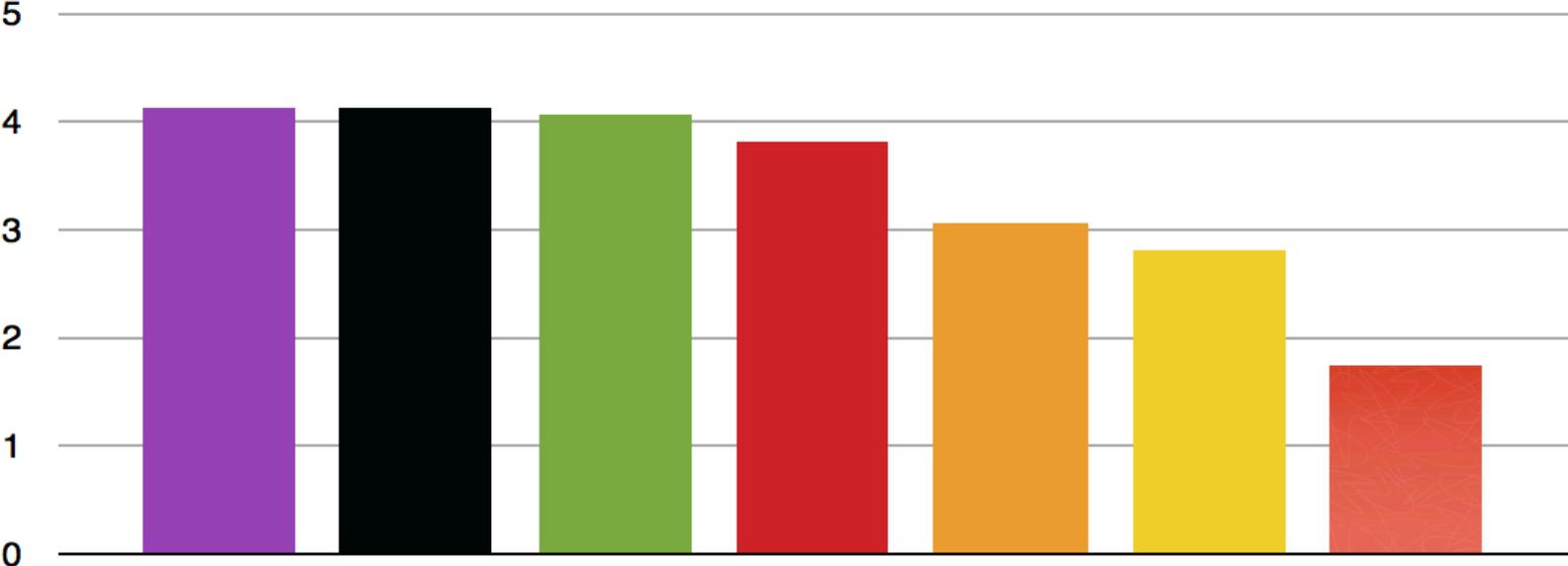
ADAEO' s Grade Level



# Percentage of Time DAEO and ADAEO Spends on Ethics



# Average Time Spent on Aspects of the Ethics Program



Written opinions      Public Financial      Confidential Financial      Education and training  
Developing IT applications      Outside activities      SGEs

**Time Spent Scale:** 1= No time, 2= Limited amount of time, 3= Moderate amount of time, 4= Considerable amount of time, 5= Extreme amount of time.

# Regulatory Benchmarking Project Results

Leadership	Awareness	Resources	Oversight
Visible Support	Distribution of Ethics-Related Information	Participation in Ethics-Related Events	Financial Disclosure and Training Tracking Systems
Access	Marketing the Ethics Program	Collaboration within the Ethics Community	Standard Operating Procedures
Involvement in Managing the Ethics Program	Training	Relationships within the Agency	Customer Feedback
Budgetary Support		Searchable Advice and Counsel Databases	
Awards and Ratings Linked to Compliance with Ethics Requirements		Electronic Filing Systems	

# Regulatory Benchmarking Project Results

Leadership	Awareness	Resources	Oversight
Visible Support	Distribution of Ethics-Related Information		Financial Disclosure Tracking Systems
Access		Collaboration within the Ethics Community	
Involvement in Managing the Ethics Program			
Budgetary Support			

# Regulatory Benchmarking Project Results

Leadership	Awareness	Resources	Oversight
Visible Support			Financial Disclosure and Training Tracking Systems
	Training	Relationships within the Agency	

# Summary

# Benchmarked Agencies Account for:

65% of public financial disclosure reports

52% of confidential financial disclosure reports

53% of all financial disclosure reports

Approximately 27% of all executive branch employees

# Self-Assessment Survey: LEADERSHIP

Rate your leadership's support and involvement in the **financial disclosure**, **ethics training** and **ethics counseling** elements of your ethics program.

## Level 1

- Concrete actions are not taken or inconsistently taken to address the success factor.

## Level 2

- Concrete actions are consistently taken to address the success factor in one or two program elements, but not all three.

## Level 3

- Concrete actions are consistently taken to address the success factor in all three program elements.

# Self-Assessment Survey: AWA RENESS

Please rate efforts your agency has taken to build employee awareness of the ethics program and its role in personal ethics responsibilities through **financial disclosure process**, **ethics training** and **ethics counseling**.

## Level 1

- Concrete actions are not taken or inconsistently taken to address the success factor.

## Level 2

- Concrete actions are consistently taken to address the success factor in one or two program elements, but not all three.

## Level 3

- Concrete actions are consistently taken to address the success factor in all three program elements.

# Self-Assessment Survey: RESOURCES

Please rate efforts you have taken to leverage agency and ethics community resources to aid in the **financial disclosure process**, **ethics training** and **ethics counseling** elements of your ethics program.

## Level 1

- Concrete actions are not taken or inconsistently taken to address the success factor.

## Level 2

- Concrete actions are consistently taken to address the success factor in one or two program elements, but not all three.

## Level 3

- Concrete actions are consistently taken to address the success factor in all three program elements.

# Self-Assessment Survey: OVERSIGHT

Please rate efforts your agency has taken to establish internal controls in and oversight of the **financial disclosure**, **ethics training** and **ethics counseling** elements of your ethics program.

## Level 1

- Concrete actions are not taken or inconsistently taken to address the success factor.

## Level 2

- Concrete actions are consistently taken to address the success factor in one or two program elements, but not all three.

## Level 3

- Concrete actions are consistently taken to address the success factor in all three program elements.

# What begin as media headlines...

## The Washington Post

**FCC commissioner Meredith Baker to join Comcast-NBC**

By [Hayley Tsukayama](#)

Updated 11:45 a.m., Thursday

Federal Communications commissioner Meredith Attwell Baker

## THE WALL STREET JOURNAL.

**SEC General Counsel Becker Latest To Face 'Clawback' Suit By Picard**

By Chad Bray

The Securities & Exchange Commission's general counsel has

## THE WALL STREET JOURNAL.

**Secretive Culture Led Toyota Astray**

On Jan. 19, in a closed-door meeting in Washington, D.C., two top executives from [Toyota Motor](#)

# ...turn into Congressional action

## The Washington Post

Republicans question SEC official's tie to Madoff

By [David S. Hilzenrath](#)

Washington Post Staff Writer

Thursday, February 24, 2011; 11:32 PM

THE  HILL

The revelation this week that the

**Regulators decided against Toyota investigation in '08**

By [Silla Brush](#) - 02/08/10 09:59 PM ET

Transportation regulators in late 2008 decided against

THE  HILL

**Former SEC lawyer defends agency work despite Madoff connections**

By [Peter Schroeder](#) - 02/28/11 04:56 PM ET

The former top lawyer at the Securities and Exchange

THE  HILL

**Lawmakers consider probe of FCC member's move to Comcast/NBCU**

By [Sara Jerome](#) - 05/13/11 12:52 PM ET

House members in both parties are concerned about the decision

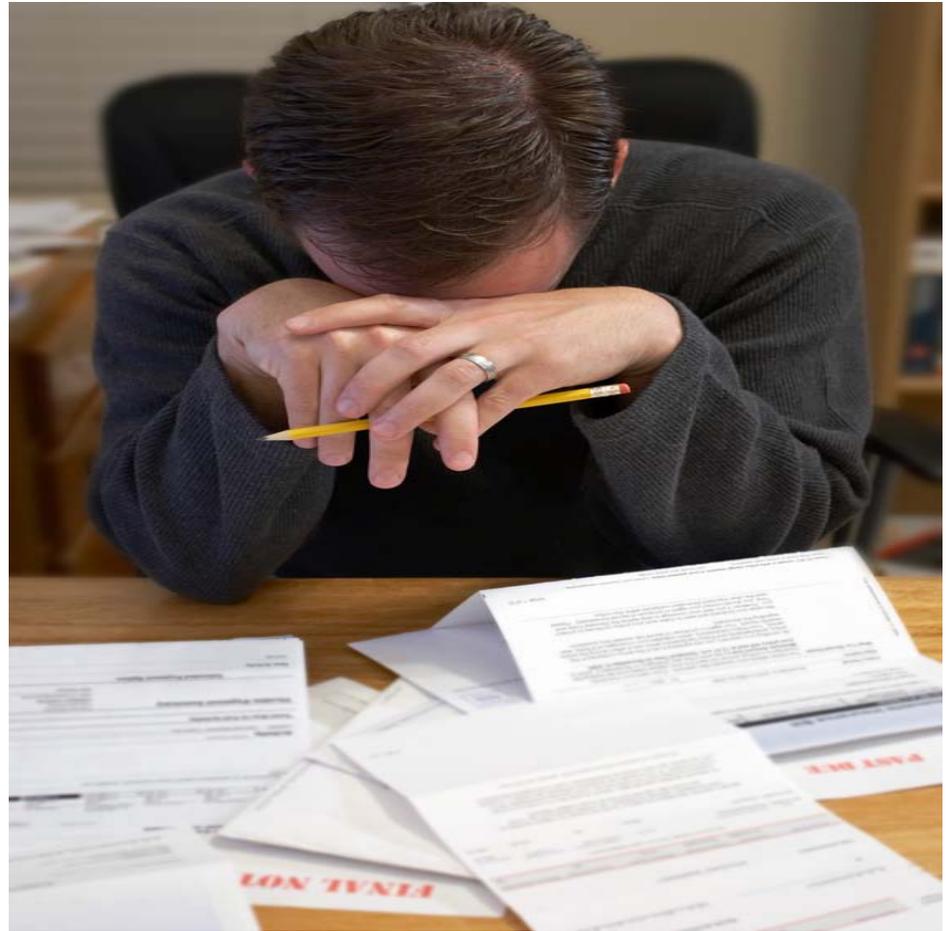
# Don't Get Caught in Congressional Crosshairs:

What You Need to Know about the  
Legislative Process and How OGE  
Can Help



# Why you care: ignorance is risk

Ethics issue  
+ Media headlines  
+ Congress acts  
+ Agency not  
engaged  
= unwelcome  
changes to your  
ethics program

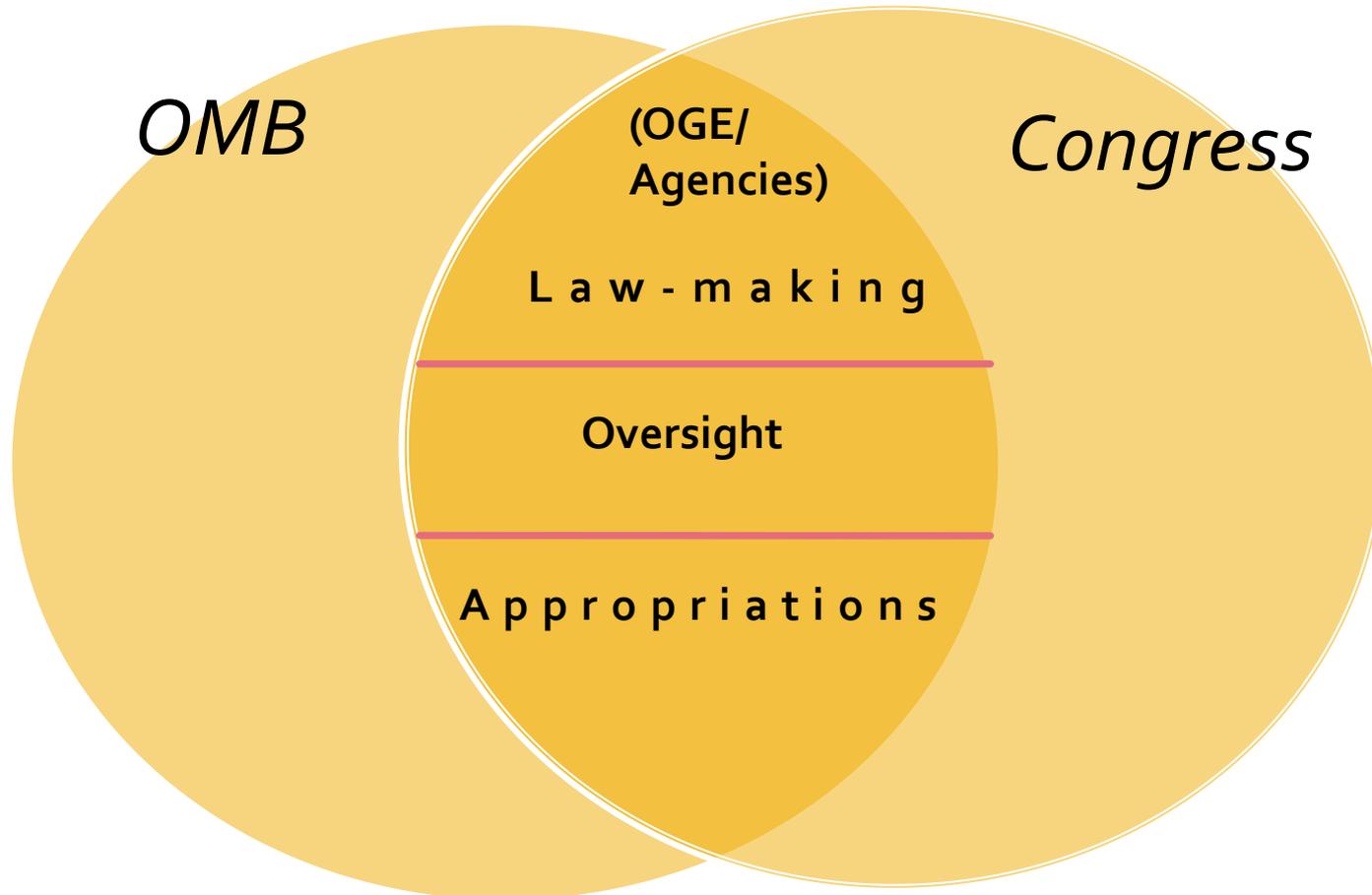


# Knowledge is Power: The Roadmap



- Culture Shock
- Legislative process  
101
- How OGE helps
- Case study discussion
- Resources

# Overlap of the two branches in the legislative process



# Speaking for the ethics community in OMB legislative clearance process

- Who: OMB Legislative Review Division
- What: Any and all materials to or from the Hill
- When: Anytime. Deadlines 2 hours to 2 weeks
- Where: Email account
- Why: Uniform Executive Branch position
- How: Email with materials for review attached

# Congressional Culture Shock

- Co-equal/powerful branch of government that differs significantly from executive branch in:
  - Pace
  - Power
  - Politics
  - Personnel
  - Perception

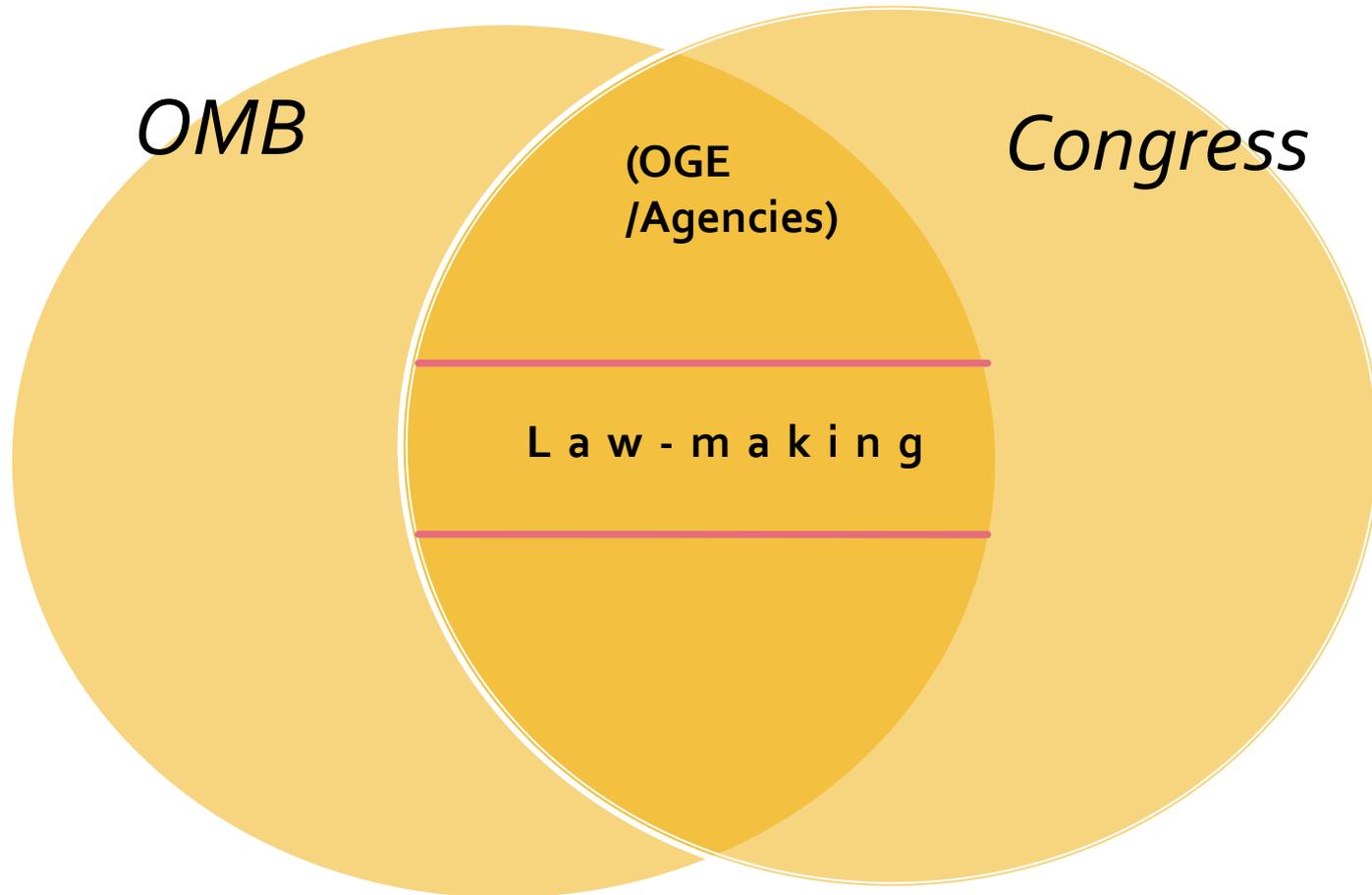


# Congressional Calendar

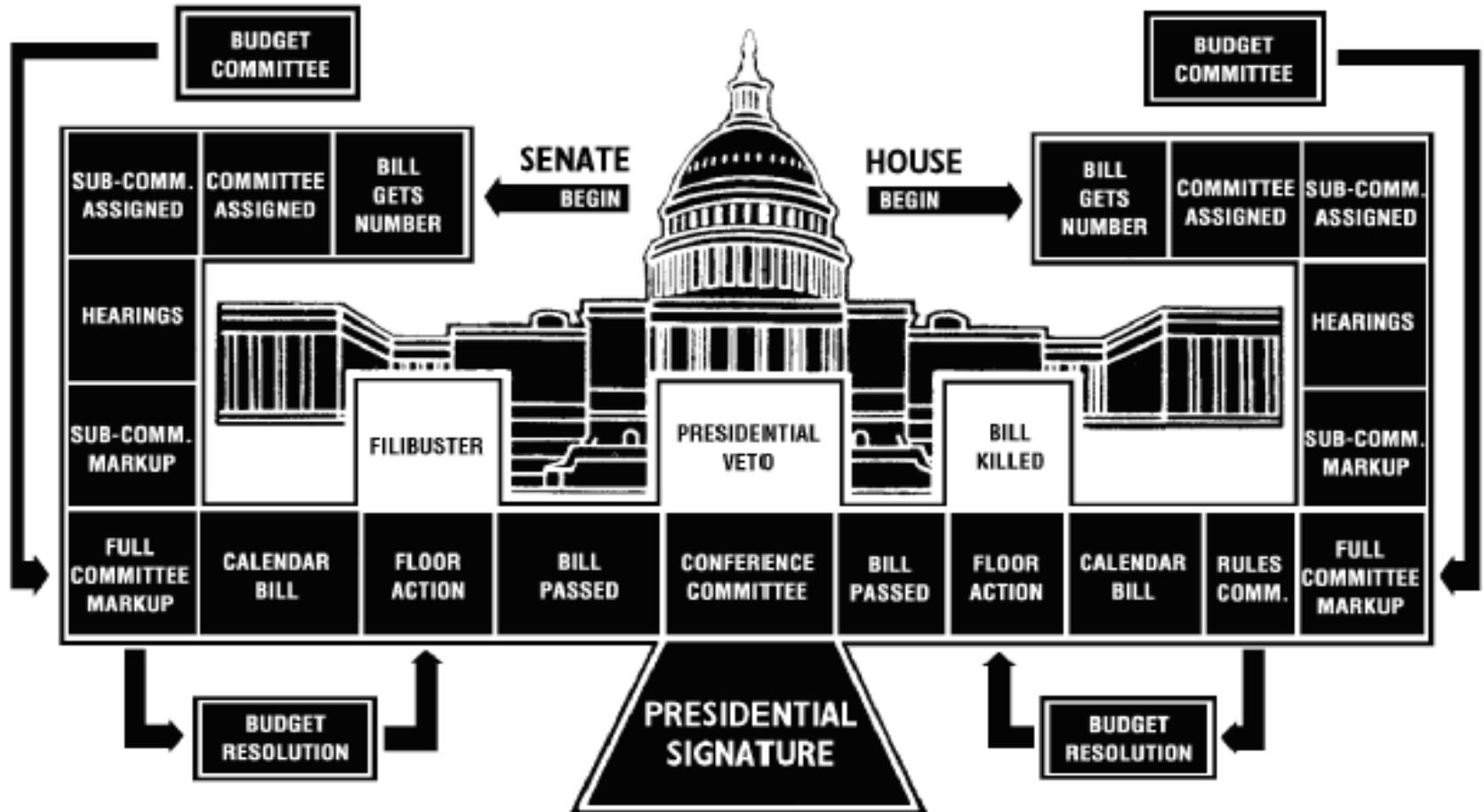
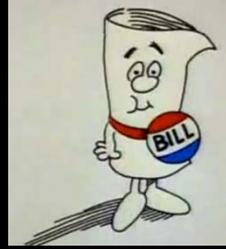


- Congress – 2 years
  - Composed of two 1-year sessions
  - Election cycle
  - Recesses and adjournment
    - Leadership

# Intersecting with Congress

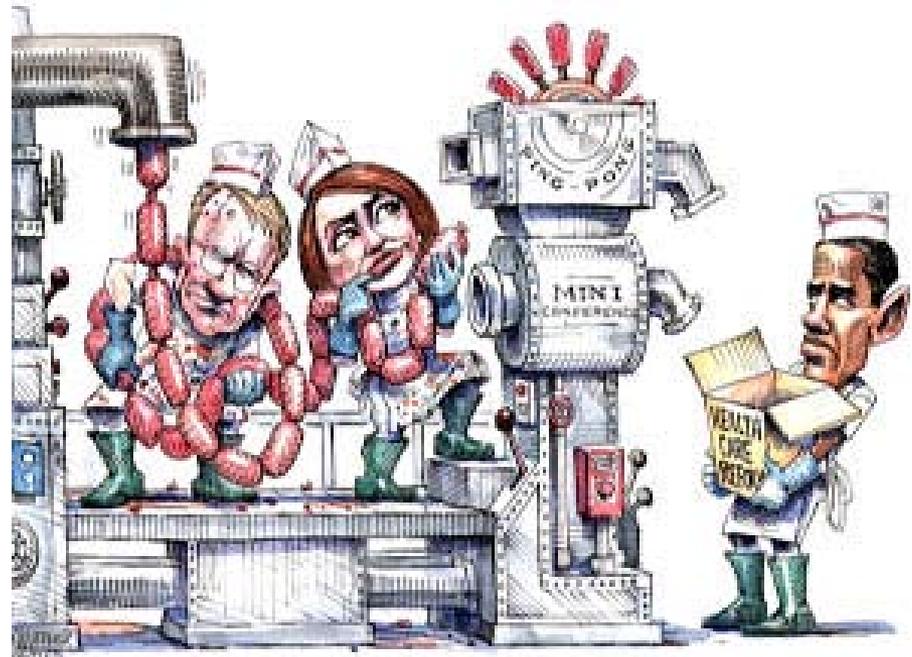


# Legislative Process Flowchart



# Legislation: Making sausage

- Introduction (who and motivation)
- Types
  - Bills
  - Resolutions
- Referral
  - Committees
  - Types of Referral



Wuerker

# Committee Process (Subcommittees)

- Hearings
  - Testimony/  
briefings
- Report
  - Requirements
  - Elements
- Mark-up
  - Amendment  
process
- Staff
  - Reliance
  - Portfolios

# Floor Action

- House (majority rules)
  - Rules Committee
  - Suspension of the Rules
- Senate (minority power)
  - Unanimous consent
  - Motion to proceed
    - **Cloture: 60 vote reality**
- Amendments

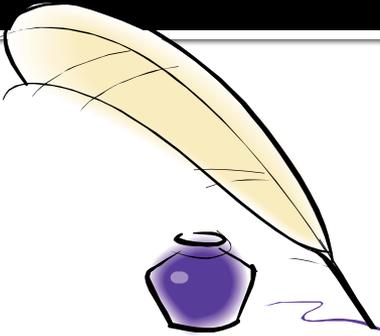


# Reconciling differences between the chambers

- Amendments between the chambers
  - Limits on the ping pong game
- Conference committees
  - Conferees
  - Negotiations
  - Vote on conference report

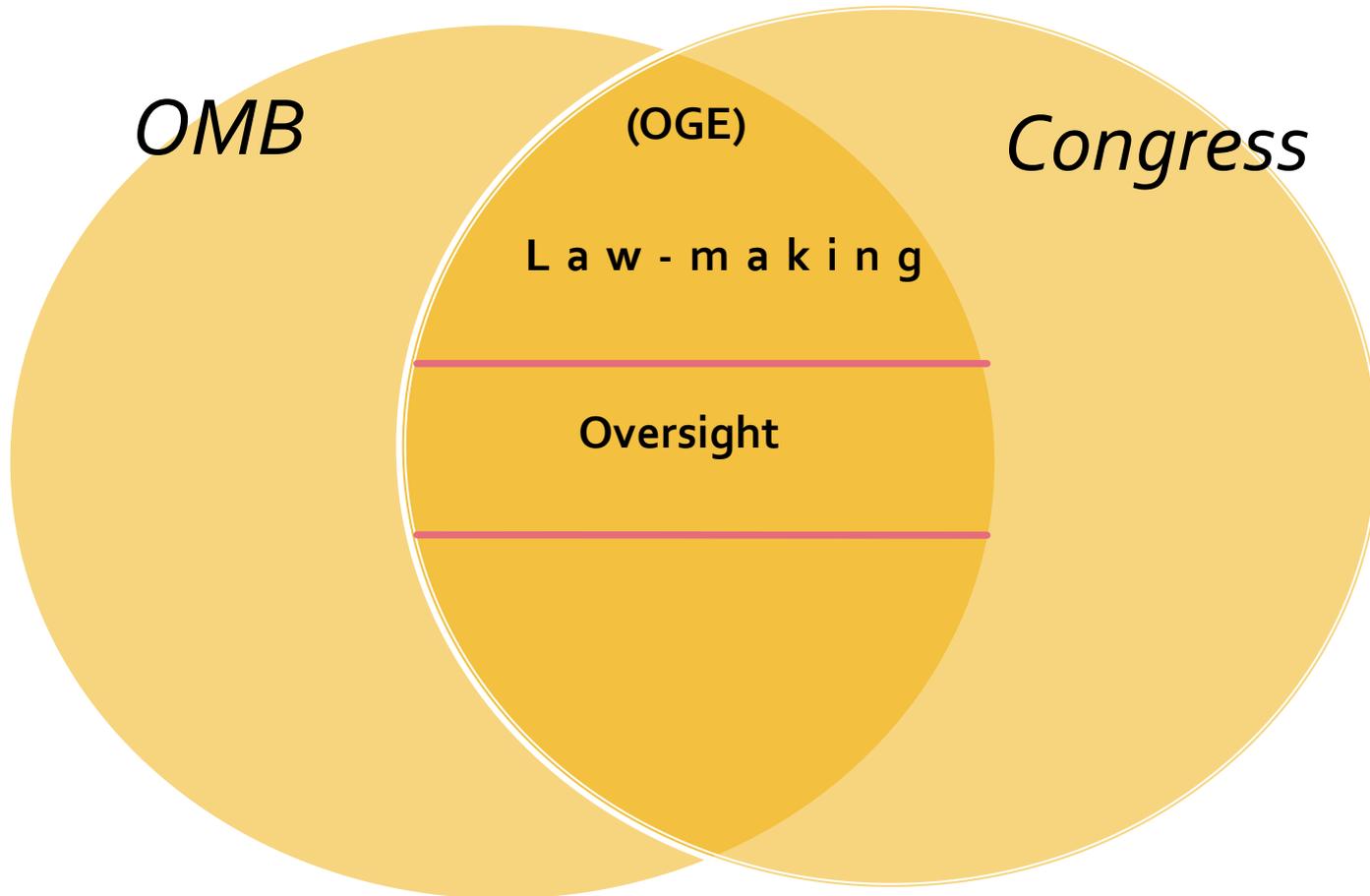


# Presidential Action



- Sign into law
- Allow to become law without signature
- Veto
- Pocket Veto

# Intersecting with Congress

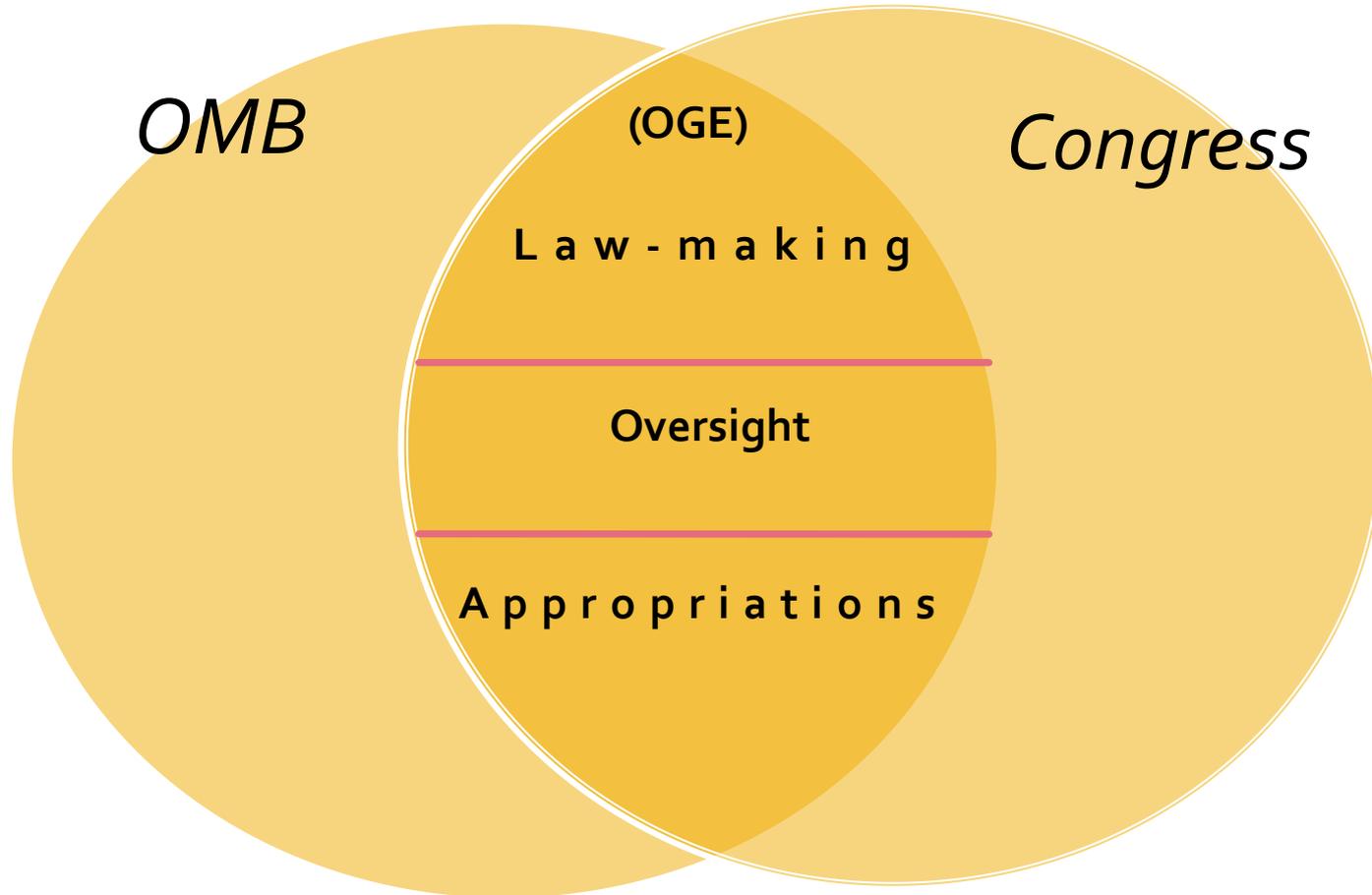


# Congressional Oversight

- Oversight Hearings
  - Testimony
  - Questions for the Record
- Briefings/Technical Assistance
- Government Accountability Office



# When OGE intersects with the legislative process



# Power of the Purse



- Appropriations
- Policy riders
- Committee report language

# How OGE's Legislative Program Helps You

- Finding and monitoring ethics-related legislative proposals and activity
- Working with Committees of Jurisdiction
  - Senate: Homeland Security and Gov Affairs, Judiciary
  - House: Oversight and Government Reform, Judiciary
  - BUT proposals can arise in any committee where ethics concerns surface

# How OGE's Legislative Program Helps You

- Providing ethics expertise on proposals
  - Congressional staff
  - OMB legislative review process
  - Congressional agencies
- Developing our own legislative proposals

# How OGE's Legislative Program Helps You

- Keeping you informed of key changes
  - Revised Compilation of Federal Ethics Laws
  - OGE Legislative legal advisories
  - OGE Legislative web pages

# Now you know: what should you do?

- Ethics issue → Media → Congressional Action = changes to your ethics program
- How should you get out of the congressional crosshairs?
- Let's Discuss

# Case study – Think



- What is my goal/the problem I am trying to address?
- Do I need to know more information about the situation?
- What resources do I have that may help achieve the goal?

# Fact Scenario



- Your agency is the subject of a newspaper article about the findings in an IG report.
- The IG report details instances of possible conflicts of interest between agency employees and regulated entities as well as finding fault with the agency.
- The newspaper account calls this a “scandal,” saying that the agency regulators were “in bed” with the manufacturers the agency is supposed to regulate.
- The article creates a public outcry for reform.

# Additional Facts



- New article quoting committee chair: “I am deeply concerned about the safety of widgets because the agency seems to care more about taking care of the big manufacturers than it cares about the health of America’s children.”
- Phone call from committee expressing concern is NOT a committee with ethics jurisdiction.

# Additional Facts

- Subsequently, an OGE internet search finds proposed legislation that would prohibit all agency employees from working for widget manufacturers for 3 years after leaving government and contains a gift prohibition with no exceptions.
- Then a congressional committee calls a hearing on the matter.



# Additional Facts



- An LRM comes in from OMB/ 2-day deadline
- OGE also received the LRM, flagged the relevant section, and told OMB it did this.
- Agency comments on proposed bill sent to the Hill through the LRM process
- There is a committee markup of the bill
- Then there is a vote on the floor & passed
- The passed version is circulated to agency through the LRM process

# Staying out of the crosshairs: Tips and tricks

## ■ Keep an eye out

- Thomas.loc.gov
- Hill publications
- Search engines

## ■ Introduce yourself

- Legislative affairs office
- OGE legislative staff
- Hill staff, as permitted
- OMB analyst

## ■ Know the process

- Timing
- Players
- Information

## ■ Anticipate and act

- Issues to headlines
- Headlines to hearings
- Hearings to legislation

# We're from OGE and we're here to help

- Shelley Finlayson, Assoc. Dir. for Leg Affairs
  - [skfinlay@oge.gov](mailto:skfinlay@oge.gov) (202) 482-9314
- Seth Jaffe, Assoc. General Counsel
  - [sjaffe@oge.gov](mailto:sjaffe@oge.gov) (202) 482-9303

Office of Government Ethics

02 x 11

**Memorandum dated December 9, 2002,  
to Designated Agency Ethics Officials  
from Amy L. Comstock, Director, Regarding  
Application of the Financial Disclosure  
Requirements to Detailees under the  
Intergovernmental Personnel Act (IPA)**

This memorandum offers guidance regarding the application of the financial disclosure requirements to detailees under the Intergovernmental Personnel Act (IPA), 5 U.S.C. §§ 3371-3376.

In December 2001, the IPA was amended to make State and local government employees who are detailed to Federal agencies, "employees" of the Federal agency for purposes of the Ethics in Government Act (EIGA).<sup>1</sup> Accordingly, some IPA detailees now may be required to file financial disclosure reports. Whether a particular detailee has to file a public report, a confidential report, or any report at all depends upon the nature of the detailee's position as well as the detailee's duties and rate of pay.

We have consulted with the Office of Personnel Management (OPM) and reviewed the OPM handbook on the IPA Mobility Program. According to OPM, agencies have a great deal of discretion with respect to the assignment of persons on detail under the IPA. A detailed employee "may be assigned to an established, classified position in the Federal agency, or may be given a set of ad hoc, unclassified duties, relevant only to the specific assignment project."<sup>2</sup> The following guidance is provided in light of this information.

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<sup>1</sup> The National Defense Authorization Act for Fiscal Year 2002, Pub. L. No. 107-107 (2001), amended 5 U.S.C. § 3374(c)(2) of the Intergovernmental Personnel Act.

<sup>2</sup> Office of Merit Systems Oversight and Effectiveness, U.S. Office of Personnel Management, *A Handbook on the Intergovernmental Personnel Act Mobility Program*, 14 (1998).

## PUBLIC FINANCIAL DISCLOSURE REQUIREMENTS

Section 101 of the EIGA requires certain Federal Government employees to file public financial disclosure forms, including:

- (1) those whose positions are classified above GS-15 under the General Schedule;
- (2) those in positions outside the General Schedule, for which the rate of basic pay is equal to or greater than 120% of the minimum rate of basic pay payable for GS-15; and
- (3) those in any other position determined by the Director of OGE to be of equal classification.

5 U.S.C. app. § 101(f)(3). Because IPA detailees now are considered Federal employees under the EIGA, those who occupy positions that fit one of these categories are required to file public financial disclosure reports.

An IPA detailee who is assigned to an "established, classified position," with a rate of basic pay equal to or greater than 120% of the minimum rate of basic pay for a GS-15, and is reasonably expected to perform the duties of his position for more than 60 days in a calendar year, is required to file a Public Financial Disclosure Report under section 101(f)(3). As we have stated in prior OGE opinions, it is the position that controls the public financial disclosure reporting requirement.<sup>3</sup> In OGE 98 x 2, we cited a 1977 Senate Governmental Affairs Committee report which noted that determining who should file a public report is based on the level of responsibility for the position, as indicated by the lowest level of pay for the position.

An IPA detailee who is "given a set of ad hoc, unclassified duties, relevant only to the specific assignment project" is not required to file a Public Financial Disclosure Report. These IPA detailees do not have clearly defined positions and many of them retain their non-Federal salaries, which may not reflect the level of responsibility for their Government duties and often may be higher than the salary paid other Government employees for similar

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<sup>3</sup> In the Office of Government Ethics (OGE) Informal Advisory Letters 81 x 3 and 98 x 2, OGE looked at both the wording of the Ethics in Government Act and its legislative history and concluded that "it is the position and not the individual which controls the public financial disclosure reporting requirements."

work. However, in unusual cases, under section 101(f)(3), an agency may request that this Office issue a determination that the detailee's position is of equal classification to those required to file SF 278s.

#### **EQUAL CLASSIFICATION DETERMINATION**

A request for an equal classification determination may be made for either a detailee who is assigned to an established, classified position that does not require the submission of an SF 278 under the standard at section 101(f)(3), or for an IPA detailee who is given a set of ad hoc, unclassified duties. To the extent possible, a request for an equal classification determination should address the following criteria, as applicable:

1. Nature of the position's responsibilities, such as managerial or policy-making;
2. Type of work required by the position, such as fiscal, scientific research, law enforcement, teaching;
3. Scope of duties and authority associated with the position, such as interaction with the agency head, liaison with private sector executives, contact with foreign governments;
4. Any special qualification requirements of the position, such as skills, expertise, experience, educational level;
5. Relative standing of the position in an agency's organizational hierarchy or chart;
6. The position description and title;
7. The agency's own assessment that a position has a pay grade equivalency at a higher level, such as Senior Executive Service, and the basis for that conclusion;
8. Difficulty filling the position at a higher level, such as attempts to have it reclassified that are unsuccessful because of grade ceiling or other factors;
9. Whether the position has previously been filled by employees at a higher pay grade;

10. Actual pay level for the position's incumbents, such as those in a special pay schedule who have been selected to receive pay at the high end of that grade scale;
11. Number of other employees in the particular pay system (or in the agency or department generally) that are paid at a comparably high level but who are not public filers, and why the positions requested for designation are considered unique; and
12. Any compelling special circumstances, such as a high-visibility position with significant potential for conflict.

We will apply these criteria in determining whether an IPA detailee's position warrants equal classification under section 101(f)(3).

#### **CONFIDENTIAL FINANCIAL DISCLOSURE REQUIREMENTS**

The EIGA authorizes each branch of the Government to collect confidential financial disclosure reports from its employees, where appropriate. See 5 U.S.C. app. § 107. Therefore, IPA detailees who are "assigned to an established, classified position" but are not required to file SF 278s and detailees who are "given a set of ad hoc, unclassified duties, relevant only to the specific assignment project," may be required to file a Confidential Financial Disclosure Report if their duties and responsibilities meet the criteria at 5 C.F.R. § 2634.904(a)(1).

#### **FILING DEADLINES**

The filing deadlines for individuals filing a public form are set forth in 5 C.F.R. § 2634.201. For those filing a confidential form, the filing deadlines are described at 5 C.F.R. § 2634.903. If there are IPA detailees in your agency who have never filed a financial disclosure report, but who you believe now should file either a public or confidential report, we recommend that they be allowed to file the report within 30 days of being notified of the requirement to do so.

If you have any questions, please contact my Office.



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

October 19, 2006  
DO-06-031

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick  
Director

SUBJECT: Intergovernmental Personnel Act Summary

The Office of Government Ethics (OGE) recently amended the Standards of Ethical Conduct for Executive Branch Employees (Standards) to clarify that all of the Standards' provisions apply to individuals serving on detail to Federal agencies under the Intergovernmental Personnel Act (IPA), 5 U.S.C. §§ 3371-3376.<sup>1</sup> This amendment to the Standards provides an occasion for OGE to remind you about the kinds of ethics issues that can arise in connection with IPA assignments.

### **Background**

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<sup>1</sup> Specifically, OGE has amended the definition of "employee" at section 2635.102(h) to indicate that the term includes IPA detailees. See 71 Fed. Reg. 45735 (August 10, 2006). OGE also has amended section 2635.105 of the Standards in order to enable agencies to amend their supplemental regulations to provide that some or all of their provisions also apply to IPA detailees. Id. OGE's determination that the Standards apply to IPA detailees is based upon a 2001 amendment to the IPA that deemed them to be Federal employees for purposes of the Ethics in Government Act of 1978. National Defense Authorization Act for Fiscal Year 2002, Pub. L. No. 101-107, § 1117, December 28, 2001; 5 U.S.C. § 3374(c)(2). While there had been some uncertainty about whether, and to what extent, the Standards applied to IPA detailees, the amendment to the IPA and the subsequent amendments to the Standards eliminated any doubt that the Standards apply to them.

The IPA authorizes the head of a Federal agency, under certain conditions and restrictions, to arrange for the temporary assignment of an employee of his agency to one of several types of non-Federal entities. The IPA also permits the temporary assignment of an employee of such a non-Federal entity to a Federal agency.<sup>2</sup> In either case, such assignments are intended to be for work of mutual concern to the agency and to the State or local government<sup>3</sup> that the agency head determines will be beneficial to both. 5 U.S.C. § 3372(a). A Federal employee, on an outgoing IPA assignment, may either be *detailed*, as a regular work assignment, or work for the receiving organization while on leave without pay from his agency. 5 U.S.C. § 3373(a). Similarly, an employee of a non-Federal entity may receive an IPA assignment to a Federal agency either through appointment or detail. 5 U.S.C. § 3374(a). An IPA assignment may be made for up to two years, and may be extended for up to an additional two years. 5 U.S.C. § 3374(a). Under OPM regulations,<sup>4</sup> before an IPA assignment can be made, the Federal agency, the non-Federal entity, and the employee must

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<sup>2</sup> The IPA allows for the detail of an employee to or from a: State government, government of a United States territory or possession, local government, Indian tribal government, non-profit educational organization including an institution of higher education, metropolitan organization representing member State or local governments, association of State and local public officials, and Federally funded research and development center. 5 U.S.C. §§ 3371-3374. Office of Personnel Management (OPM) regulations, 5 C.F.R. part 334, contemplate an even broader body of potential participants.

<sup>3</sup> In the IPA, the term "State or local government" includes all of the entities listed in footnote 2. In this memorandum, these entities will be referred to, collectively, as "non-Federal entities" or "receiving organizations."

<sup>4</sup> Executive Order 11589 (April 1, 1971) delegated to OPM the authority to prescribe regulations for the administration of the Intergovernmental Personnel Act.

enter into a written agreement recording the obligations and responsibilities of the parties. 5 C.F.R. § 334.106.<sup>5</sup>

A Federal employee who is assigned under the IPA to a non-Federal entity, whether on *leave without pay* or on *detail*, remains a Federal employee. 5 U.S.C. § 3373(a). Therefore, the employee continues to be subject to all Federal ethics laws and regulations while working for the non-Federal entity. A non-Federal employee who is *appointed* to a Federal position under the IPA is considered a Federal employee for virtually all purposes, including all applicable ethics provisions. 5 U.S.C. § 3374(b). As discussed in greater detail below, however, a non-Federal employee who is *detailed* to a Federal agency is deemed to be a Federal employee only for limited purposes including many specified ethics provisions. 5 U.S.C. § 3374(c).

**Non-Federal Employees Assigned to  
Federal Positions Under the IPA**

Although, as noted above, a non-Federal employee's IPA assignment may be effectuated either through a detail or a Federal appointment, our understanding is that IPA assignments to Federal agencies are virtually always accomplished through details. Thus, our discussion about the application of the various ethics provisions to incoming IPA assignees will be limited to those questions that arise for non-Federal employees who are *detailed* to Federal positions.

The IPA, as amended, specifies that during the period of an IPA assignment, a non-Federal employee who is detailed to a Federal agency is deemed to be an employee of the agency for purposes of: 5 U.S.C. Chapter 73 (employment limitations, political activities, foreign gifts and decorations, gifts from prohibited sources, gifts between employees, certain kinds of misconduct, and drug and alcohol abuse); the Ethics in

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<sup>5</sup> The written agreement should contain information regarding, inter alia, the length of the assignment, the responsibility to pay the employee's salary, and the employee's prospective duties.

## Designated Agency Ethics Officials

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Government Act (financial disclosure and outside earned income limitations), section 27 of the Office of Federal Procurement Policy Act (procurement integrity), 18 U.S.C. §§ 203, 205, 207, 208, and 209 (the criminal conflict of interest statutes);<sup>6</sup> 18 U.S.C. §§ 602, 603, 606, 607, 643, and 654 (political contributions, accounting for public money, and conversion of property); 18 U.S.C. §§ 1905 and 1913 (disclosure of confidential information and lobbying with appropriated moneys); and 31 U.S.C. §§ 1343, 1344, and 1349(b) (passenger motor vehicle and aircraft purchase and use).

A. Restrictions on Representation: Sections 203 and 205 of title 18 of the U.S. Code impose related restrictions on the outside activities of Federal employees, particularly activities involving the representation of others before the Federal Government. Section 203 prohibits an employee from receiving, agreeing to receive, or soliciting compensation for representational services, rendered either personally or by another, before any court or Federal agency or other specified Federal entity, in connection with any particular matter in which the United States is a party or has a direct and substantial interest. Section 203 applies not only to representational services provided by the employee personally, but also to services provided by another person, when the employee shares in the compensation for such services, for example, through partnership income or profit-sharing arrangements. See 4 Op. O.L.C. 603 (1980).

Section 205 prohibits an employee from personally representing anyone before any court or Federal agency or other specified Federal entity, in connection with any particular matter in which the United States is a party or has a direct and substantial interest. See 18 U.S.C. § 205(a)(2). Unlike section 203, the prohibition in section 205(a)(2) applies

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<sup>6</sup> An IPA detailee who is assigned for not more than one hundred and thirty days during any period of three hundred and sixty-five consecutive days is subject to the provisions of these statutes only to the extent that they apply to special Government employees (SGEs). See 18 U.S.C. § 202.

whether or not the employee receives any compensation for his representational activity. Furthermore, section 205(a)(1) prohibits an employee 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 the claim.

These prohibitions can limit the permissible activities of a non-Federal employee detailed to a Federal position under the IPA. University professors, for instance, often work on research projects funded by Federal grants. Thus, the question often arises whether such an individual, while on an IPA detail to a Federal agency, properly could continue to serve as such a grant's "principal investigator," a position that could require the kind of representational duties that are prohibited by section 205.<sup>7</sup> Because section 205 prohibits only *representing* a third party before a Federal agency or court, it would not necessarily prohibit the detailee from continuing to serve as the principal investigator. Although the detailee would not be permitted to, for instance, sign and submit a grant application to a Federal agency, the detailee could prepare the application, and could be listed on it as principal investigator, if it were signed and submitted by a co-investigator who is not a Federal employee or detailee.<sup>8</sup> See, e.g., Example 1 to 5 C.F.R. § 2637.201(b)(6).

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<sup>7</sup> The principal investigator is the head of the project or grant. On occasion, he may have one or more "co-principal investigators" who share with him responsibility for the project's performance.

<sup>8</sup> An agency may choose, when negotiating an IPA agreement for the services of an individual who also serves as a principal investigator on a Government grant, to request that the non-Federal entity designate a co-investigator to perform any necessary representational services. Conversely, an agency may choose to prohibit, in an IPA agreement, the continued service of a detailee as a contract's principal investigator or co-investigator.

This prohibition particularly may be limiting for a part-time IPA detailee who, while also continuing to work part-time for his non-Federal employer, is prohibited from representing this entity before any Federal agency during the course of his IPA detail. Nevertheless, the part-time detailee would have to structure his duties to his home institution in order to avoid such representational activities. This prohibition, however, would be substantially less onerous for a part-time IPA employee who is detailed for 130 days or less during any period of 365 consecutive days because 18 U.S.C. §§ 203 and 205 would apply to such a detailee only to the extent that they apply to SGEs.<sup>9</sup>

B. Financial Conflicts of Interest: A non-Federal official who is detailed to a Federal agency also is subject to 18 U.S.C. § 208, which prohibits an employee from participating personally and substantially in any particular matter that would have a direct and predictable effect on his own financial interests, or on the financial interests of, among others, any organization which he serves as officer, director, trustee, general partner or *employee*; or any person or organization with which he is negotiating for, or has any arrangement concerning, future employment.

Section 208 issues often arise because, as noted above, an IPA detailee continues his employment status with his home institution. Thus, absent a waiver, an IPA detailee must not take any official action that will directly and predictably affect the financial interests of his home institution. For instance, absent a waiver, a university employee who is detailed to supervise a Federal research project, and who recognizes the

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<sup>9</sup> These statutes would only prohibit the participation of an SGE IPA detailee in a particular matter involving a specific party or parties in which he has participated as a Government employee. If the IPA detailee has served in the Federal position for more than 60 days, but less than 130 days, these statutes also prohibit his participation in particular matters involving a specific party or parties that are pending before the agency at which he is employed. See 18 U.S.C. §§ 203(c), 205(c).

need for additional work to be done, cannot recommend or select his home institution to perform the additional work.<sup>10</sup>

A regulatory exemption published by OGE provides some relief from the restrictions of section 208 for certain IPA assignees. An employee on a leave of absence from an institution of higher education may participate in any particular matter of *general applicability* affecting the financial interests of the institution from which he is on leave, provided that the matter will not have a special or distinct effect on that institution other than as part of a class. 5 C.F.R. § 2640.203(b). This exemption, however, would not apply to an IPA detailee who continues to serve his home institution part-time because such an employee actually would not be "on leave" from his university.

Where the matter in question is *not* one of *general applicability* (or is one of general applicability to which the regulatory exemption at 5 C.F.R. § 2640.202(c) does not apply), the agency sometimes may decide to waive the imputed financial conflict of interest pursuant to section 208(b)(1). Some agencies, for example, have issued waivers in situations where non-Federal officials are assigned, while on IPA details, to manage Federal grants that involve their home institutions, but that are wholly unrelated to the detailees' own past or future work there. Other agencies decline to issue waivers under these circumstances, arguing that the detailee's perceived primary loyalty to his home institution makes it difficult to determine that the conflict of interest is "insubstantial." Because assessing the appropriateness of issuing a waiver to an IPA detailee is complicated, agencies should consult with OGE. See 5 C.F.R. § 2640.303.

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<sup>10</sup> Further illustrating this problem, a December 2005 GAO report concluded that the Department of Homeland Security needed to improve its management controls to help IPA detailees from the national laboratories guard against conflicts of interest when participating in determining the direction of research and development projects. "DHS Needs to Improve Ethics-Related Management Controls for the Science and Technology Directorate," GAO-06-206.

When an IPA detailee holds a direct financial interest that would be affected by the Government matter to which he is assigned, normally he either will seek a waiver or recuse. Although he also may choose to divest the interest in order to participate, this is an unusual choice of remedy for an IPA detailee. It is important to note that an IPA detailee who divests a conflicting financial interest in order to participate in a particular matter is not eligible to receive a certificate of divestiture (CD).<sup>11</sup> In contrast, an employee who is *appointed* to a Federal position under the IPA would be eligible to receive a CD.

C. Post-Employment Restrictions: The criminal post-employment statute, 18 U.S.C. § 207, imposes a number of different restrictions on the activities of former Federal Government employees. They include: (1) the lifetime prohibition on representing others in connection with the same particular matter involving specific parties in which the former employee participated personally and substantially, 18 U.S.C. § 207(a)(1); (2) the two-year prohibition on representing others in connection with the same particular matter involving specific parties that was pending under the employee's official responsibility during the last year of Government employment, 18 U.S.C. § 207(a)(2); (3) the one-year prohibition on representing, aiding, or advising others about certain ongoing

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<sup>11</sup> A CD may be issued only to an employee (other than an SGE), an employee's spouse or minor child, or a trustee holding property in a trust in which one of these individuals has a beneficial interest in principal or income. See 5 C.F.R. § 1003. The version of the National Defense Authorization Act for Fiscal Year 2002 that was originally passed by the House in 2001 (S. 1438) included, in its amendments to 5 U.S.C. § 3374(c)(2), the authority to issue certificates of divestiture to IPA detailees. See 147 Cong. Rec. H7072 (October 17, 2001). This provision, however, was removed from the bill that ultimately passed both houses and became law. See National Defense Authorization Act for Fiscal Year 2002, Pub. L. No. 107-107, sec. 1117, December 28, 2001; H. Conf. Rep. 107-333, 107<sup>th</sup> Cong., 1st Sess., December 12, 2001, 2001 U.S.C.C.A.N. 1021, 1139.

trade or treaty negotiations on the basis of certain nonpublic information, 18 U.S.C. § 207(b); (4) the "one year cooling off period" that prohibits a former "senior employee" from representing anyone before his former agency or department in connection with any matter for one year after terminating his senior position, 18 U.S.C. § 207(c); and (5) the restriction on certain post-employment activities with foreign entities, 18 U.S.C. § 207(f). Generally, all of these provisions apply to IPA detailees.<sup>12</sup> Section 207(a)(1), for example, would prohibit a former IPA detailee from negotiating the terms of a grant application, on behalf of any institution or organization, if he participated personally and substantially in evaluating applications for the grant during his Federal detail.<sup>13</sup>

Section 207(c) also may apply to an individual serving as a senior employee pursuant to the IPA. Based on advice that OGE has received from the Office of Legal Counsel (OLC), such individual is considered a senior employee if his total pay, from both Federal and non-Federal sources, is equal to or greater than 86.5 percent of the rate of basic pay payable for level II of the Executive Schedule (excluding Federal reimbursement of a non-Federal employee's share of non-salary benefits) **and** either: (1) the individual served in a Federal position ordinarily compensated at this rate; (2) the individual's non-Federal employer received Federal reimbursement in an amount equal to or greater than this rate; or (3) the individual received a direct Federal payment pursuant to 5 U.S.C. § 3374(c)(1) that, when added to the salary that he

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<sup>12</sup> As noted above, the IPA specifically provides that an individual serving on detail to a Federal agency "is deemed an employee of the agency for purposes of . . . 203, 205, 207, 208, and 209 . . . of title 18." 5 U.S.C. § 3374(c)(2).

<sup>13</sup> Additionally, because the Procurement Integrity Act, 41 U.S.C. § 423, also applies to IPA detailees, a former detailee who is a "covered official" would be prohibited from accepting compensation from a contractor, for one year from the detailee's last involvement in specific contract actions, on a contract of \$10 million or more.

received from his non-Federal employer, totals an amount equal to or greater than this rate.

D. Supplementation of Government Salary: 18 U.S.C. § 209 prohibits a Federal employee from receiving any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch, from any source other than the United States Government. Although this provision applies to an IPA detailee, section 209(a) permits the acceptance of "compensation contributed out of the treasury of any State, county, or municipality." This provision applies to all payments from State and local governments, and a payment from a state university is considered a payment from the state. See generally, OGE Informal Advisory Opinion 93 x 29. Additionally, the IPA itself provides that a sending organization may pay some or all of the individual's salary. See 5 U.S.C. § 3374(c). Thus, according to informal advice that OGE has received from OLC, section 209 does not prohibit other sending organizations from paying some or all of a detailee's salary because such a prohibition would be inconsistent with the IPA statute's specific authorization of such fee splitting arrangements.

Section 209 could be relevant where an IPA detailee is seeking to receive compensation for writing. To the extent that the material in question was written as part of the detailee's Federal Government duties, section 209 would prohibit the receipt of compensation for its publication. On the other hand, a part-time IPA detailee who was able to show that he wrote the material in question entirely on his own time, or during the hours in which he worked for his home institution, and that the writing was not otherwise part of his official Government duties, would not be barred by section 209 from receiving this compensation. Of course, section 2635.807 of the Standards would still bar his receipt of compensation if the writing "relates to his official duties."

E. Financial Disclosure: As noted above, in December 2001, Congress amended section 3374(c)(2) of the IPA, as part of the National Defense Authorization Act for Fiscal Year 2002, Pub. L. No. 107-107 (2001), to specify that an IPA

detailee to a Federal position is a Federal employee for purposes of the Ethics in Government Act. This provision subjects certain IPA detailees to the obligation to file Public Financial Disclosure Reports (SF 278s). It is the position, rather than the individual, that controls the public financial disclosure reporting requirement. Thus, an IPA detailee who is assigned to an established designated public filer position, and who reasonably is expected to perform the duties of that position for more than 60 days in a calendar year, must file an SF 278 under 5 U.S.C. app. § 101(f)(3).

An IPA detailee who is "given a set of ad hoc, unclassified duties, relevant only to the specific assignment project" is not required to file an SF 278. See OGE Informal Advisory Opinion 02 x 11. Such IPA detailees do not have clearly defined positions and many of them retain their non-Federal salaries, which may not reflect the level of responsibility of their Government duties and often may be higher than the salaries paid to other Government employees for similar work. However, in particular cases, under section 101(f)(3), an agency may request that OGE issue a determination that the detailee must file because his position is of equal classification to those required to file SF 278s.

Any IPA detailee who is not required to file an SF 278 may be required to file a Confidential Financial Disclosure Report (OGE Form 450) if his duties and responsibilities meet the criteria set forth at 5 C.F.R. § 2634.904(a)(1). See December 9, 2002 OGE Memorandum to Designated Agency Ethics Officials (reprinted as OGE Informal Advisory Opinion 02 x 11).

#### **Federal Employees Assigned to Non-Federal Positions Under the IPA**

A Federal employee remains an employee of his agency during an IPA assignment, whether he is on detail or on leave without pay. 5 U.S.C. § 3373(a). Thus, all applicable ethics laws and standards continue to apply to him. See 5 C.F.R. § 2635.104(c). Although this is fairly straightforward, several particular ethics issues may arise for outgoing IPA assignees.

A. Restrictions on Representation: Generally, 18 U.S.C. § 205 would be implicated if an employee on an IPA assignment were to represent the interests of the non-Federal organization to which he is assigned back to the Federal Government. However, § 205 does not apply to representation undertaken by a Federal employee in the discharge of his official duties. Thus, if such representation were "integral to the statutory scheme administered by" his home agency, it would not be statutorily prohibited. See 4 Op. O.L.C. 498, 503 (1980); Informal Advisory Opinion 94 x 15. Moreover, where the Federal agency head determines that work of "mutual concern" to the Federal agency and to the non-Federal entity includes such representational contacts with the Federal Government, and the IPA agreement explicitly authorizes such representation, the contact would not violate section 205. See Memorandum from OLC to the Federal Bureau of Investigation (FBI) dated January 11, 1999, available at <http://www.usdoj.gov/olc/1999opinions.htm>.

B. Financial Conflicts of Interest: Section 208 of title 18 of the U.S. Code prohibits a Federal executive branch employee from participating personally and substantially, in an official capacity, in a particular matter in which he has, or certain others (whose interests are imputed to him under the statute) have, a financial interest. An organization or entity that he serves as an employee is one whose financial interests are imputed to him. As noted above, although an employee assigned to a non-Federal entity under the IPA remains a Federal employee during his assignment, he also is in an employment relationship with the non-Federal entity to which he is assigned. Thus, the employee's participation in a particular matter that would affect the non-Federal entity's financial interests would seem to present a financial conflict of interest. However, because the IPA provides explicit statutory authority for a Federal employee to serve the Government and a

non-Federal entity simultaneously, section 208 would not be violated.<sup>14</sup>

Another common issue is that a Federal employee who is assigned to a non-Federal entity may wish to seek permanent employment with that receiving organization.<sup>15</sup> Section 208 prohibits the personal and substantial participation of a Federal employee in any particular matter that would directly and predictably affect the financial interests of anyone with whom he is negotiating for employment. Because, as noted above, an IPA assignment essentially is ex officio, and the employee's primary loyalty remains to the United States, all of his actions while on assignment constitute participation in Federal Government matters. Thus, it would be inconsistent, under section 208, for the employee to negotiate for employment with a non-Federal organization to which he is currently assigned under the IPA while at the same time working on matters that affect the receiving organization's financial interests. Although the issuance of a section 208(b)(1) waiver would resolve this conflict, agencies should consider carefully whether the issuance of a waiver is appropriate under these circumstances, and should consult with OGE before issuing such a waiver.

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<sup>14</sup> In a 1996 opinion, OLC determined that the financial conflict of interest that results from an employee's outside service to a non-Federal entity can be relieved by the existence of statutory authority for such official outside service. See Memorandum for Howard M. Shapiro, General Counsel, FBI, from Beth Nolan, Deputy Assistant Attorney General, OLC (November 19, 1996).

<sup>15</sup> Generally, the IPA requires that a Federal employee agree, as a condition of accepting an IPA assignment, to serve in the Government upon the completion of the assignment for a period of time equal to the length of the assignment. 5 U.S.C. § 3372(c)(1). Failure to abide by this requirement makes the employee liable to pay back all of the expenses of the assignment, excluding salary. 5 U.S.C. § 3372(c)(2). The agency head, however, may waive this liability "for good and sufficient reason." Id.

C. Post-Employment Restrictions: Because a Federal employee's IPA assignment to a non-Federal entity is considered ex officio, the matters in which he participates while on assignment are considered official duties and fall within the purview of the post-employment restrictions. Thus, the lifetime prohibition set out at 18 U.S.C. § 207(a)(1) would prohibit a former Federal employee from making, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of anyone other than United States, in a particular matter involving specific parties in which he participated personally and substantially while serving a non-Federal entity on an IPA assignment. For example, an employee who assisted in the performance of a contract while on an IPA assignment to a non-Federal entity, could not subsequently make a communication to or appearance before the Government regarding that same contract, on behalf of another.

### **Conclusion**

Although this memorandum discusses the ethics issues that arise most commonly for individuals serving under IPA assignments, it is not exhaustive. Thus, in addition to considering these issues, we urge agency ethics officials to be sensitive to the possibility that other concerns may arise in particular cases. OGE would be happy to help you parse through such concerns, should they arise.



**Science & Technology Directorate**  
**Intergovernmental Personnel Act (IPA)**  
**Program Reference Guide**

**[Draft]**

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# DHS Science & Technology Directorate

## Intergovernmental Personnel Act (IPA) Program Reference Guide

### 1.0 Introduction

This reference guide describes the implementation of the *Intergovernmental Personnel Act* (IPA) (see References) for individuals assigned to the U.S. Department of Homeland Security (DHS) Science and Technology (S&T) Directorate. The Office of Personnel Management (OPM) provides detailed guidance on the Federal government's policy for the IPA program at <http://www.opm.gov/programs/ipa/index.asp>. This guide addresses non-Federal IPA staff assigned to S&T as detailees; it does not address IPA staff assigned to S&T through appointment or S&T staff assigned as IPAs to Federal or non-Federal organizations. Future procedures will address these situations.

Information in this guide has been taken from the OPM; 5 CFR 334, *Temporary Assignment of Employees Between Federal Agencies And State, Local, and Indian Tribal Governments, Institutions of Higher Education, and Other Eligible Organizations*; the General Services Administration (GSA) website; and 41 CFR 300-304, *Federal Travel Regulation* (FTR) (see References).

IPA assignments in S&T are valued within the scientific and technology communities. From universities, national laboratories, and research centers, S&T is able to recruit diverse, high-quality candidates with a wide variety of academic and professional backgrounds and demonstrated leadership skills. S&T uses IPA staff as conduits to the scientific and engineering research community and as competent staff who can help manage S&T's work.

S&T uses a flexible approach in filling IPA positions and has a broad and fully competitive recruitment process in an effort to select the best-qualified applicant for the vacant position. The goal is to ensure that S&T's decisions on how to fill scientific and technological positions are consistent in its use of various hiring authorities and based on the DHS strategic plan.

In no case will S&T fill a career-reserved Senior Executive Service (SES) position using an IPA staff member. Career-reserved SES positions involve certain areas of program management, such as grants or contract administration. By law, only career executives may occupy career-reserved positions.

### 1.1 Intergovernmental Personnel Act Mobility Program

The Intergovernmental Personnel Act Mobility Program (IPA program) provides for the temporary assignment of personnel between the Federal government and state and local governments, colleges and universities, Native American tribal governments, Federally funded research and development centers (FFRDCs), and other eligible organizations.

The goal of the IPA program is to facilitate the movement of employees, for short periods of time, when this movement serves a sound public purpose. Assignments may be used to achieve objectives such as the following:

- Strengthening the management capabilities of non-Federal agencies; state, local, and Native American tribal governments; and other eligible organizations
- Assisting the transfer and use of new technologies and approaches to solving governmental problems
- Supporting government-wide initiatives

- Meeting the temporary need for skilled personnel and scarce expertise
- Facilitating an effective means of involving state and local officials in developing and implementing Federal policies and programs
- Providing program and developmental experiences to enhance the IPA staff member's performance when he/she returns to his/her parent organization.

S&T recognizes the value of the IPA program as a means of strengthening its workforce by leveraging outside talent from academia and the nonprofit sector. Assignments arranged to meet the personal interest of employees, to circumvent personnel ceilings, or to avoid unpleasant personnel decisions are contrary to the spirit and intent of the IPA program.

## 1.2 Organization of This Guide

Because this guide is updated periodically, staff need to check for the latest version on the [Standardized Policies and Procedures \(SP2\) System](#). If a topic is addressed by one or more SP2 procedures, those procedures are referenced. If a topic is not addressed by an SP2 procedure, basic information and points of contact are provided. The information in this guide applies to any IPA staff member assigned to any S&T location.

The remainder of this guide consists of the following sections:

- [Section 2](#) – Eligibility for Participating in the IPA Program
- [Section 3](#) – IPA Assignment Administration
- [Section 4](#) – Legal Issues and Considerations
- [Section 5](#) – Financial Considerations
- [Section 6](#) – Amendments, Extensions, and Terminations
- [Appendix A](#) – IPA Forms and Procedures
- [Appendix B](#) – Acronyms and Abbreviations
- [Appendix C](#) – References.

## 2.0 Eligibility for Participating in the IPA Program

DHS is responsible for certifying the eligibility of organizations participating in the IPA program. When a Federal agency approves and certifies a non-Federal organization, the certification is permanent and applicable throughout the Federal government. Therefore, another agency outside of DHS has the discretion to accept the certification. If previous certification is not acceptable, the non-Federal entity must submit the appropriate paperwork for review, as discussed below. If a non-Federal entity is denied certification, it may appeal the denial to OPM. Non-Federal entities wishing to participate in the IPA program must be certified before they initiate a new IPA agreement.

State, local, and Native American tribal governments; institutions of higher education; and certain other organizations, including FFRDCs that appear on a master list maintained by the National Science Foundation (<http://www.S&T.gov/sbe/srs/ffrdc>) and organizations that S&T approves for participation, are eligible to participate in the IPA program. Employees in those organizations who have been employed for at least 90 days in career positions are eligible for the IPA program.

More information on assignment of non-Federal employees to a Federal agency is available on the OPM website at <http://www.opm.gov/programs/ipa/assignF.asp>.

## 2.1 Establishing Organizational Certification Status

FFRDCs automatically qualify for the IPA program and do not require special certification. Unless it accepts certification issued by another Federal agency, S&T must certify the following entities before they can arrange assignments with S&T: (1) state or local governments and (2) Native American tribal governments.

Requests for certification must be approved by the Under Secretary with concurrence by the S&T and DHS Office of the General Counsel (OGC). The certification process requires a minimum of 3 months. A Supervisor/Manager (MGR) interested in pursuing an IPA candidate should determine whether another Federal agency has already granted certification to the candidate's parent organization. If so, the Human Resources Manager (HRM), in coordination with OGC Staff, determines whether further certification is necessary.

To obtain certification, the parent organization submits a written request containing the following information to the HRM:

1. Articles of incorporation
2. Bylaws
3. IRS nonprofit statement
4. Any other information describing the organization's activities as they relate to the public management concerns of governments or universities
5. Information indicating that the organization has a principal function of offering professional advisory, research, education, development, or related services to governments or universities concerned with public management.

The HRM then prepares a written request to determine an organization's eligibility for participation and sends the request to the DHS Legal Advisor for Ethics in the Office of Government Ethics. Upon approval, the certification of eligibility becomes a part of the official record and is retained by the Office of Government Ethics.

## 2.2 Qualifying for an IPA Position

Although the IPA program provides more flexibility in assigning individuals than the traditional merit staffing procedures for competitive service appointments, each assignment must be carefully reviewed to ensure that the IPA staff member's experience and pay level are commensurate with the duties assigned. The process for obtaining proposals or information from a parent organization interested in participating in the IPA program is described in the SP2 procedure *Hiring of Staff as IPA Detailees*.

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## 3.0 IPA Assignment Administration

This section includes information on the following topics as they relate to IPA assignments:

- Absences
- Awards
- Deployment
- Hiring of IPA staff
- Length of assignments
- Performance reviews
- Timekeeping
- Training requirements
- Work hours and holidays
- Worker's compensation.

In addition to the information provided in this guide, IPA staff members are expected to follow all other Federal, DHS, and S&T policies and procedures. The *SP2 System* and the *S&T Staff Reference Guide* provide additional guidelines on policies, requirements, and practices.

### 3.1 Absences

Because IPA staff are not Federal employees, their annual, sick, or other type of leave is not accrued by S&T. Generally, an IPA staff member continues to earn leave under the parent organization's leave system and charges appropriate absences against that leave. However, the IPA staff member must obtain his/her S&T MGR's approval to use leave. See Section 3.7, "Timekeeping," for information on how an IPA staff member documents his/her leave.

### 3.2 Awards

IPA staff members are eligible for the S&T Under Secretary Annual Awards, as described in the SP2 procedure *S&T Under Secretary Annual Awards*. IPA staff members are *not* eligible for the awards described in the following SP2 procedures: *DHS Secretary's Annual Award Nominations*, *On-the-Spot or Time-Off Awards*, and *Special Act or Service Awards*.

### 3.3 Deployment

IPA staff may be deployed to offsite locations if required to meet national, DHS, or S&T requirements. If deployment is required, the IPA staff member follows the travel processes described in the SP2 procedures *Domestic Travel Authorization* or *Foreign Travel*, as applicable, as well as any applicable incident management procedures (see the SP2 procedures under the *Incident Management Overview*).

### 3.4 Hiring of IPA Staff

The SP2 procedure *Hiring of Staff as IPA Detailees* describes the process for hiring staff as detailees through IPA program.

### 3.5 Length of Assignments

The following applies to the length of IPA assignments:

- May be intermittent, part-time, or full-time
- Can initially range from 60 days to 2 years
- May be extended for up to a total of 4 years

- Can be terminated with a 30-day notice by S&T, the IPA staff member, or the parent organization.

The length of an assignment is not impacted by the IPA staff member's work schedule. For example, an individual who began a part-time IPA assignment on January 1, 2006, would still be considered to have completed a two-year assignment on January 1, 2008.

Assignments automatically end on the date indicated in OF 69 – IPA Assignment Agreement, as described in the SP2 procedure *Termination of IPA Assignments*. Assignments may end before that date if the work is completed early or if personal situations, performance issues, conflict of interest issues, or other issues arise.

### **3.6 Performance Reviews**

The IPA staff member's S&T MGR conducts an annual review of the goals and objectives established for the assignment using the DHS Headquarters Performance Plan (see below). The MGR discusses the review with the IPA staff member and provides a written copy to the parent organization.

### **3.7 Timekeeping**

IPA staff complete a S&T timesheet and submit it to his/her S&T MGR for review and signature, in addition to reporting his/her time as required by the parent organization. The staff member indicates time spent on official travel for which he/she receives per diem.

### **3.8 Training Requirements**

Once an IPA staff member joins S&T, he/she is notified of and receives the following formal and/or informal training:

- Annual ethics and financial disclosure training – see Section 4.6.2, “Ethics Training Resources,” for more information on this training
- Reimbursement of per diem allowances, if applicable (as described in the SP2 procedure *Reimbursement of IPA Per Diem Expenses*)
- Impact of travel on per diem
- S&T timesheet completion
- Review of the DHS Headquarters Performance Plan to understand how his/her performance will be evaluated
- Termination options and procedures.

### **3.9 Work Hours and Holidays**

An IPA staff member normally has the same workweek and hours of duty as Federal employees in the organization to which he/she is assigned. The IPA staff member observes the paid holidays observed by his/her parent organization (rather than the established Federal holidays). The IPA staff member may work from home if his/her parent organization does not observe a holiday observed by S&T. An IPA staff member may be excused from work on the non-Federal holidays celebrated by the parent organization. Such absences are shown as IPA holiday leave on the S&T timesheet.

DEPARTMENT OF HOMELAND SECURITY  
HEADQUARTERS PERFORMANCE PLAN

EMPLOYEE'S NAME <i>(Last, First MI)</i>		SERIES AND GRADE				
POSITION/TITLE		DUTY LOCATION <i>(Office, Division, Branch)</i>		RATING PERIOD <i>(Month/Day/Year)</i> FROM TO		
<b>SECTION A. CERTIFICATION OF ISSUANCE, MIDYEAR REVIEW AND FINAL APPRAISAL</b>						
<b>ELEMENTS ISSUED</b>	<b>DATE</b>	<b>MID-YEAR REVIEW</b>	<b>DATE</b>	<b>FINAL APPRAISAL</b>	<b>DATE</b>	
EMPLOYEE SIGNATURE:		EMPLOYEE SIGNATURE:		EMPLOYEE SIGNATURE:		
RATING OFFICIAL <i>(Signature and Typed Name)</i>		RATING OFFICIAL <i>(Signature and Typed Name)</i>		RATING OFFICIAL <i>(Signature and Typed Name)</i>		
<input type="checkbox"/> RATING OF RECORD <input type="checkbox"/> OTHER <i>(E.G., DETAIL RATING)</i>		<input type="checkbox"/> OUTSTANDING RESULTS <input type="checkbox"/> RESULTS ACHIEVED <input type="checkbox"/> RESULTS NOT ACHIEVED		REVIEWING OFFICIAL <i>(Signature and Typed Name)</i>	DATE	
<b>SECTION B. CORE PERFORMANCE ELEMENTS AND STANDARDS FOR ALL EMPLOYEES</b>				OUTSTANDING RESULTS	RESULTS ACHIEVED	RESULTS NOT ACHIEVED
<b>Accomplishing Work</b> – <i>(Supervisor to provide detailed requirements, as necessary)</i> Completes assigned work within required timeframe. Products and services meet requirements and reflect appropriate technical skill levels. Anticipates problems and develops effective solution and/or alternative course of action often in advance. Works efficiently with minimal waste of time and resources.				□	□	□
<b>Communications and Customer Support</b> - Provides courteous and responsive customer support. Maintains rapport with customers and stake-holders, developing working relationships, as necessary. Projects a positive, supportive and professional image to all customers. Anticipates customer needs and responds with the necessary guidance and/or timely, high quality products. Written and oral communications are clear, well-organized, concise, and tailored to the audience. Keeps supervisor, co-workers and other stake-holders, as appropriate, informed of issues and problems. Provides guidance and information that is timely and correct.				□	□	□
<b>Managing Transition and Programs</b> – Proposes or develops new approaches, work processes, or technologies for better, faster or less expensive ways to do things. Keeps supervisors and managers informed about problems and proposes solutions. Maintains commitment to goals in the face of obstacles and frustrations. Develops plans and objectives that are responsive to activity/organizational goals and requirements. Develops procedures and guidelines to review program quality and responsiveness. Monitors and evaluates program to ensure organizational requirements and objectives are being met.				□	□	□
<b>Collaboration and Team Work</b> - Works cooperatively with others; develops and maintains partnerships/rapport with others who can provide information, assistance and support. Provides assistance, information and expertise to others when needed. Supports team processes and decisions; fosters cooperation; expresses disagreement constructively. Supports organizational policies, procedures, priorities and regulations. Seeks opportunities to enhance the organization's image and effectiveness. Projects a positive, supportive and professional image of DHS/work unit when dealing with all organizations.				□	□	□
<b>SECTION C. ADDITIONAL PERFORMANCE ELEMENTS AND STANDARDS FOR SUPERVISORS AND MANAGERS</b>				OUTSTANDING RESULTS	RESULTS ACHIEVED	RESULTS NOT ACHIEVED
<b>Work Environment</b> - Demonstrates commitment to building a high quality, diverse workforce and to ensuring fairness in employment and leadership practices. Hires, promotes and provides developmental opportunities w/o regard to non-merit factors; monitors the work environment to ensure that it is free from prohibited discriminatory practices. Promptly addresses allegations of discrimination and takes appropriate corrective action.				□	□	□
<b>Supervision and Management</b> - Distributes work fairly and keeps work progress on track. Gives feedback to employees promptly after an event; acts to reward or correct performance appropriately. Ensures employees have clear goals and responsibilities that are based on broader organizational objectives. Fosters communication, information sharing and understanding of the unit's goals in relationship to DHS's mission. Promotes cooperation internally and externally, recognizing and rewarding behaviors that contribute to collaboration and teamwork. Facilitates problem-solving and creative-thinking that lead to the development and implementation of new processes, systems, or methods Supports employees by providing needed resources and developmental opportunities and removing obstacles to achievement.				□	□	□
<b>SECTION D. PERFORMANCE ELEMENT AND STANDARD (CHECK, IF APPROPRIATE)</b>						
<input type="checkbox"/> <b>Classification Management and Safeguarding of Classified Information:</b> - <i>(Mandatory for Employees Who Create or Handle Classified Material)</i> - Classifies information under proper authority; Uses sound judgment based on regulatory guidelines and classification sources when making classification decisions; ensures appropriate markings are applied to classified information to reflect classification status, authority, and declassification; safeguards classified information in the manner prescribed by regulation or directive; reports incidents involving the improper handling or unauthorized or inadvertent disclosure of classified information; seeks assistance or guidance when needed.				□	□	□

DHS Form 3100-2 (9/04)

### 3.10 Worker's Compensation

Worker's compensation is the responsibility of the parent organization.

## 4.0 Legal Issues and Considerations

This section includes information on the following topics as they relate to IPA assignments:

- Authorities
- Ethics, standards of conduct, and conflicts of interest
- Independent Research/Development (IR/D) Program
- Liability statutes
- Post-employment restrictions
- Release of IPA information
- Tax issues.

The IPA staff member is responsible for following all applicable laws, regulations, and standards of conduct that apply to Federal staff. All Federal staff, including IPA staff, are responsible for being familiar with and following the *Standards of Ethical Conduct for Employees of the Executive Branch* (see 5 CFR 2635 in References).

### 4.1 Authorities

Generally, an IPA staff member has the same authorities as a Federal staff member, with some restrictions. The IPA staff member may supervise Federal employees and perform program management functions, including strategy formulation and program definition. He/she may *not* create financial obligations, including signing documents such as grants, contracts, or other agreements, and may not make decisions regarding the parent organization. The IPA staff member may *not* testify before Congress on behalf of S&T in budget testimony or position statements but may testify as a Subject Matter Expert.

### 4.2 Ethics, Standards of Conduct, and Conflicts of Interest

This section provides information on ethics, standards of conduct, and conflicts of interest.

#### 4.2.1 Ethics and Standards of Conduct

An IPA staff member is required to take annual classroom ethics training provided by the OGC. An IPA staff member's conduct must conform to the following (more information is available at [5 CFR 2535](#), *Standards of Ethical Conduct for Employees of the Executive Branch*):

- **Acts Affecting Financial Interests.** An IPA staff member must *not* be personally involved in handling or participating in any proposal, award, research activity, or other matter that involves his/her parent organization or in which the parent organization would have a financial interest. Likewise, an IPA staff member must *not* represent private parties in dealings with any official from his/her parent organization on any proposal, project, or other matter.
- **Acts Involving Other Relationships.** An IPA staff member must obtain permission from the DHS OGC, Office of Government Ethics, before participating in any matter involving specific parties if a reasonable person with knowledge of the relevant facts would question his/her impartiality in the matter because of the parent organization.
- **Communicating with Parent Organization.** The IPA staff member must not communicate with his/her parent organization with the intent to influence them but may communicate to request routinely available and noncontroversial information, such as the status of the decision process on a proposal.

- **Conferences, Workshops, and Meetings Supported by Parent Organization.** The IPA staff member may participate in a conference, workshop, or similar event supported by funds from his/her parent organization if the staff member receives no compensation or honorarium for doing so. However, the IPA staff member may *not* serve as an organizer, director, or proceedings editor for such an event nor may he/she chair a session or give a paper except to describe S&T programs or needs. The IPA staff member may discuss arrangements with the organizers or directors but may *not* use influence that derives from his/her position with S&T.
- **Outside Activities/Employment.** An IPA staff member must have written permission from his/her S&T MGR and the OGC before accepting any outside employment (with or without compensation) with his/her parent organization or an entity that does business, or may be reasonably expected to do business, with the parent organization.
- **Suspension of Work on a Parent Organization Project.** The IPA staff member must suspend work on any research or project from his/her parent organization if that research or work involves S&T.
- **Use of Nonpublic Information from Parent Organization.** An IPA staff member must *not* use nonpublic information concerning his/her parent organization for his/her private benefit or make it available for the benefit of others.

#### 4.2.2 Conflicts of Interest

A conflict of interest is a clash between a staff member's concern for the public interest and his/her private interests or allegiances. An IPA staff member is subject to the same conflict of interest statutes and regulations as all S&T staff and must sign an IPA Disqualification Agreement as described in the SP2 procedure *Hiring of Staff as IPA Detailees*. More information on conflicts of interest is available from the U.S. Office of Government Ethics at <http://www.usoge.gov> and from the U.S. Office of Special Counsel at <http://www.osc.gov/hatchact.htm>.

#### 4.3 Independent Research/Development (IR/D) Program

An IPA staff member with an approved IR/D plan may maintain involvement with his/her professional research. An IR/D is a benefit that may be negotiated with S&T as an allowable expense, with the approval of the Under Secretary. IR/D is a method S&T can use to provide its IPA staff with the opportunity to maintain their professional competencies and continue their ongoing research. Under an IR/D, the IPA staff member may receive both the time away from regular duties and the travel costs necessary to conduct research. If IR/D is approved as an added IPA staff benefit, S&T's senior management must approve the IPA staff member's IR/D proposal, and the proposed research and development activities must relate to accomplishing S&T's goals.

#### 4.4 Liability Statutes

The *Federal Tort Claims Act* and any other Federal tort liability statutes apply to all IPA staff from non-Federal organizations. The status of such IPA staff is discussed in the following:

- 5 USC 73, *Suitability, Security, and Conduct* at <http://uscode.house.gov/download/pls/05C73.txt>
- 5 USC 3374(c), *Assignments of Employees from State or Local Governments* at <http://uscode.house.gov/download/pls/05C33.txt>

- 18 USC 203, *Arrest and Commitment*; 205, *Searches and Seizures*; 207, *Release and Detention Pending Judicial Proceedings*; 209, *Extradition*, at [http://uscode.house.gov/download/title\\_18.shtml](http://uscode.house.gov/download/title_18.shtml)
- *Federal Tort Claims Act* at [http://www.law.cornell.edu/uscode/html/uscode28/usc\\_sup\\_01\\_28\\_10\\_VI\\_20\\_171.html](http://www.law.cornell.edu/uscode/html/uscode28/usc_sup_01_28_10_VI_20_171.html).

## 4.5 Post-Employment Restrictions

An IPA staff member has the same post-employment restrictions as a Federal employee, as discussed in the SP2 procedure *Staff Exit Process* and in *After-Government Employment* (see References). In addition, after an assignment ends, the IPA staff member may not represent his/her parent organization to the government on the following:

- Forever – On contracts, grants, or agreements the IPA staff member worked on while assigned to S&T
- 2 years – On matters the IPA staff member didn't actually work on but was responsible for while assigned to S&T
- 1 year – On any matter related to S&T if the IPA staff member was paid at SES-5 salary or higher while assigned to S&T.

## 4.6 Release of IPA Information

OF 69 and other information pertaining to assignments are S&T Federal records that are subject to the rules for releasing and protecting information under 5 USC 552b, *The Freedom of Information Act* (FOIA), and 5 USC 552a, *The Privacy Act* (see References). If the records contain information that could be used to identify the individual, the removal of this data may be appropriate, but other portions of the records will be disclosed. Usually, an appropriate exemption relates to an unwarranted invasion of personal privacy. Statistical data, information on agency participation in the IPA program, and other general information concerning the program are available to the public.

## 4.7 Tax Issues

This section discusses taxation of expense reimbursements and provides Frequently Asked Questions (FAQs) and answers regarding IPA tax issues. S&T cannot provide individual advice or assistance on personal income tax issues. The IRS or a tax consultant can provide up-to-date advice on tax laws and regulations.

### 4.7.1 Taxation of Expense Reimbursements

The IRS treats employment away from home for more than 1 year as *not* “temporary.” Therefore, the deduction for business expenses incurred while away from home is not allowed for any period of employment in excess of 1 year. Reimbursements of expenses received by the IPA staff member are taxable after the first year of an assignment and are subject to income tax withholding. If it is known at the time of the assignment that the employment will exceed 1 year, taxes are withheld for the entire period of the assignment. Otherwise, taxes are withheld from the point that official action is taken to extend the assignment beyond 1 year. S&T pays this reimbursement directly to the IPA staff member, as described in the SP2 procedure *Reimbursement of IPA Per Diem Expenses*.

If the IPA staff member chose the limited relocation allowance option instead of per diem reimbursement, the HRM lists the Relocation Income Tax Allowance (RITA) as an eligible allowance on OF 69 under Part 8, “Benefits.” More information on RITA is available in the [FTR](#) (see the References). The IPA staff member may also be eligible for an Income Tax Reimbursement Allowance (ITRA) as described in the FTR (301-11.601 – 301-11.640).

#### 4.7.2 FAQs

The following table provides frequently asked questions (FAQs) concerning car registration and Federal and state income taxes. IRS Publication 463, *Travel, Entertainment, Gift, and Car Expenses*, provides more information on such taxes (see References). A tax consultant can provide assistance.

Frequently Asked Questions	
<b>Car Registration</b>	
Do I have to register my car in Virginia, Maryland, or Washington, DC?	An IPA staff member needs to register his/her car in the state in which he/she lives (e.g., Virginia or Maryland) within 30 days of moving there.
<b>Federal Income Taxes</b>	
If I plan to be at S&T for less than 1 year, what expenses are deductible and do I need to save receipts?	S&T reimburses IPA staff who elect to receive per diem rather than a relocation allowance. Therefore, an IPA staff member receives per diem that consists of a lodging allowance and miscellaneous and incidental (M&IE) expenses. The IPA staff member must provide documentation for the actual cost of the lodging to get the reimbursement. While receipts are not necessary for filing your tax return, accurate records of actual expenses should be kept in the event of an IRS audit. Per diem received in excess of actual expenses must be claimed as income. Most expenses are deductible and can be claimed to offset the income, including transportation to and from work; lodging; laundry; business phone calls; meals; tips on any of these items; and automobile actual expenses such as depreciation, maintenance, repairs, gas, oil, or the prevailing mileage rate.
If I am at S&T for over 1 year, are these expenses above still deductible?	<p>If an IPA staff member initially agrees to be on assignment with S&amp;T for more than 1 year, the IRS considers the assignment indefinite and no travel expenses incurred during the period are deductible. The IPA staff member should claim per diem received as income on the income tax return.</p> <p>However, at the start of the assignment, if the IPA staff member expects to be on assignment for less than 1 year, but during the year his/her expectations change, the IPA staff member may deduct expenses <b>only for the period before his/her expectations changed</b>. Travel expenses incurred subsequently are not deductible. For example, if a IPA staff member initially expected to be on assignment for 1 year, but after 8 months is asked to stay for another 7 months (for a total of 15 months), the IPA staff member may deduct travel expenses for only the first 8 months. The expenses for the remaining 7 months are not deductible.</p>

### Frequently Asked Questions

Would my tax situation be affected if I went home for a month at the end of 1 year and then returned for another year?	The question is one of intent; when did the intent to be assigned at S&T for more than 1 year occur? If an IPA staff member returned home intending to remain there and then changed his/her mind and returned to S&T, the tax situation would be affected. If the IPA staff member intended all along to work at S&T for longer than 1 year, then the tax situation would not be affected.
Is it best to get a lump sum of all of my per diem up front or should I request it in increments?	S&T reimburses per diem monthly to avoid providing per diem in excess of an IPA staff member's eligibility for the calendar year.
If I get paid by my university, isn't my tax home where my university (i.e., house, family) is?	An IPA staff member on assignment for less than 1 year is on a temporary assignment and his/her tax home remains his/her home state. If an IPA staff member is on assignment for more than 1 year, the S&T site where he/she works (e.g., Washington, DC, Maryland, or New York) becomes his/her tax home.

### State Income Taxes

Do I have to pay New York, Maryland, or Washington, DC, taxes if I maintain a residence in another state?	New York law imposes individual income tax filing requirements on virtually all New York residents as well as on nonresidents who receive income from New York sources. However, residents of Washington, DC, and Maryland are exempt from this requirement if the only New York source of income received was from salaries or wages. Income taxes paid to other states are addressed through tax credits. Nonresidents are individuals who are neither domiciliary nor actual residents of New York but who receive income from New York during the tax year. They report their income in the same manner as residents.
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## 5.0 Financial Considerations

S&T and the parent organizations negotiate the financial arrangements governing an IPA assignment, as described in OF 69 in *Hiring of Staff as IPA Detailees*. This section includes information on the following topics as they relate to IPA assignments:

- Allowable and unallowable expenses
- Cost sharing
- Financial disclosure requirements
- Lost consulting
- Per diem reimbursement or limited relocation allowance
- Salary and supplemental pay.

### 5.1 Allowable and Unallowable Costs

S&T may pay the following allowable costs, as negotiated with the parent organization:

- Basic pay (salary) verified by the HRM, not to exceed a comparable Federal salary
- Basic pay increase approved by S&T, not to exceed the locality location rate
- Business travel and expenses related to the IPA assignment
- Costs for lodging for the first year of an assignment (e.g., a furnished or unfurnished apartment or house and utilities [e.g., gas, electricity, water, and garbage collection, including connection and disconnection] if per diem reimbursement rather than a relocation allowance has been selected)
- Limited relocation allowance or per diem allowance (not both)
- M&IE for the first year of the assignment
- Supplemental pay, if approved by the Under Secretary
- Travel and expenses for one roundtrip to the home of record
- General and administrative costs associated with the IPA program – S&T pays a 15% fixed reimbursement
- Lost consulting income up to \$10,000 a year if supported by 2 years' documentation.

S&T does *not* pay the following unallowable costs:

- Costs for office space, staff services, or supplies other than those normally provided by S&T
- Costs for services or furnishings at the temporary residence (e.g., cable television, exterminators, maid service, parking, or telephone)
- Educational costs
- S&T costs if the IPA staff member fails to complete the assignment unless the reasons are beyond his/her control
- Travel unrelated to the IPA assignment.

### 5.2 Cost Sharing

Because the work to be performed in the IPA program is of mutual benefit to a parent organization and S&T, both organizations typically share the cost of the assignment. The parent organization must pay a minimum of 15% of a new IPA staff member's salary and benefits. All current parent organizations will be notified that this change is effective for future IPA assignments; existing assignments will not be amended to reflect this change. All other cost and benefits responsibilities are outlined in OF 69, as described in the *Hiring of Staff as IPA Detailees*. Waiver of overhead costs is not accepted as cost sharing.

## 5.3 Financial Disclosure Requirements

An IPA staff member follows the financial disclosure requirements outlined in the SP2 procedure *Hiring of Staff as IPA Detailees* and as discussed in Section 4.5.2, “Conflicts of Interest,” in this guide. Each year the IPA staff member is on assignment with S&T, he/she completes either SF 278 (due by May 15) or OGE 450 (due by February 15) and submits it to the following:

Legal Advisor for Ethics  
U.S. Department of Homeland Security  
Office of General Counsel, Office of Government Ethics  
Washington, DC 20528

## 5.4 Lost Consulting Income

S&T may compensate an IPA staff member for lost consulting income. Payments are based on an average of the consulting income during the last 2 years up to a maximum of \$10,000 a year. The IPA staff member may not conduct consulting if he/she receives payment for any lost consulting activities. S&T pays this income directly to the IPA staff member and reports it to the IRS at the end of each year in Form 1099-Miscellaneous. If the IPA staff member decides to continue consulting activities while at S&T, he/she first must discuss these activities with OGC Staff.

An IPA who requests lost consulting income reimbursement from S&T submits the following documentation to the HRM:

- Schedule C, *Profit or Loss From Business*, or IRS Form 1099
- Type and dates of consulting services rendered, confirmation of amounts paid (e.g., invoices, check receipts), and a description of the services provided for each client.

OPM provides guidance concerning acceptable forms of documentation to support lost consulting payments. Detailed supporting documentation minimizes the risk of fraud and misrepresentation of consulting income for lost consulting payments. In addition, it ensures that an IPA staff member receives proper and accurate lost consulting payments from S&T.

## 5.5 Per Diem Reimbursement or Limited Relocation Allowance

An IPA staff member may receive a per diem reimbursement for lodging and M&IE *or* a limited relocation allowance, *not* both.

### 5.5.1 Per Diem Reimbursement

For any new OF 69, S&T reimburses lodging and M&IE per diem for only the first 1 year of an IPA assignment. Agreements in place before January 1, 2007, will be honored until they are terminated or modified.

Requests for per diem are paid monthly as described in the SP2 procedure *Reimbursement of IPA Per Diem Expenses*. Payments in excess of \$600 or more are reported to the IRS at the end of the first year and every year thereafter.

The IPA staff member is responsible for repaying any expenses if he/she fails to complete the IPA assignment unless the reasons for failing to complete the agreement are beyond his/her control. In addition, S&T may waive the requirement to pay back expenses. [how is this applicable for per diem?]

### IPA Per Diem Reimbursement – First 30 Days (100%)

The maximum per diem for the first 30 days of an IPA assignment is calculated as follows:

Lodging reimbursement (actual cost up to the maximum allowed):	\$187 x 31 days = \$5,797
M&IE reimbursement:	\$64 x 31 days = <u>\$1,984</u>
Per diem reimbursement:	\$7,781

**NOTE:** [GSA](#) lodging and M&IE rates vary by location; the numbers used (\$187 and \$64) are only an example. The IPA staff member is reimbursed the actual cost of lodging up to the maximum lodging reimbursement for a commercial lodging (\$5,797 in this example).

### Traveling for Business During the First 30 Days

If the IPA staff member is required to travel for business during his/her first 30 days of assignment, he/she is reimbursed as follows:

- Up to 100% of the actual lodging at the travel location (see *Domestic Travel Authorization* or *Foreign Travel* for possible reductions of the lodging allowance)
- 75% of the M&IE at the travel location for the first and last days of the travel and 100% of the M&IE at the travel location for the other days of travel
- Up to 100% of the lodging per diem at the IPA assignment location
- 0% of the M&IE per diem at the IPA assignment location while on business travel.

### IPA Per Diem Reimbursement – After 30 Days (55%)

After the first 30 days of an IPA assignment, the percentage of reimbursed per diem is reduced to 55% because it is assumed that the staff member has found suitable longer-term accommodations (e.g., an apartment or house). This reduced rate is referred to as a “flat rate” reimbursement.

The reduced per diem after 30 days is calculated as follows:

Lodging reimbursement (actual cost up to the maximum allowed):	\$187 x 31 days = \$5,797 x 55% = \$3,188.35
M&IE reimbursement:	\$64 x 31 days = \$1,984 x 55% = <u>\$1,091.20</u>
Per diem reimbursement:	\$4,279.55

### Traveling for Business After the First 30 Days

If the IPA staff member is required to travel for business after his/her first 30 days of assignment, he/she is reimbursed as follows:

- Up to 100% of the lodging at the travel location (see *Domestic Travel Authorization* or *Foreign Travel* for possible reductions of the lodging allowance)
- 75% of the M&IE at the travel location for the first and last days of the travel and 100% of the M&IE at the travel location for the other days of travel
- Up to 55% of the lodging per diem at the IPA assignment location
- 0% of the M&IE per diem at the IPA assignment location while on business travel.

Lodging reimbursement is the actual cost of lodging as demonstrated by receipts up to the maximum lodging reimbursement. M&IE reimbursement does not require receipts but cannot exceed the maximum M&IE reimbursement for the location.

## 5.5.2 Limited Relocation Allowances

This section provides information on authorized limited relocation expenses, the forms to be completed to initiate relocation, and points of contact. The [DHS Office of Financial Management \(OFM\)](#) website provides more information on relocation.

### Authorized Limited Relocation Expenses

If relocation allowances are authorized, S&T may reimburse the IPA staff member and his/her immediate family for the following expenses (as described in the [FTR](#)). From the start date of the IPA assignment, the IPA staff member and his/her immediate family members have up to 2 years to relocate.

- **Transportation for the IPA staff member, spouse, and children to and from the assignment location.** S&T reimburses the cost of moving the IPA staff member and his/her immediate family to and from the assignment location; the return moving expenses are allowed only for the IPA staff member's return to the former place of residence after the IPA assignment has been completed or terminated.

Immediate family includes the IPA staff member's spouse and children. Children include natural offspring, stepchildren, adopted children, grandchildren, legal minor wards, or other dependent children who are under legal guardianship of the employee or employee's spouse who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support.

S&T reimburses transportation expenses for the IPA staff member and family from their residence to the assignment location using a common carrier or the mileage allowance using [GSA](#) rates if the family uses their private vehicle to travel to the assignment location.

- **Transportation and shipment of household goods and personal effects to and from the assignment location.** S&T reimburses up to 18,000 pounds of goods and personal effects moved, regardless of the number of family members involved in the move. The IPA staff member is responsible for charges for excess weight, valuation above the minimum amount, and services obtained by the IPA staff member at higher costs.

S&T does *not* pay to transport items such as boats over 14 feet long, airplanes, mobile homes, camper trailers, and farming vehicles; live animals, birds, fowls, and reptiles; cordwood and building materials; and property for resale, disposal, or commercial use rather than for use by the IPA staff member or immediate family. The cost of disassembling and reassembling the following items are *not* part of authorized moving costs: icemaker refrigerators, outside TV antennas, swing sets, water beds, pool tables, etc.

- **Lodging and M&IE per diem allowances to and from the assignment location.** Only the IPA staff member receives a per diem according to [GSA](#) rates; if the IPA staff member is driving to the assignment, he/she must drive a minimum of 300 miles per day, unless travel is delayed for reasons clearly beyond the control of the travelers, such as acts of God, restrictions by government authorities, or other reasons acceptable to the agency (e.g., to accommodate persons with disabilities).

- **Lodging and M&IE while occupying temporary quarters at the assignment location and on return to the former duty station.** Temporary lodging and M&I are not to exceed 30 days in each instance (100% per diem for the IPA staff member, 75% for the spouse and each child 12 and over, and 50% for each child under 12).
- **Nontemporary storage of household goods and personal effects in connection with an assignment to an isolated location.** If the IPA staff member is assigned to an isolated location, S&T may pay for extended storage of household goods and personal effects.
- **Temporary storage of household goods.** S&T reimburses temporary storage of household goods at their origin, in transit, or at assignment destination for up to exceed 90 days. However, the IPA staff member may submit a written request for an additional 90 days of storage to the HRM.
- **ITRA (Income Tax Reimbursement Allowance).** ITRA is an allowance to reimburse Federal, state, and local income taxes incurred for an extended temporary duty assignment at one location.
- **RITA (Relocation Income Tax Allowance).** RITA is payment to offset the tax consequences for the move; e.g., reimbursements for temporary quarters and the shipment of household goods are taxable income. The amount of S&T reimbursement for these expenses may include tax considerations resulting from the move.
- **Miscellaneous expenses if shipment and storage of household goods are involved.** S&T may pay for miscellaneous expenses, such as boxes and tape, if household goods are being shipped and stored.

An IPA staff member using the relocation option signs the Limited Relocation Allowance Agreement (see below) and agrees to remain in that assignment for at least 1 year. If the staff member violates this agreement, he/she must repay subsistence expenses and the costs for shipping.

S&T does *not* pay the expenses of selling or purchasing a residence or the expenses of property management services while the IPA staff member is on the assignment.

### Relocation Forms

Relocations are managed through the DHS OFM in Dallas, Texas. If the IPA staff member chooses to receive a limited relocation allowance, the following forms must be completed at least 60 days before the move is planned:

1. Selection Notification Wire (completed by the HRM)
2. Agreement to Remain in Government Service Form (completed by the IPA staff member) [same as the form included on following page?]
3. Limited Relocation Transfer Questionnaire (completed by the IPA staff member).

The Agreement to Remain in Government Service Form and Limited Relocation Transfer Questionnaire are available on the OFM website: <https://ofm.ice.dhs.gov>.

IPA staff members should keep all move-related receipts because they are needed to complete SF 1012 – Travel Voucher. The IPA staff member only completes this voucher once – after the move is complete. The IPA staff member contacts OFM directly to receive guidance on how to complete the form, provided at <http://www.psc.gov/forms/sf/Sf-1012.pdf>.



**Homeland  
Security**

**Intergovernmental Personnel Act (IPA)  
Limited Relocation Allowance Agreement**

I, (Full Name of IPA), hereby agree that reimbursement of travel, relocation, and per diem expenses associated with my DHS Science and Technology Directorate approved limited relocation allowance may be permitted only if I agree to serve the entire period of my IPA Assignment Agreement or one year, whichever is shorter, unless the assignment is terminated for reasons acceptable to DHS S&T.

\_\_\_\_\_  
Full Name of IPA

\_\_\_\_\_  
Date

C:/IPA SP2/DHS S&T Limited Relocation Allowance Agreement - As of 04-06-06

**DHS OFM Points of Contact:**

Mr. David Greenfield  
Phone: (214) 915-6029  
Email: [david.b.greenfield@dhs.gov](mailto:david.b.greenfield@dhs.gov)

Ms. Brenda McNabb  
Phone: (214) 915-6017  
Email: [Brenda.g.mcnabb@dhs.gov](mailto:Brenda.g.mcnabb@dhs.gov)

Mr. Fred Green  
Phone: (214) 915-6022  
Email: [fred.green@dhs.gov](mailto:fred.green@dhs.gov)

**5.6 Salary and Supplemental Pay**

The IPA staff member's salary is usually annualized to 12 months, although shorter-term assignments are possible. Pay is supplemented when the salary at the parent organization is below the minimum of the S&T position. If the IPA staff member is from an academic institution and the annualized academic salary exceeds the S&T salary for the assigned position, the full academic salary may be preserved and salary for the summer months calculated based on the Federal pay rate of the assigned position.

OF 69 allows for supplemental pay when the parent organization increases salary and/or benefits. S&T's contribution to salary increases may not exceed the annual Federal pay increase. S&T pays this income directly to the staff member and reports it on Form 1099-Miscellaneous Income at the end of the year. Supplemental pay cannot be paid in advance or in a lump sum. Supplemental pay is not conditional on the completion of the full period of assignment. The supplemental payment may vary during the assignment as the IPA staff member's regular salary varies and as revisions to the Federal pay plan occur.

## 6.0 Modification, Extension, and Termination of IPA Assignments

The SP2 procedures *Modification of IPA Assignments* and *Termination of IPA Assignments* describe the processes for amending, extending, and terminating IPA assignments.

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## Appendix A – IPA Forms and Procedures

The following forms are related to IPA assignments:

### Ethics/Legal:

#### **DHS Form 11000-6 – Sensitive But Unclassified Information Non-Disclosure Agreement**

<https://dhsonline.dhs.gov/portal/jhtml/dc/sfi.jhtml?doid=6041>

#### **DHS Form 11000-9 – Disclosure and Authorization Pertaining to Consumer Reports Pursuant to the Fair Credit Reporting Act**

<https://dhsonline.dhs.gov/portal/jhtml/dc/sfi.jhtml?doid=5122>

#### **IPA Disqualification Statement**

See SP2 procedure *Hiring of Staff as IPA Detailees*

#### **OGE Form 450, Confidential Financial Disclosure Report**

[http://www.usoge.gov/pages/forms\\_pubs\\_otherdocs/forms\\_pubs\\_other\\_pg3.html#Anchor-OG-13588](http://www.usoge.gov/pages/forms_pubs_otherdocs/forms_pubs_other_pg3.html#Anchor-OG-13588)

#### **SF 278 – Executive Branch Personnel Public Financial Disclosure Report**

[http://www.usoge.gov/pages/forms\\_pubs\\_otherdocs/fpo\\_files/forms/sf278\\_2004/sf278\\_automated.pdf](http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/forms/sf278_2004/sf278_automated.pdf)

### Hiring:

#### **DHS Form 3130-1 – Non-DHS Staff Assignment Document**

<https://dhsonline.dhs.gov/portal/jhtml/dc/sfi.jhtml?doid=9121>

#### **IPA Budget Work Sheet**

See SP2 procedure *Hiring of Staff as IPA Detailees*

#### **OF 69 – Assignment Agreement**

[http://contacts.gsa.gov/webforms.nsf/0/57F8BEEE3C393BC985256A720068950E/\\$file/of69.pdf](http://contacts.gsa.gov/webforms.nsf/0/57F8BEEE3C393BC985256A720068950E/$file/of69.pdf)

### Security:

#### **DHS Form 11000-5 – DHS Personnel Security Data Verification Request**

<https://dhsonline.dhs.gov/portal/jhtml/dc/sfi.jhtml?doid=14384>

#### **SF 86 – Questionnaire for National Security Positions**

[http://www.opm.gov/forms/pdf\\_fill/SF86.pdf](http://www.opm.gov/forms/pdf_fill/SF86.pdf)

### Travel:

#### **DHS Form 1500-2 – Request for Travel Orders**

<https://dhsonline.dhs.gov/portal/jhtml/dc/sfi.jhtml?doid=4755>

#### **Form 1351-2 – Travel Voucher or Subvoucher**

<http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1351-2.pdf>

The following SP2 procedures are related to IPA assignments:

- *Hiring of Staff as IPA Detailees*
- *IPA Invoices*
- *Modification of IPA Assignments*
- *Reimbursement of IPA Per Diem Expenses*
- *Termination of IPA Assignments.*

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## Appendix B – Acronyms and Abbreviations

<b>Term</b>	<b>Definition</b>
CFR	Code of Federal Regulation
FFRDC	Federally Funded Research and Development Center
FOIA	Freedom of Information Act
FTR	Federal Travel Regulation
GSA	U.S. General Services Administration
HRM	Human Resource Manager
IPA	Intergovernmental Personnel Act
IR/D	Independent Research/Development
IRS	Internal Revenue Service
ITRA	Income Tax Reimbursement Allowance
M&IE	Meals and Incidental Expenses
MGR	(S&T) Supervisor/Manager
OFM	(DHS) Office of Financial Management
OGC	Office of the General Counsel
OPM	Office of Personnel Management
RITA	Relocation Income Tax Allowance
S&T	DHS Science and Technology Directorate
SES	Senior Executive Service
USC	United States Code

## Appendix C – References

5 CFR 334, Temporary Assignment of Employees Between Federal Agencies And State, Local, and Indian Tribal Governments, Institutions of Higher Education, and Other Eligible Organizations  
[http://www.access.gpo.gov/nara/cfr/waisidx\\_06/5cfr334\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/5cfr334_06.html)

5 CFR 2635, Standards of Ethical Conduct for Employees of the Executive Branch, as amended  
[http://www.access.gpo.gov/nara/cfr/waisidx\\_05/5cfr2635\\_05.html](http://www.access.gpo.gov/nara/cfr/waisidx_05/5cfr2635_05.html)

26 CFR 1, Income Taxes  
[http://www.access.gpo.gov/nara/cfr/waisidx\\_05/26cfr1a\\_05.html](http://www.access.gpo.gov/nara/cfr/waisidx_05/26cfr1a_05.html)

41 CFR 300-304, Federal Travel Regulation (FTR)  
<http://www.gsa.gov/Portal/gsa/ep/channelView.do?specialContentType=FTR&file=FTR/FTR300TOC.html&pageTypeId=8199&channelPage=%2Fep%2Fchannel%2FgsaOverview.jsp&channelId=-16523>

5 USC 33, Subchapter VI, Assignments To and From States  
[http://www.law.cornell.edu/uscode/html/uscode05/usc\\_sup\\_01\\_5\\_10\\_III\\_20\\_B\\_30\\_33\\_40\\_VI.html](http://www.law.cornell.edu/uscode/html/uscode05/usc_sup_01_5_10_III_20_B_30_33_40_VI.html)

5 USC 552b, The Freedom of Information Act (FOIA)  
<http://www.usdoj.gov/04foia/foiastat.htm>

5 USC 552a, The Privacy Act  
<http://www.usdoj.gov/foia/privstat.htm>

5 USC 3371-76, Title IV of the Intergovernmental Personnel Act of 1970, as amended  
[http://www.access.gpo.gov/uscode/title5/partiii\\_subpartb\\_chapter33\\_subchaptervi\\_.html](http://www.access.gpo.gov/uscode/title5/partiii_subpartb_chapter33_subchaptervi_.html)

5 USC 3371-3376, Intergovernmental Personnel Act of 1970, Public Law 91-648,  
[http://www.access.gpo.gov/uscode/title5/partiii\\_subpartb\\_chapter33\\_subchaptervi\\_.html](http://www.access.gpo.gov/uscode/title5/partiii_subpartb_chapter33_subchaptervi_.html)

18 USC 201, Bribery of Public Officials and Witnesses  
[http://uscode.law.cornell.edu/uscode/html/uscode18/usc\\_sec\\_18\\_00000201----000-.html](http://uscode.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00000201----000-.html)

18 USC 203, Compensation to Members of Congress, Officers, and Others in Matters Affecting the Government  
[http://uscode.law.cornell.edu/uscode/html/uscode18/usc\\_sec\\_18\\_00000203----000-.html](http://uscode.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00000203----000-.html)

18 USC 205, Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government  
[http://uscode.law.cornell.edu/uscode/html/uscode18/usc\\_sec\\_18\\_00000205----000-.html](http://uscode.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00000205----000-.html)

18 USC 207(a)(1), Restrictions on All Officers and Employees of the Executive Branch and Certain Other Agencies  
[http://uscode.law.cornell.edu/uscode/html/uscode18/usc\\_sec\\_18\\_00000207----000-.html](http://uscode.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00000207----000-.html)

31 USC 3512(c), Federal Managers' Financial Integrity Act of 1982, Public Law 97-255  
<http://www.whitehouse.gov/omb/financial/fmfia1982.html>

After-Government Employment  
<https://dhsonline.dhs.gov/portal/jhtml/community.jhtml>

DHS Needs to Improve Ethics-Related Management Controls for the Science and Technology Directorate, GAO-06-206, 2005

[http://www.securitymanagement.com/library/gao06206\\_dhs\\_ethics0306.pdf](http://www.securitymanagement.com/library/gao06206_dhs_ethics0306.pdf)  
[Intergovernmental Personnel Act](#)

Internal Revenue Service  
<http://www.irs.ustreas.gov/>

Internal Revenue Service, Publication 463, *Travel, Entertainment, Gift, and Car Expenses*  
<http://www.irs.gov/pub/irs-pdf/p463.pdf>

National Science Foundation, *Conflicts of Interest and Standards of Ethical Conduct*  
<http://www.nsf.gov/pubs/manuals/manual15.pdf>.

National Science Foundation, Federally Funded Research and Development Centers  
<http://www.S&T.gov/sbe/srs/ffrdc>

Office of General Counsel, Office of Government Ethics Policy Memorandum (March 8, 2002) from the General Counsel: Advises that IPA Assignees are subject to Ethics in Government Act and Procurement Integrity Act  
<http://www.usoge.gov>

Office of Management and Budget (OMB) Circular No. A-123, Management Accountability and Control, June 1995  
<http://www.whitehouse.gov/OMB/circulars/a123/a123.html>

Office of Personnel Management (OPM) – Assignment of a Non-federal Employee to a Federal Agency  
<http://www.opm.gov/programs/ipa/assignF.asp>

Standards for Internal Control in the Federal Government, GAO/AIMD-00-21.3.1, 1999  
<http://www.gao.gov/special.pubs/ai00021p.pdf>

U.S. General Services Administration (GSA)  
<http://www.gsa.gov>

U.S. Office of General Counsel, Office of Government Ethics Policy Memorandum (December 9, 2002) from the Director, OGE: Application of the Financial Disclosure Requirements to Detailees under the Intergovernmental Personnel Act (IPA)  
<http://www.usoge.gov>

U.S. Office of Special Counsel, Political Activity  
<http://www.osc.gov/hatchact.htm>

GAO

Report to the Ranking Minority Member,  
Committee on Homeland Security and  
Governmental Affairs, United States  
Senate

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December 2005

# HOMELAND SECURITY

## DHS Needs to Improve Ethics-Related Management Controls for the Science and Technology Directorate





Highlights of [GAO-06-206](#), a report to the Ranking Minority Member, Committee on Homeland Security and Governmental Affairs, United States Senate

## Why GAO Did This Study

The Department of Homeland Security's (DHS) Science and Technology (S&T) Directorate was established to focus on areas such as addressing countermeasures for biological threats. To do this, it hired experts from the national laboratories under the authority of the Intergovernmental Personnel Act (IPA). The Directorate is organized into portfolios, led by portfolio managers. Questions have been raised about potential conflicts of interest for these individuals, since a portion of the Directorate's research funds have gone to the national laboratories. GAO was asked to examine (1) the management controls established within the Directorate to help guard against conflicts of interest for IPA portfolio managers; and (2) the role of the IPA portfolio managers, particularly those from national laboratories, in determining where research and development projects were directed.

## What GAO Recommends

To improve the S&T Directorate's ethics-related management controls, GAO recommends that DHS take several related actions to help ensure that IPA portfolio managers comply with conflicts of interest laws. DHS concurred with our recommendations, and noted several actions they plan to take. If implemented effectively, these actions would be responsive to some of our recommendations.

[www.gao.gov/cgi-bin/getrpt?GAO-06-206](http://www.gao.gov/cgi-bin/getrpt?GAO-06-206).

To view the full product, including the scope and methodology, click on the link above. For more information, contact George H. Stalcup at (202) 512-6806 or [stalcup@gao.gov](mailto:stalcup@gao.gov).

## HOMELAND SECURITY

# DHS Needs to Improve Ethics-Related Management Controls for the Science and Technology Directorate

## What GAO Found

DHS's S&T Directorate is working to improve its management controls to help guard against conflicts of interest for its IPA portfolio managers, but it can do more. In the first few years of DHS's existence, the S&T Directorate focused on the urgency of organizing itself to meet the nation's homeland security research and development requirements, and had few resources devoted to developing its management infrastructure, including the management controls to guard against conflicts of interest. In the past year, steps have been taken to improve these controls. For example, in June 2005, DHS implemented a new process for hiring IPA employees. Although the S&T Directorate is taking steps to improve its ethics-related management controls, several conditions still need to be addressed to better ensure that its IPA portfolio managers comply with the conflict of interest laws. First, the process for determining where research and development projects and funds are directed, including the role of the IPA portfolio managers, has never been finalized. Second, the S&T Directorate does not require documentation of how determinations are made about where research and development projects and funds are directed. Third, S&T Directorate officials are only now seeking waivers, where appropriate, and considering whether to take other actions that would allow IPA portfolio managers to participate in certain matters. Finally, DHS officials told us that S&T Directorate employees, including those hired under the IPA, are offered the same new employee and annual ethics training as are all DHS employees. However, employees hired under the IPA do not receive regular training that addresses their unique situation; namely that they have an agreement for future employment with an entity that may benefit from the S&T Directorate's funding.

The role of the IPA portfolio managers, five of whom came from the national laboratories, in determining where research and development projects and associated funds were directed was unclear. This was due to several factors. First, as previously discussed, the S&T Directorate has never finalized a standard process for determining where research and development projects and funds are directed, or the decision-making role of the IPA portfolio managers within such a process. Second, the extent of the IPA portfolio managers' participation in making these determinations was unclear because there was no documentary evidence of how these determinations were actually made. Third, the testimonial evidence on the extent of the IPA portfolio managers' involvement was inconsistent and, at times, vague. Because we could not determine whether or not the IPA portfolio managers participated "personally and substantially" in the decision-making process, which is precluded by 18 U.S.C. § 208, GAO contacted the Acting Director of the Office of Government Ethics (OGE) in September 2005. GAO suggested that OGE review this matter further in conjunction with its planned ethics program review of DHS. In December 2005, OGE officials told us that they plan to examine, among other matters, the transparency and accountability issues in DHS's ethics program raised by our findings.

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## Abbreviations

BTS	Border and Transportation Security
DAEO	Designated Agency Ethics Officer
DHS	Department of Homeland Security
DOE	Department of Energy
ERB	Executive Review Board
FFRDC	Federally Funded Research and Development Center
HSARPA	Homeland Security Advanced Research Projects Agency
IPT	Integrated Project Team
IPA	Intergovernmental Personnel Act
OGC	Office of General Counsel
OGE	Office of Government Ethics
OPM	Office of Personnel Management
ORD	Office of Research and Development
PPB	Office of Programs, Plans, and Budgets
R&D	Research and Development
SED	Systems Engineering and Development
S&T	Science and Technology

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United States Government Accountability Office  
Washington, D.C. 20548

December 22, 2005

The Honorable Joseph I. Lieberman  
Ranking Minority Member  
Committee on Homeland Security and Governmental Affairs  
United States Senate

Dear Senator Lieberman:

The Department of Homeland Security's (DHS) Science and Technology (S&T) Directorate was established by the Homeland Security Act of 2002<sup>1</sup> to coordinate the federal government's civilian efforts to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats on our nation. This activity was not the previous responsibility of any one agency. The Office of Programs, Plans, and Budget (PPB) was created within the S&T Directorate to establish and oversee the priorities of DHS's research and development activities. At the beginning of our review, PPB was organized into 18 portfolios, each focused on a particular discipline, such as addressing countermeasures for biological threats and border and transportation security.<sup>2</sup> Each portfolio was headed by a portfolio manager who, according to DHS, helped to establish the research and development needs and priorities of their portfolios.

When the S&T Directorate began operating in March 2003, it hired scientists, engineers, and experts in needed disciplines from federal laboratories, universities, and elsewhere in the federal government under authority provided by the Intergovernmental Personnel Act (IPA) of 1970.<sup>3</sup> Portfolio managers hired under the IPA were brought to DHS from these employers because of their expertise in the areas of greatest risk to the nation's security. These managers were hired for a specified limited period with the understanding that they would subsequently return to their

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<sup>1</sup> Pub. L. No. 107-296 § 301, 116 Stat. 2135, 2163 (2002).

<sup>2</sup> As of September 2005, there were 13 portfolios.

<sup>3</sup> 5 U.S.C. §§ 3371-76. The IPA facilitates the temporary hiring of skilled personnel or specialists to and from other federal entities, state and local governments, colleges and universities, and Indian tribal governments. Such assignments may be used to achieve objectives such as assisting the transfer and use of new technologies. DHS hires IPAs under a 2-year agreement that can be renewed one time for 2 additional years, consistent with Office of Personnel Management (OPM) regulations.

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“home” institution. Seven of the 16 portfolio managers for the 18 portfolios were employed by DHS under the IPA. Five of these 7 employees came from the national laboratories, which are owned by the Department of Energy (DOE) and operated by private contractors, and the two others came from a nonprofit organization and a federally funded research and development center (FFRDC).<sup>4</sup> You have raised questions about potential conflicts of interest for these individuals, since a portion of the Directorate’s research funds have gone to these laboratories. In fiscal year 2004, 23 percent of the S&T Directorate’s \$761 million in research and development project funding obligations went to the national laboratories. (Appendix I provides more detailed budgetary data).

IPA employees are generally subject to the same conflict of interest laws and regulations as all other federal employees. One of these laws, Section 208 of Title 18 of the United States Code (18 U.S.C. § 208), generally precludes federal employees from personally and substantially participating in decisions in which they have a financial interest, including participating in decisions that affect an entity, such as the national laboratories, with which they have an agreement for future employment. However, the agency official responsible for hiring the employee can grant a waiver of this law’s application if the official determines that the conflicting interest is not so substantial as to be deemed likely to affect the integrity of the services the government may expect. Further, the Office of Management and Budget (OMB) requires agencies to establish a set of management controls.<sup>5</sup> GAO issues standards for internal control in the federal government,<sup>6</sup> as required by the Federal Managers’ Financial Integrity Act of 1982,<sup>7</sup> which provide the overall framework for establishing and maintaining internal control and for identifying and addressing major performance challenges and areas at greatest risk for fraud, waste, abuse, and mismanagement.

As agreed with your office, we examined (1) the management controls that have been established within DHS’s S&T Directorate to help guard against

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<sup>4</sup> FFRDCs are nonprofit organizations that are generally financed on a sole-source basis by federal agencies.

<sup>5</sup> OMB Circular No. A-123 (June 1995).

<sup>6</sup> GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

<sup>7</sup> 31 U.S.C. § 3512(c).

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conflicts of interest for portfolio managers hired under the IPA, and (2) the role of the IPA portfolio managers (particularly those from the national laboratories) in determining where research and development (R&D) projects and associated funds are directed.

To address our objectives, we reviewed DHS documentation of management controls related to conflicts of interest and other relevant documents, as well as its Web-based research and development process currently under development. In addition, we reviewed ethics laws and regulations, guidance on internal controls, and prior GAO and DHS Inspector General work pertaining to DHS's S&T Directorate and ethics issues. We also interviewed senior DHS officials, including the Assistant Secretary for Programs, Plans, and Budgets for the S&T Directorate and DHS's Designated Agency Ethics Officer (DAEO), as well as other officials in the S&T Directorate, including the IPA portfolio managers. In addition, we judgmentally selected two portfolios within the S&T Directorate, and interviewed members of these portfolio teams, to examine in more detail the existence of their process and management controls and compare any differences in the application of such processes and controls. These portfolios were: (1) the Biological Countermeasures portfolio, which is the largest portfolio in the S&T Directorate and led by an IPA; and (2) the Border and Transportation Security portfolio, a smaller portfolio led by a career federal employee. We also met with the Acting Director of the Office of Government Ethics (OGE) and her staff. OGE is the federal agency responsible for overseeing the executive branch's ethics programs. Appendix II contains more detailed information on our scope and methodology.

We performed our work from September 2004 through December 2005 in accordance with generally accepted government auditing standards.

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## Results in Brief

DHS's S&T Directorate is working to improve its management controls to help guard against conflicts of interest for employees hired under the IPA, but it can do more. In the first few years of DHS's existence, the S&T Directorate focused on the urgency of organizing itself to meet the nation's homeland security research and development requirements, and had few resources devoted to developing its management infrastructure, including the management controls to guard against conflicts of interest. However, in the past year, steps have been taken to improve these controls. For example, in June 2005, DHS implemented a new process for hiring IPA employees. Although DHS is taking steps to improve its management

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controls, there is more the Directorate can do to better ensure that its IPA portfolio managers comply with the conflict of interest laws. First, the process for determining where R&D projects and funds are directed, including the role of the IPA portfolio managers, has never been finalized. Second, the S&T Directorate does not require documentation of how determinations are made about where R&D projects and funds are directed. Third, S&T Directorate officials are only now seeking waivers, where appropriate, and considering whether to take other actions that would allow IPA portfolio managers to participate in certain matters. Finally, DHS officials told us that S&T Directorate employees, including those hired under the IPA, are offered the same new employee and annual ethics training as are all DHS employees. However, employees hired under the IPA do not receive regular training that addresses their unique situation; namely that they have an agreement for future employment with an entity that may benefit from the S&T Directorate's funding.

The role of the IPA portfolio managers, five of whom were hired from the national laboratories, in determining where research and development projects and associated funds are directed was unclear. This was due to several factors. First, as previously discussed, the S&T Directorate has never finalized a standard process for determining where R&D projects and funds are directed, or for the decision-making role of the IPA portfolio managers within such a process. Second, the extent of the IPA portfolio managers' participation in making the determinations was unclear because there was no documentary evidence of how those determinations were actually made. Finally, the testimony regarding the extent of the IPA portfolio managers' involvement in the decision-making process was inconsistent and, at times, vague. For example, one IPA portfolio manager told us that he/she recused him/herself from any decision that may have involved his/her national laboratory, although this portfolio manager noted that he/she was present and "facilitated" the meetings when such decisions were made. Other IPA portfolio managers told us that they participated to varying degrees. However, because there was no documentation of the decision-making process, we could not determine the extent of the IPA portfolio managers' actual involvement on any particular funding matter, or whether their involvement affected their national laboratory. Because we could not determine whether or not the IPA portfolio managers participated "personally and substantially" in the decision-making process, we contacted the Acting Director of OGE in September 2005, and suggested that OGE review this matter further in conjunction with its planned ethics program review of DHS. In December 2005, OGE officials told us that they

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plan to examine, among other matters, the transparency and accountability issues in DHS's ethics program raised by our findings.

To help IPA portfolio managers comply with conflict of interest laws, we are making recommendations that the Secretary of DHS direct the Undersecretary for Science and Technology to work with DHS's DAEO and OGE to establish additional ethics-related management controls for the S&T Directorate by

- finalizing the R&D process;
- developing a system to document how decisions are made within the R&D portfolio teams;
- determining whether waivers of 18 U.S.C. § 208 are appropriate or other actions are needed;
- providing regular ethics training for IPA portfolio managers; and
- establishing a monitoring and oversight program of ethics-related management controls.

We provided a draft of this report to the Secretary of Homeland Security. DHS concurred with our recommendations and noted several actions that they plan to take. If implemented effectively, these actions would be responsive to some of our recommendations. For example, the S&T Directorate plans to (1) coordinate with the DAEO and OGE in seeking waivers under 18 U.S.C. § 208 for some of the IPAs in the S&T Directorate; (2) enhance its ethics-related training for IPAs; and (3) strengthen its monitoring and oversight programs for ethics-related management controls.

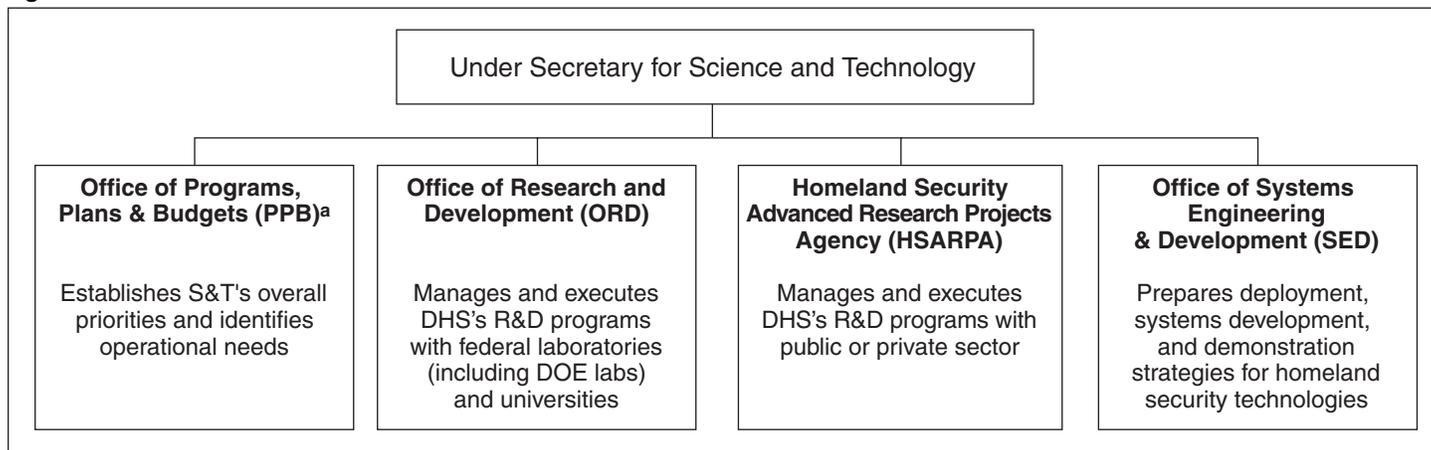
Although DHS agreed with all of our recommendations, it believed that we misstated the facts in asserting that IPA employees do not routinely receive specific training regarding conflicts of interest. We revised the report to indicate that the ethics training we believe is still needed should focus on the application of the ethics statutes and regulations to the unique financial relationship between the IPA portfolio managers and their "home" institutions. Second, we are encouraged that the S&T Directorate is seeking waivers under 18 U.S.C. § 208 for some IPAs. However, IPA portfolio managers continue to be vulnerable to violating the conflict of interest laws because the S&T Directorate has not finalized the process for

determining where research and development projects and funds are directed. DHS's comments are provided in appendix III. In addition, we received technical comments from DHS, which we incorporated as appropriate. We also provided a draft to OGE. On December 8, 2005, we met with OGE officials, including the Deputy Director of the Office of Agency Programs, who provided us with technical comments, which we incorporated as appropriate.

## Background

The S&T Directorate consists of four offices responsible for managing and executing DHS's R&D programs: (1) the Office of Programs, Plans and Budgets (PPB); (2) Office of Research and Development (ORD); (3) Homeland Security Advanced Research Projects Agency (HSARPA); and (4) Systems Engineering and Development (SED), as seen in figure 1 below.

**Figure 1: The S&T Directorate's Offices and Overview of Their Functions**



Source: DHS.

<sup>a</sup> On June 29, 2005, a Chief Financial Officer position was created for the S&T Directorate to consolidate and execute budgetary planning. Because the budgetary responsibility for the S&T Directorate was moved out of the Office of Programs, Plans, and Budgets, its name was changed to the Office of Programs, Plans and Requirements (PPR). This new position and name change are not reflected in this figure.

In the first few years of DHS's existence, the S&T Directorate focused on the urgency of organizing itself to meet the nation's homeland security research and development requirements, and had few resources devoted to developing its management infrastructure, including the management

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controls to guard against conflicts of interest. In our 2004 report on DHS's potential use of the national laboratories, we noted that when the S&T Directorate began operating in March 2003, they sought and hired scientists, engineers, and experts in needed disciplines from federal laboratories, universities, and elsewhere in the federal government.<sup>8</sup> These individuals were brought into the S&T Directorate to use their knowledge in ways that would help the Directorate achieve its mission quickly and effectively. DHS officials told us that these individuals came to DHS out of a sense of urgency and motivated by a strong sense of patriotism. Some of these scientists were hired from the national laboratories, and they came with the understanding that they would return to their laboratories following their time at DHS.

As part of their responsibilities, portfolio managers led and facilitated Integrated Project Teams (IPT), which included representatives from ORD, HSARPA, and SED.<sup>9</sup> In addition to identifying R&D projects and budgets, IPTs were responsible for determining which office (ORD, HSARPA, or SED) within the S&T Directorate would be responsible for them. These determinations were important because it influenced whether the project and associated funds went to the public or private sector. According to a March 2004 Office of Inspector General report,<sup>10</sup> ORD generally executes programs that involve the national laboratories and which the private sector should not, could not, or would not perform. HSARPA generally executes programs for which technology development involves the private sector. SED generally executes programs employing proven technologies and resulting in transition to operational systems.

As previously discussed, IPA employees are generally subject to the same laws and regulations that govern the ethical conduct of other federal employees. Section 208 of Title 18 of the United States Code, a criminal statute, generally precludes federal employees from personally and substantially participating in any particular matter that would have a direct and predictable effect on their financial interests, or the financial interest

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<sup>8</sup> GAO, *Homeland Security: DHS Needs a Strategy to Use DOE's Laboratories for Research on Nuclear, Biological, and Chemical Detection and Response Technologies*, [GAO-04-653](#) (Washington, D.C.: May 24, 2004).

<sup>9</sup> For more information on the use of IPTs, see GAO, *Best Practices: DOD Teaming Practices Not Achieving Potential Results*, [GAO-01-510](#) (Washington, D.C.: Apr. 10, 2001).

<sup>10</sup> Department of Homeland Security Office of Inspector General, *Survey of the Science and Technology Directorate*, OIG-04-24 (Washington, D.C.: March 2004).

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of any organization attributable to them. An employee's participation is "substantial" if their participation is meaningful to the matter. An employee can be personally and substantially involved in a variety of ways, including making a recommendation, rendering advice, or making a decision on a particular matter. The law can be waived if the employee first makes a full disclosure of the conflict of interest to the official responsible for his or her appointment, "and receives in advance a written determination made (i.e., waiver) by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the government may expect."<sup>11</sup> Executive departments and agencies are required to forward documentation of such waivers to OGE.<sup>12</sup> Waivers cannot be granted to cover past activities. In addition to avoiding conflicts of interest, executive branch employees must avoid even the appearance of a conflict of interest. However, when there is potential for such an appearance of a conflict, an employee can be granted an "authorization" to work on a matter even in situations where a reasonable person with knowledge of the relevant facts can question the employee's impartiality in a matter.<sup>13</sup>

As mentioned earlier, OMB requires agencies to establish a set of management controls and GAO issues standards for internal control in the federal government.<sup>14</sup> In addition, GAO developed the *Internal Control Management and Evaluation Tool*<sup>15</sup> to help managers and evaluators determine how well an agency's internal control is designed and functioning and help determine what, where, and how improvements, when needed, may be implemented. The five standards for internal control are: control environment, risk assessment, control activities, information and communications, and monitoring. Two of these standards, control environment and control activities, include key factors related to conflicts of interest. If effectively implemented, these internal controls can help to guard against employees participating in actions that present a personal

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<sup>11</sup> 18 U.S.C. § 208(b)(1).

<sup>12</sup> 5 C.F.R. § 2640.303.

<sup>13</sup> 5 C.F.R. § 2635.502. Authorizations are based upon a determination "that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations."

<sup>14</sup> [GAO/AIMD-00-21.3.1](#).

<sup>15</sup> GAO, *Internal Control Management and Evaluation Tool*, [GAO-01-1008G](#) (Washington, D.C.: August 2001).

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conflict of interest. Examples of relevant key factors that address the establishment and maintenance of an effective control environment of an agency are:

- establishment and use of a formal code of conduct and other policies communicating appropriate ethical and moral behavioral standards and addressing acceptable operational practices and conflicts of interest;
- establishment of an ethical tone at the top of the organization and communicated throughout the agency; and
- implementation of policies and procedures for hiring employees.

Internal control activities are the policies, procedures, techniques, and mechanisms that help ensure that management's directives to mitigate identified risks are carried out. Examples of relevant key factors that address internal control activities are:

- existence of appropriate policies, procedures, techniques, and mechanisms with respect to each of the agency's activities;
- providing appropriate training and other control activities to give employees the tools they need to perform their duties and responsibilities to meet the demands of changing organizational needs; and
- documentation of transactions and other significant events is complete and accurate and facilitates tracing the transaction or event and related information from authorization and initiation, through its processing, to after it is completed.

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## DHS's S&T Directorate Can Do More to Improve Its Management Controls Related to Conflicts of Interest for Its IPA Portfolio Managers

DHS's S&T Directorate has implemented several management controls to help its IPA portfolio managers comply with conflict of interest laws and regulations. Most of these were implemented during the course of our review. Since the S&T Directorate was created in 2003, individuals employed in the S&T Directorate under the IPA have completed an "assignment agreement", as required by OPM. Having procedures in place for hiring employees and implementing them is one aspect of an effective management control environment. The assignment agreements include a section on conflicts of interest and employee conduct. As part of the assignment agreement, each applicant must acknowledge that:

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- “applicable Federal, State or local conflict-of-interest laws have been reviewed with the employee to assure that conflict-of-interest situations do not inadvertently arise during this assignment”; and
  - “the employee has been notified of laws, rules and regulations, and policies on employee conduct which apply to him/her while on this assignment.”

We reviewed the IPA assignment agreements for all of the IPA portfolio managers and found that the IPA portfolio managers acknowledged these provisions.

The S&T Directorate’s leadership took steps to establish an ethical tone and communicate it through a March 15, 2004, memorandum from DHS’s Undersecretary for S&T to all S&T Directorate employees emphasizing that they should strictly adhere to all applicable ethics laws. The memo summarized ethics laws, called attention to the consequences of noncompliance, provided points of contact for those with questions, and explained that S&T employees “have the responsibility to be scrupulous in complying with all applicable ethics laws.” Further, the memo specifically mentioned that employees hired under the IPA may not participate in matters involving their “home” institution (which, in the S&T Directorate, has often been a DOE national laboratory). The memo explained provisions of 18 U.S.C. § 208, stating that an employee may not participate “personally and substantially” in a particular matter that may affect an entity in which he has a financial interest and that “personal and substantial participation can occur if the employee participates in a decision, approval, disapproval, recommendation, investigation, or the rendering of advice on the matter.”

According to DHS’s DAEO, the IPAs in the S&T Directorate were employed before a process was in place to screen them for personal conflict of interest issues. On June 30, 2005, the S&T Directorate issued new, internal procedures for hiring employees under the IPA. These new procedures outline the responsibilities of the parties involved in the hiring process and detail the steps necessary to hire an IPA. These steps include a preliminary review of financial disclosure forms by DHS’s Office of General Counsel (OGC) to determine whether conflicts of interest exist based on the roles and responsibilities of the proposed position.

Along with these new hiring procedures, the S&T Directorate began requiring applicants being considered under the IPA to complete written disqualification statements meant to bar their involvement in any matter

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that could reasonably be perceived to affect the interests of their national laboratory or other employer. In addition, once hired, IPAs can complete a memorandum that provides their supervisor with a written recusal from “certain Government matters” that affect the institution to which they will return after their employment at DHS, and allows them “to describe the screening arrangement” they are implementing to ensure that they comply with their “obligation to recuse.” In this memorandum, the employee then lists each asset, entity, or other interest that gives rise to a disqualifying interest under 18 U.S.C. § 208.

DHS officials told us that S&T Directorate employees, including those hired under the IPA, are offered the same new employee and annual ethics training as are all new DHS employees. Having training and orientation programs for new employees, with ongoing training for all employees, are key activities for establishing effective controls.<sup>16</sup> On January 7, 2005, the Assistant Secretary of PPB also held a mandatory meeting for all IPAs in the S&T Directorate. S&T Directorate officials told us that this meeting was called to discuss the ethics issues that apply specifically to employees hired under the IPA, including the conflict of interest statutes.

Other important management controls that could help ensure portfolio managers comply with conflict of interest laws are not yet in place in the S&T Directorate. Importantly, the process for determining where R&D projects and funds are directed, including the role of the IPA portfolio managers, has never been finalized. Establishment of a process for each agency activity is one of the key factors for meeting internal control standards. Though IPTs were created to help make this determination, as previously discussed, we were told that each IPT worked differently and there were no requirements to operate in the same way. In addition, neither the S&T Directorate nor its draft process requires documentation of how determinations are made about where R&D projects and funds are directed.

Further, the S&T Directorate is only now seeking waivers, where appropriate, and considering whether to grant authorizations or take other actions for their portfolio managers hired under the IPA. As we discussed, under 18 U.S.C. § 208(b)(1), the official responsible for an employee's

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<sup>16</sup> For more on DHS's training program, see GAO, *Department of Homeland Security: Strategic Management of Training Important for Successful Transformation*, GAO-05-888 (Washington, D.C.: Sept. 23, 2005).

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appointment may grant a waiver in advance allowing participation in certain matters if he or she makes a written determination that the affected financial interest “is not so substantial as to be deemed likely to affect the integrity” of the employee's services. In May 2005, an S&T Directorate official stated to us that they first needed to “scrutinize all of their positions to determine whether an actual or apparent conflict requires such action.” In August 2005, senior S&T officials told us that, in conjunction with DHS’s DAEO and OGE, they had begun the process of determining whether to issue waivers to IPA portfolio managers. During our exit briefing with DHS in September 2005, DHS officials indicated that one option might be to not hire anyone for which a waiver may be needed. In DHS’s December 2005 letter to us commenting on our report, it noted that the S&T Directorate is now seeking waivers for at least 6 of its IPAs.

Finally, IPA portfolio managers in the S&T Directorate are not routinely offered specific training that focuses on the application of the ethics statutes and regulations to the unique financial relationship between the IPA portfolio managers and their “home” institution. The January 2005 meeting held with all IPAs in the S&T Directorate to discuss the specific ethics issues related to their circumstances is not scheduled to be repeated. Ensuring that management conveys the message on a periodic basis that integrity and ethical values must not be compromised is part of maintaining an effective control environment. Because of IPA portfolio managers’ ties to their “home” institution, and that their responsibilities at DHS may involve issues that affect their “home” institution, ensuring that these managers receive regular training that targets the application of conflict of interest laws to IPAs may keep them alert to those actions that could constitute a violation of such laws.

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## IPA Portfolio Managers’ Role in Determining Where R&D Projects and Funds Were Directed Was Unclear

The recent changes and further improvements to the S&T Directorate’s ethics-related management controls are critical because we found that the role of the IPA portfolio managers in determining where R&D projects and associated funds were directed was unclear. This was due to several factors, as discussed in more detail below.

First, the process that was to be followed by IPA portfolio managers when determining where R&D projects and funds are directed, and the decision-making role of the IPA portfolio managers within such a process, has never been finalized. DHS provided us with a draft version of this process as part of a Web-based tool. However, IPTs were not required to follow this draft process and team members from the two IPTs that we examined said that

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they were becoming familiar with the process. In this draft, DHS stated that IPTs, facilitated by portfolio managers, were to “decide” which office within the S&T Directorate would execute a project, (i.e., ORD, HSARPA, or SED). The draft stated that if the members of the IPT could not reach agreement, the project would be reviewed by the Executive Review Board (ERB), which consisted of the Assistant Secretary, Programs, Plans, and Budgets, and the Directors of SED, ORD, and HSARPA. However, in September 2005, senior S&T Directorate officials told us that the information regarding the decision-making role of the IPT in the draft Web-based tool was inaccurate, indicating that IPTs can only make recommendations to the ERB, but not a final decision. However, as we noted, 18 U.S.C. § 208 guards against “personal and substantial participation” through various actions which include “decision” and “recommendation.”

Second, DHS officials, portfolio managers, and IPT members were unable to provide us with any documentation, such as meeting minutes, to indicate the actual role that the five IPA portfolio managers from the national laboratories played in the decision-making process within the IPTs. Third, the testimony regarding the extent of the IPA portfolio managers’ involvement in the decision-making process was inconsistent and, at times, vague. For example, one IPA portfolio manager told us that he/she recused himself/herself from any decision that may have involved his/her national laboratory, although this manager noted that he/she was present and “facilitated” the IPT meetings when such decisions were made. Other IPA portfolio managers told us that they participated to varying degrees. For example, one told us that he/she was involved in the IPT decisions regarding which S&T Directorate office would execute a project only when the other IPT members could not reach agreement. Another told us that he/she participated in all IPT discussions that helped make this determination. However, because there was no documentation of the decision-making process, we could not determine the extent of the IPA portfolio managers’ actual involvement on any particular funding matter, or whether their involvement affected their “home” institution, such as a national laboratory.

In March 2005, we discussed our review with OGE to obtain their views on the ethics issues, both in general and as they may specifically apply to the S&T Directorate. During these discussions, OGE officials told us that they planned to begin their first audit of DHS’s ethics program in late 2005. Because we could not determine whether or not the IPA portfolio managers participated “personally and substantially” in the decision-making process,

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however, we contacted the Acting Director of OGE in September 2005 and suggested that OGE review this matter further in conjunction with its planned ethics program review of DHS. In December 2005, OGE officials told us that they plan to examine, among other matters, the transparency and accountability issues in DHS's ethics program raised by our findings.

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## Conclusions

In the first few years of its existence, the S&T Directorate focused on rapidly organizing itself to meet the nation's homeland security R&D requirements. During this time, DHS had few resources devoted to developing the S&T Directorate's management infrastructure, including management controls to guard employees against conflicts of interest. Although the S&T Directorate has recently implemented management controls to help protect against conflicts of interest, and is currently considering others, more needs to be done. In the absence of a process for deciding what entities will implement R&D projects, the role that IPA portfolio managers played has been inconsistent and the potential exists that they may have unknowingly violated conflict of interest laws. By developing and carrying out a process to decide which office will execute a project, and clearly defining the roles and responsibilities of those involved in the process, the S&T Directorate may help its IPA portfolio managers avoid such situations in the future. In addition, documenting how the decisions are made while implementing this process may help protect both DHS and its employees if questions are raised.

Ensuring that the S&T Directorate continues to have access to the best personnel with needed expertise is important to the success of DHS's mission. The IPA provides the S&T Directorate with a mechanism to hire some of these people. However, because IPA portfolio managers have an arrangement for future employment with an entity that could benefit from the S&T Directorate's work, determining whether (1) waivers of the conflict of interest laws are appropriate, (2) IPA portfolio managers should be authorized to work on these issues regardless of any appearance of a conflict, or (3) DHS should take other steps to facilitate the use of their expertise to achieve the S&T Directorate's mission, could help ensure that these valuable employees are protected against violating conflict of interest laws.

Further, once hired, IPA employees must understand how the ethics laws address their unique situations; namely, that they have an agreement for future employment with an entity that stands to benefit from the S&T Directorate's funding. Regular training for IPA portfolio managers that

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targets the conflict of interest laws could help them understand what actions are not permitted.

Finally, to help ensure that DHS's ethics-related management controls are implemented and working in a satisfactory manner, it is critical that DHS establish a monitoring and oversight program. Such a monitoring mechanism will allow the S&T Directorate to assess its ethics-related management controls in order to facilitate awareness and mitigation of risk in DHS, while providing a greater degree of impartiality and integrity.

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## Recommendations for Executive Action

To help IPA portfolio managers comply with the conflict of interest law, we are recommending that the Secretary of Homeland Security direct the Undersecretary of the S&T Directorate to improve the S&T Directorate's management controls related to potential conflicts of interest by

- finalizing the S&T Directorate's R&D process and defining and standardizing the role of the IPA portfolio managers in this process;
- developing a system to document how decisions are made within the IPTs;
- determining, in consultation with DHS's DAEO and OGE, whether waivers of 18 U.S.C. § 208 or authorizations related to the appearance of a conflict of interest are appropriate, or other actions are needed;
- providing regular ethics training for IPA portfolio managers that focuses on the application of the ethics statutes and regulations to their unique financial situation; and
- establishing a monitoring and oversight program of ethics-related management controls.

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Secretary of Homeland Security. DHS concurred with our recommendations and noted some actions that they plan to take. If implemented effectively, these actions would be responsive to some of our recommendations. For example, the S&T Directorate plans to (1) coordinate with the DAEO and OGE in seeking waivers under 18 U.S.C. § 208 for some of the IPAs in the S&T Directorate; (2) enhance its ethics-related training for IPAs; and (3) strengthen its

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monitoring and oversight programs for ethics-related management controls.

Although DHS agreed with all of our recommendations, it believed that we misstated the facts in asserting that IPA employees do not routinely receive specific training regarding conflicts of interest. We revised the report to indicate that the ethics training we believe is still needed should focus on the application of the ethics statutes and regulations to the unique financial relationship between the IPA portfolio managers and their “home” institutions. Second, we are encouraged that the S&T Directorate has reviewed the individual circumstances of all of the IPAs in the S&T Directorate and is seeking waivers under 18 U.S.C. § 208 for at least six of these individuals. However, as stated in our report, the S&T Directorate has not finalized the process for determining where research and development projects and associated funds are directed, nor has it defined and standardized the role of the IPA portfolio managers in this process. Further, the ability of IPA portfolio managers themselves to influence or control where projects and funds are directed has been inconsistent and, at times, vague within the S&T Directorate. Thus, IPA portfolio managers continue to be vulnerable to violating the conflict of interest laws. DHS’s comments are provided in appendix III. In addition, we received technical comments from DHS, which we incorporated as appropriate.

We also provided a draft to OGE. On December 8, 2005, we met with OGE officials, including the Deputy Director of the Office of Agency Programs, who provided us with technical comments, which we made as appropriate.

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We are sending copies of this report to the Secretary of Homeland Security and other interested parties. In addition, this report is available at no charge on the GAO Web site at <http://www.gao.gov>.

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If you or your staff have any further questions about this report, please contact me at (202) 512-6806 or [stalcup@gao.gov](mailto:stalcup@gao.gov). Major contributors to this report included Ben Crawford, Terry Draver, John Krump, James Lager, Andrea Levine, Sarah Veale, and Michael Volpe.

Sincerely yours,

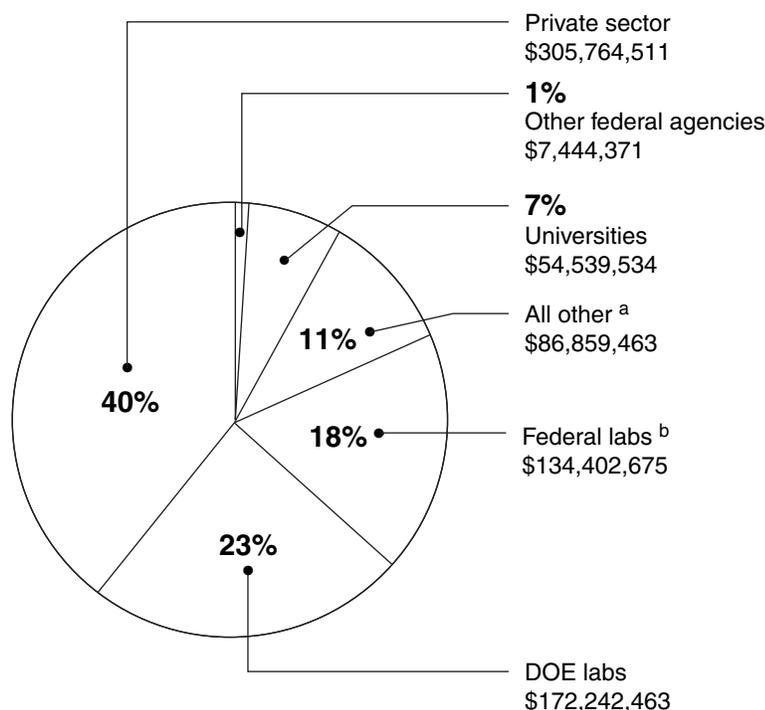
A handwritten signature in black ink that reads "George H. Stalcup". The signature is written in a cursive style with a large initial "G" and "S".

George H. Stalcup  
Director, Strategic Issues

# DHS Research and Development Funding Distribution in Fiscal Year 2004

In fiscal year 2004, the most recent year in which the Science and Technology (S&T) Directorate could provide us with detailed breakdowns of its obligated funds, about 41 percent of the \$761 million obligated for its research and development (R&D) funding was distributed to Department of Energy and federal laboratories (mostly the Office of Research and Development's programs) and about 40 percent to the private sector (mostly the Homeland Security Advanced Research Projects Agency's programs), as seen in figure 2 below.

**Figure 2: The S&T Directorate's R&D Funding Obligations in Fiscal Year 2004**



Source: DHS.

Note: This chart is presented for background purposes only; therefore we did not assess the reliability of the data.

<sup>a</sup> Includes Federally Funded Research and Development Centers, nonprofits, etc.

<sup>b</sup> Includes DHS-funded laboratories.

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# Scope and Methodology

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The objectives of our review were to examine (1) the management controls that have been established within the Department of Homeland Security's (DHS) Science and Technology (S&T) Directorate to help guard against conflicts of interest for portfolio managers hired under the Intergovernmental Personnel Act (IPA), and (2) the role of the IPA portfolio managers (particularly those from the national laboratories) in determining where research and development (R&D) projects and associated funds are directed.

To address our objectives, we analyzed DHS documentation of management controls related to conflicts of interest and other relevant documents. These documents included such materials as agency directives, official memos, human capital procedures, fiscal years 2007-2011 Planning, Programming, and Budgeting Cycle guidance, DHS reports and testimony to Congress, and IPA agreement forms for the Directorate's employees hired under the IPA. In addition, we reviewed the most current, but incomplete, draft of an electronic version of the Research, Development, Testing and Evaluation process to be used by the S&T Directorate. We reviewed relevant laws and regulations, including the Homeland Security Act of 2002, Title 18 U.S.C. Section 208(a); (b); and 5 C.F.R. pt. 2635. In addition, we used GAO's *Standards for Internal Control in the Federal Government* and *Internal Control Management and Evaluation Tool*. We also reviewed prior work from DHS's Office of the Inspector General (OIG) and GAO on the DHS S&T Directorate and ethics-related issues.

We interviewed officials in the S&T Directorate, including the Deputy Secretary for S&T and head of Programs, Plans, and Budgets (PPB); Director of the Office of Research and Development (ORD); Acting Director of the Homeland Security Advanced Research Projects Agency (HSARPA); S&T portfolio managers, five of whom were employed by DHS on IPA agreements from the national laboratories; and the human capital director for S&T. We did not interview the Director of Systems, Engineering, and Development (SED) because SED works with mature technologies at or near the deployment stage, rather than technologies needing R&D by an entity like the national laboratories. More specifically, we examined the role of the IPA portfolio managers from the national laboratories in determining where R&D projects and associated funds were directed during the period from December 2004 through May 2005. In addition, we interviewed DHS's Designated Agency Ethics Officer, attorneys in DHS's General Counsel's Office, and DHS's OIG.

We judgmentally selected two portfolios within the S&T Directorate to examine in more detail the existence of their process and management controls and compare any differences in the application of such processes and controls. These portfolios were: (1) the Biological Countermeasures portfolio, which is the largest portfolio in the S&T Directorate and is run by an IPA; and (2) the Border and Transportation Security (BTS) portfolio, a smaller portfolio managed by a career federal employee. We interviewed the members of these Integrated Project Teams, which included representatives of PPB, HSARPA, ORD and SED. In addition, we reviewed the fiscal years 2004 and 2005 Execution Plans for the Biological Countermeasures portfolio, the fiscal year 2004 Execution Plan for the BTS portfolio, and the fiscal year 2004 BTS portfolio funding allocations by type of entity. (e.g., national laboratory, university, private industry, etc.)

We also met with the Acting Director of the Office of Government Ethics (OGE) and her staff to discuss the ethics issues we were reviewing at DHS. OGE exercises leadership in the executive branch to prevent conflicts of interest on the part of government employees and to resolve those conflicts of interest that do occur. The responsibilities of the Director of OGE include, among other things, consulting with agency ethics counselors and other responsible officials regarding the resolution of conflict of interest problems in individual cases, and ordering corrective action on the part of agencies and employees which the Director deems necessary.

Written comments from DHS are included in appendix III. We performed our work from September 2004 through December 2005 in accordance with generally accepted government auditing standards.

# Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

December 7, 2005

Mr. George H. Stalcup  
Director, Strategic Issues  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Stalcup:

Thank you for the opportunity to review and comment on draft report GAO-06-206, *HOMELAND SECURITY: DHS Needs to Improve Ethics-Related Management Controls for the Science and Technology Directorate*. Technical comments have been provided under separate cover.

With respect to the assertion that Intergovernmental Personnel Act (IPA) portfolio managers within the Science and Technology (S&T) Directorate do not routinely receive specific training regarding conflicts of interest, we believe this misstates the facts. While it is clear that the identification and administration of detailees under the IPA in S&T has been problematic, there is no question that once an IPA is identified to the Department's Legal Advisor for Ethics (the Department's Designated Agency Ethics Officer or DAEO), that individual is required to complete new employee and annual ethics training, as appropriate. As discussed in your report, the January 2005 meeting with all IPAs in S&T that was held to discuss ethics issues was a direct result of discussions with IPAs at the annual ethics training session held in December 2004 for S&T personnel.

A review of the ethics training records for Calendar Year (CY) 04 and 05 shows that in CY 04, the Ethics Office provided 7 one-hour face-to-face annual ethics training sessions for S&T staff who filed financial disclosures, to include the IPA employees. In CY 05, the number of these face-to-face sessions increased to 12. For CY 05, while developing the S&T focused annual training, the ethics instructors identified ethics issues unique to S&T personnel after consultation with S&T officials, reviewed requests for ethics advisory opinions submitted by S&T personnel throughout the past year, and considered ethical concerns raised by S&T staff in discussion with the ethics staff. As a result, the training sessions to S&T personnel integrated discussion of ethical problems, such as conflicts of interest likely to arise in S&T due to the component's unique mission and component specific programs. As the S&T IPAs have become known to the Ethics Office and added to those notified about annual ethics training, the number of IPAs attending appropriate ethics training has steadily increased.

[www.dhs.gov](http://www.dhs.gov)

Overall, the Department concurs with the recommendations contained in the report. However, we would like to call your attention to some corrective actions already underway with respect to three of the Recommendations for Executive Action and ask that these efforts be acknowledged in the final report.

- ***Determining, in consultation with DHS's DAEO and OGE, whether waivers of 18 U.S.C. § 208, authorizations related to the appearance of a conflict of interest, or other actions are needed.***

In November 2005, officials from the Science and Technology's Offices of General Counsel and Human Capital thoroughly reviewed the records, and assignments, of all IPA employees that are assigned to S&T. This review was conducted under the premise that we would seek a waiver under 18 U.S.C. 208(b) if the duties of the incumbent IPA could potentially affect the financial interests of a family member or their sending institution. This review standard was intended to be stricter than that in 18 U.S.C. 208 - - personal and substantial participation of employee in a matter in which he/she has a financial interest.

Given the recent allegations that IPAs at S&T were in positions to direct work to their sending institutions, we were especially focused on both the raw ability of an IPA to direct work to any particular institution (including the national labs) as well as their ability to shape requirements which could be the subject of future work which their institution might seek to perform. As a result of this zero-based review, we identified 7 IPAs in S&T that are candidates for 18 U.S.C. 208 waivers. This is in addition to the disqualification statements that all IPAs in S&T have signed admonishing them of their obligations under 18 U.S.C. 208 and requiring them to involve their named supervisor in any official matter in which their sending institution, or a corporate affiliate, may become involved.

One individual is at the end of her IPA term so, depending on timing, a waiver may not be sought in her case by S&T. In no case did S&T find an instance where an IPA – regardless of assignment – is specifically directing work to his/her sending institution or, to the best of our knowledge, helping shape requirements which could benefit his/her sending institution. S&T is now preparing waiver packages – using templates provided by Office of Government Ethics (OGE) - for the appropriate individuals. Those packages will be coordinated with the DAEO and the OGE. As new IPAs join S&T, each case will be analyzed prior to that person's assignment to determine whether the new hire IPA presents 18 U.S.C. 208 challenges that would need to be addressed in some manner.

- ***Providing regular ethics training for IPA portfolio managers that focuses on the application of the ethics statutes and regulations to their unique financial situation.***

Officials from the Department's Office of General Counsel (OGC) and S&T's Offices of General Counsel and Human Capital determined that the appropriate course of action for

long-term ethics training would be to enhance the new ethics website called *Ethicsburg* to include new training web pages devoted strictly to IPAs.

If approved by *Ethicsburg* management, this web-based approach would allow the IPA job candidate to complete his/her ethics training *before* joining the Directorate. Upon completion of the required training, *Ethicsburg* automatically generates a completion certificate, which is routed to the Department's OGC. The Directorate is in the process of submitting recommendations for the long-term *Ethicsburg* initiative to add IPA training to *Ethicsburg* management.

In the interim, pending approval of the long-term *Ethicsburg* initiative, the short-term training solution is the creation of a MS PowerPoint © presentation devoted to the IPA's unique ethics training requirements. Section one of this presentation would be devoted to training ethics-related laws and statutes, while section two would be a multiple choice test that each IPA would need to complete with a passing score. The Directorate is in the process of developing this presentation which will be distributed to all current S&T IPAs for completion no later than January 31, 2006.

Additionally, all IPAs are required to fulfill their annual ethics training requirement unless they are new hires or have completed the ethics training during the current calendar year. S&T's annual ethics training is conducted in two settings: several classroom sessions with an OGC instructor, or electronically through *Ethicsburg*. Instructions were sent to all IPAs regarding filing the Confidential Disclosure Report (OGE-450) and the Public Financial Disclosure Report (SF-278). Instructions were also sent to IPAs on how to access *Ethicsburg*.

- *Establishing a monitoring and oversight program of ethics-related management controls.*

In those situations where *Ethicsburg* is determined to be an appropriate means for providing ethics training, it affords a simple mechanism for notifying the Ethics Office and the supervisor of the employee involved that the employee has completed certain required modules of ethics education. *Ethicsburg* will, at the request of the employee who has completed a training module, send an electronic notification to a data file maintained by the Ethics Office and to the employee's supervisor that the employee has successfully completed the training.

Meanwhile, during CY05, the Directorate created numerous ethics related guidance documents regarding ethics non-disclosure report filing requirements. Within these documents were instructions to reference the OGC website to access required ethics laws and past legal actions for training purposes. Distribution lists were created for OGE-450 and SF-278 filers for the purpose of disseminating ethics related announcements regarding training and the filing of non-disclosure reports.

By early 2006, S&T will launch a new Staffing Management System (SMS) database which will contain the names of all current S&T employees to include IPAs. Included

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**Appendix III**  
**Comments from the Department of Homeland**  
**Security**

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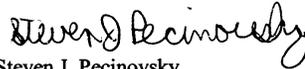
4

within the SMS system, we will track and monitor completion of ethics training requirements; submission of new financial disclose forms; disqualification statements; and Section 208 waivers for all IPAs. Until the SMS system is launched, current management controls include audit mechanisms now in place to ensure each item is addressed. In addition, S&T receives reports from the OGC office on financial reports by calendar year.

With regard to the two other Recommendations for Executive Action, in general we concur. The Directorate has taken action to strengthen existing processes. It should be noted that the S&T/Office of the Chief Financial Officer, the Requirements Office, and the program execution officers have instituted internal controls which require that before any requirements are validated or funds allocated to an executing organization (Office of Research and Development, Systems Engineering and Development, or Homeland Security Advanced Research Projects) that there is significant oversight by S&T's senior management.

We thank you again for the opportunity to provide comments on this draft report and look forward to working with you on future homeland security issues.

Sincerely,



Steven J. Pecinovsky  
Director  
Departmental GAO/OIG Liaison Office

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Washington, D.C. 20548



## INTERGOVERNMENTAL PERSONNEL ACT (IPA)

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### **I. Purpose**

This Directive establishes policy and responsibilities for the temporary assignment of employees between the Federal Emergency Management Agency (FEMA) and State or local governments, institutions of higher education, or other eligible organizations under the Intergovernmental Personnel Act (IPA) Mobility Program.

### **II. Scope**

The provisions of this Directive are applicable to all permanent full-time FEMA personnel.

### **III. Policy and Procedures**

It is FEMA policy to encourage and support temporary assignments of permanent full-time personnel between the Agency and eligible organizations under the IPA Mobility Program where such assignments directly support work of mutual concern and benefit to both FEMA and the eligible organization. The goal of the IPA Mobility Program is to facilitate the assignment of employees, for short periods of time, where such assignments are in the best interests of the Agency. IPA mobility assignments may be appropriate when designed to achieve objectives such as:

1. Strengthening the management capabilities of Federal agencies; State, local and Indian tribal governments; and other eligible organizations.
  2. Assisting with the transfer and use of new technologies and approaches to solving governmental problems.
  3. Facilitating the involvement of State, local and tribal officials in developing and implementing Federal policies and programs.
  4. Providing program and developmental experience that will enhance the assignee's performance in his or her regular job.
- A. IPA mobility assignments will not be created or arranged to accommodate the personal interests of Federal civilian personnel seeking post-government service employment.
- B. Non-Federal employees assigned to FEMA under the IPA Mobility Program must receive (in person or via videoteleconference) individualized ethics and standards of conduct training from an ethics counselor from the Office of the Chief Counsel. This

training must be completed BEFORE the non-federal employee reports for assignment. This training must also be provided to the assignee's FEMA supervisor of record.

- C. IPA mobility assignments will not be created at the expense of replacing or displacing an FTE position.
- D. Non-Federal employees will not be placed in either a bargaining unit or supervisory position.

#### **IV. Responsibilities**

A. FEMA Administrator is responsible for the following:

- 1. Providing oversight, leadership, and guidance regarding the IPA mobility program.
- 2. Approving and monitoring compliance to all regulations and OPM/DHS guidance regarding the IPA Mobility program.

B. Deputy Administrator is responsible for:

- 1. Approving all prospective (proposed) and final IPA mobility assignments.
- 2. Consulting with the Office of the Component Chief Human Capital Officer (OCCHCO) and the Office of Chief Counsel (OCC) in cases where a prospective participating non-Federal organization is not certified as eligible under the IPA Mobility Program.

C. Executive-Level Managers are responsible for:

- 1. Identifying, validating, and negotiating appropriate proposed IPA Mobility Assignment Agreements with eligible organizations.
- 2. Ensuring that participating organizations meet established eligibility criteria (refer to the guidance in paragraph IX, References). Eligibility must also be confirmed by OCC and OCCHCO.
- 3. Ensuring that all IPA Mobility Assignment Agreements support a bona fide, official interest of the Agency, and that no FEMA employee participates in an IPA Mobility Assignment Agreement where it could be reasonably concluded that the employee may be personally seeking the assignment for post-government service employment.
- 4. Coordinating all necessary financial arrangements with the Office of the Chief Financial Officer (OCFO).
- 5. Drafting written IPA Mobility Assignment Agreements using the OPM guidance.
- 6. Securing the Deputy Administrator's approval of a prospective (proposed) IPA Mobility Assignment prior to developing an IPA Mobility Assignment position description or negotiating an IPA Mobility Assignment Agreement.
- 7. Ensuring that both OCC and OCCHCO have reviewed and completed all required actions/responsibilities prior to forwarding the final IPA Mobility Assignment Agreement to the Deputy Administrator for final approval.

8. Ensuring that non-Federal employees assigned to their organization under the IPA Mobility Program, and their FEMA supervisor of record, meet with OCC (in person or via videoconference) for individualized ethics and standards of conduct training prior to reporting for assignment.
9. Ensuring that non-Federal employees comply with all pre-assignment program requirements, including, but not limited to financial disclosure, ethics briefing, personnel security, and travel prior to beginning the assignment with FEMA.
10. Forwarding fully and completely coordinated IPA Assignment Agreements to the Deputy Administrator for final approval.

D. Office of the Chief Counsel (OCC) is responsible for:

1. Providing appropriate legal counsel, guidance, and interpretation support for all provisions of the IPA mobility program.
2. Identifying applicable financial disclosure requirements for all IPA mobility assignee positions prior to the solicitation of candidates for the assignment.
3. Reviewing and certifying, prior to the effective date of assignment, the financial disclosure report that all incoming IPA mobility assignees must file.
4. Limiting the impact of potential, but non-fatal conflicts of interest through development of legally sufficient screening agreements or caution letters to IPA mobility assignees.
5. Providing mandatory ethics briefings to incoming IPA assignees (and their designated supervisors of record) prior to commencement of any FEMA IPA mobility assignments.

E. Office of the Component Chief Human Capital Officer (OCCHCO) is responsible for:

1. Providing advice and guidance to executive-level managers who wish to establish IPA Mobility Assignment Agreements.
2. Coordinating with the Office of the Chief Human Capital Officer, Department of Homeland Security, in cases where a prospective participating non-Federal organization is not certified as eligible under the IPA Mobility Program.
3. Ensuring all applicable labor-management requirements are satisfied with respect to IPA Mobility Assignments.
4. Advising FEMA employees, in writing, of the terms and conditions for outgoing IPA mobility assignments, to include return rights, and continuing service agreements.
5. Ensuring that incoming IPA mobility assignees meet all applicable requirements (e.g., personnel security requirements), and are advised prior to signing the IPA mobility agreement that they are required to file a financial disclosure report.
6. Maintaining appropriate records and providing reports as requested to the DHS Chief Human Capital Officer and Office of Personnel Management.
7. Informing all new IPA mobility assignees of applicable FEMA employee conduct rules, regulations, laws and policies.

8. Ensuring that the administration of IPA mobility assignments within the Agency conforms to all statutory and regulatory requirements and other applicable Office of Personnel Management and Department of Homeland Security guidelines.
9. Coordinating with the Deputy Administrator, and Office of the Chief Counsel (OCC) in cases where a prospective participating non-Federal organization is not certified as eligible under the IPA Mobility Program.

F. Office of the Chief Financial Officer (OCFO) is responsible for:

1. Supporting necessary financial arrangements.
2. Providing information related to travel and transportation entitlements.
3. Ensuring that the parties to IPA Mobility Assignment Agreements uphold the financial terms stated therein.
4. Establishing provisions for cost sharing and reimbursement within the IPA mobility agreement.

G. Managers and Supervisors of IPA Mobility Assignees are responsible for:

1. Ensuring adherence to and compliance with all laws, rules, regulations and policies with respect to all IPA mobility assignments, including applicable ethics rules.
2. Determining, in consultation with OCC, the financial disclosure requirements for incoming IPA mobility assignments and ensuring this information is communicated to candidates.
3. Ensuring that incoming IPA mobility assignees comply with all pre-assignment program requirements, including, but not limited to, financial disclosure, ethics briefing, personnel security, and travel, prior to beginning the assignment.
4. Ensuring that outgoing FEMA IPA mobility assignees comply with all ethics and other requirements (e.g., personnel security). This includes ensuring that FEMA employees attend the required ethics briefing prior to beginning their assignment with a non-Federal organization.
5. Coordinating with appropriate officials in their components to obtain required approvals for all IPA mobility assignments.
6. Ensuring that all assignments are properly documented and reported.
7. Coordinating start dates and exit dates, to include compliance with any requirements associated with those actions.
8. Assuring sound stewardship of all Federal funds associated with IPA mobility assignments.
9. Reviewing and approving all cost reimbursement requests to ensure that they comply with the terms of the relevant IPA agreement and reflect actual, appropriate costs incurred, prior to submitting the requests for payment.

H. FEMA Employees are responsible for:

1. Complying with Federal standards of conduct and conflict of interest statutes and regulations including, but not limited to, Title 18, U.S.C., Sections 203 (compensation

from outside sources); 205 (representation of third parties); 208 (participation in matters with a financial interest); and 209 (non-government compensation and gratuities).

2. Notifying their supervisor if contacted for possible employment by an eligible organization seeking an IPA Mobility Assignment Agreement with FEMA, and then consulting with OCC regarding permissible contacts and actions while negotiating for possible outside employment.
  3. Refraining from participating in the initiation or establishment of an IPA Mobility Assignment Agreement or any of its terms if the employee is personally seeking the IPA mobility assignment to facilitate post-government service employment.
- I. Non-Federal Employees Assigned to FEMA under the IPA Mobility Program are responsible for:
1. Meeting with OCC prior to reporting for assignment.
  2. Complying with Federal standards of conduct and conflict of interest statutes and regulations including, but not limited to, Title 18, U.S.C., Sections 203 (compensation from outside sources); 205 (representation of third parties); 208 (participation in matters with a financial interest); and 209 (non-government compensation and gratuities).

## V. **Definitions**

- A. Employee. An individual serving in a Federal agency under a career or career-conditional appointment, including career appointees in the senior executive service, and individuals under appointments of equivalent tenure in excepted service positions; or an individual employed for at least 90 days in a career position with a State, local, or Native American tribal government; institution of higher education; or other eligible organization.
- B. Eligible Organization. A State or local government, institution of higher education, or other eligible organization within the meaning of Section F below.
- C. Executive Level Managers: Associate Administrators, Regional Administrators, Assistant Administrators, and Program Directors
- D. State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, a territory or possession of the United States, any instrumentality or authority of the foregoing, and any Federal-State authority or instrumentality.
- E. Local Government. A political subdivision, instrumentality, or authority of a State or States; any general or special purpose agency of such a political subdivision, instrumentality, or authority.
- F. Native American tribal government. Any Native American tribe, band, nation, or other organized group or community, including any Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States because of its status as Native American and includes any tribal organization as defined in Section 4 of the Indian Self-Determination and Education Assistance Act.

- G. Institution of Higher Education. A domestic, accredited public or private four-year college or university, or a technical or junior college.
- H. Other Eligible Organization (or Other Organization). A national, regional, statewide or metropolitan organization representing member State or local governments; an association of State or local public officials; or a nonprofit organization that has as one of its principal functions the offering of professional advisory, research, educational, development, or related services to governments or universities concerned with public management. Such an organization is not an eligible organization unless and until it has been certified as such by the Office of the Chief Human Capital Officer, Department of Homeland Security (DHS), or by another Federal agency.

## **VI. Authorities**

- A. Title 5, United States Code (U.S.C.), Sections 3371-3375, *Assignments to and from States*
- B. Title 5, Code of Federal Regulations (CFR) Part 334, *Temporary Assignment under the Intergovernmental Personnel Act*
- C. Department of Homeland Security, Intergovernmental Personnel Act Assignment Program, Interim Guidance

## **VI. Responsible Office:**

Office of the Component Chief Human Capital Officer.

## **VIII. Supersession**

This Directive does not supersede any previous FEMA Directives or Manuals.

## **IX. References**

- A. Office of Personnel Management (OPM), Intergovernmental Personnel Act (IPA) Mobility Program: *Provisions of the IPA Mobility Program*
- B. OPM Intergovernmental Personnel Act (IPA) Mobility Program: *Assignment of a Federal Employee to a Non-Federal Agency*
- C. OPM Intergovernmental Personnel Act (IPA) Mobility Program: *Assignment of a Non-Federal Employee to a Federal Agency*
- D. Office of Government Ethics (OGE), DAEOgram DO-06-031, *Intergovernmental Personnel Act Summary (October 19, 2006)*

## **X. Electronic Forms Prescribed**

- A. Optional Form 69, Assignment Agreement - Title IV, Intergovernmental Personnel Act (this form can be accessed at: <http://www.opm.gov/forms/html/of.asp>)

- B. Standard Form 86 Questionnaire for National Security Positions (this form can be accessed at: <http://www.opm.gov/forms/html/sf.asp>)
- C. DHS Form, Record of Coordination and Approval for Intergovernmental Personnel Act Assignment
- D. DHS Form, DHS Questionnaire for Non-Federal IPA Assignments
- E. Standard Form 278, Public Financial Disclosure Form
- F. Office of Government Ethics Form 450, Confidential Financial Disclosure Form

**XI. Questions**

Questions regarding this Directive should be addressed to the Office of the Component Chief Human Capital Officer at (202)646-3962.

**V. Electronic Attachments**

- A. Office of Personnel Management (OPM), Intergovernmental Personnel Act (IPA) Mobility Program: Provisions of the IPA Mobility Program (this can be accessed at: <http://www.opm.gov/programs/ipa/mobility.asp>)
- B. Office of Personnel Management (OPM), Intergovernmental Personnel Act (IPA) Mobility Program: Assignment of a Federal Employee to a Non-Federal Agency (this can be accessed at: <http://www.opm.gov/programs/ipa/AssignN.asp>)
- C. Office of Personnel Management (OPM), Intergovernmental Personnel Act (IPA) Mobility Program: Assignment of a Non-Federal Employee to a Federal Agency (this can be accessed at: <http://www.opm.gov/programs/ipa/assignF.asp>)
- D. Office of Government Ethics (OGE),DAEOgram DO-06-031, Intergovernmental Personnel Act Summary (October 19, 2006) (this can be accessed at: [http://www.usoge.gov/ethics\\_guidance/daeograms/dgr\\_files/2006/do06031.html](http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2006/do06031.html))

\_\_\_\_\_  
 Sheila M. Clark  
 Chief Component Human Capital Officer  
 Mission Support Bureau

Date:\_\_\_\_\_

\_\_\_\_\_  
 David Garratt  
 Associate Administrator  
 Mission Support Bureau

Date:\_\_\_\_\_

STANDARDS OF CONDUCT QUIZ

TRUE-FALSE

- \_\_\_\_\_ 1. It is permissible to accept free Redskins tickets from the contractor employee you work with.
- \_\_\_\_\_ 2. It is permissible to conduct your personal catering business at your government work station during lunch breaks and after work.
- \_\_\_\_\_ 3. You can treat your government supervisor to lunch on Boss's Day if the cost of her meal is \$8.50.
- \_\_\_\_\_ 4. You can never sell Girl Scout cookies in the government workplace, even during lunch hour and before or after work.
- \_\_\_\_\_ 5. You may use the frequent flyer miles you earn from government travel for your personal use.
- \_\_\_\_\_ 6. You can sell cosmetics to your co-workers in the workplace during lunch hour.
- \_\_\_\_\_ 7. Your supervisor can accept the gift of a \$200 framed portrait of the NGA building offered as a gift by subordinates for her retirement.
- \_\_\_\_\_ 8. You may ask the support contractors in your section to contribute to your supervisor's retirement gift.
- \_\_\_\_\_ 9. You may place a modest partisan political bumper sticker on your car, even if you routinely park in the NGA parking lot.
- \_\_\_\_\_ 10. The support contractor in your section wants to show their appreciation for your support by giving you a modest cash award. You may accept it.
- \_\_\_\_\_ 11. You may advise your subordinates at a staff meeting that they should consider joining the United States Geospatial Intelligence Foundation.
- \_\_\_\_\_ 12. Supervisors cannot solicit contributions from subordinates for the Combined Federal Campaign.
- \_\_\_\_\_ 13. You may accept the free I-POD you win at the GEOINT Symposium in the vendor display area.
- \_\_\_\_\_ 14. You invite your friend, the contractor employee that works in your section, home for dinner. Your guest brings a bottle of wine. You may accept it.
- \_\_\_\_\_ 15. You can use your government computer to solicit volunteers for your son's Boy Scout troop.
- \_\_\_\_\_ 16. You can ask the government computer expert to fix your personal laptop during business hours.

- \_\_\_\_\_ 17. If you are retired from Federal service, there is no restriction on which companies you can seek employment with.
- \_\_\_\_\_ 18. Your spouse works for a defense contractor. You may attend that contractor's summer picnic and/or holiday party even though you are an NGA employee.
- \_\_\_\_\_ 19. You can speak in an official capacity at an AFCEA (Armed Forces Communications and Electronics Association, a private organization) which raises money for AFCEA'S military scholarship fund.
- \_\_\_\_\_ 20. You own \$30,000 worth of Lockheed Martin stock. You can review specifications for a contract proposal you believe Lockheed Martin will bid on.
- \_\_\_\_\_ 21. There are post Federal government service employment restrictions you have to consider if you leave NGA and seek another job.
- \_\_\_\_\_ 22. You can forward a chain letter e-mail praising a presidential candidate on your NGA e-mail.
- \_\_\_\_\_ 23. You may keep the business records for your personal income tax business on your government computer if you only access them during non-duty hours.
- \_\_\_\_\_ 24. You can personally solicit the sale of cosmetics to your subordinates outside the workplace.
- \_\_\_\_\_ 25. You can raise money within your section to send flowers to a co-worker who is in the hospital.
- \_\_\_\_\_ 26. You can ask the contractors in your section to contribute for flowers for a government co-worker who is in the hospital.
- \_\_\_\_\_ 27. You may conduct your \$100 per person fantasy football league in your office on the NGA computer network.
- \_\_\_\_\_ 28. You may not use a government vehicle to run a personal errand from your normal work station when your POV is being repaired.
- \_\_\_\_\_ 29. You may direct your contractor secretary to plan the golf tournament at the USGIF conference.
- \_\_\_\_\_ 30. Your section can wear t-shirts that say "NGA supports the March of Dimes" when you participate in their fundraising walk.
- \_\_\_\_\_ 31. You may ask your secretary to pick up something for you from the cafeteria because you are too busy during lunch to go to the cafeteria yourself.
- \_\_\_\_\_ 32. You must carefully check your subordinates' OGE 450 forms to determine if the employees have conflict of interest issues.

\_\_\_\_\_ 33. There is a \$200 late filing fee if the SF 278 is not filed within 30 days after the date the form is required to be filed, or 30 days after an approved extension expires.

\_\_\_\_\_ 34. You may give a Director's coin purchased with appropriated funds to a contractor employee.

\_\_\_\_\_ 35. A team lead cannot send a partisan political e-mail to subordinates.

# GOVERNMENT ETHICS YEAR IN REVIEW

Tuesday, September 13, 2011 (10:30 a.m. – 12:00 p.m.)

## 1. Introduction

*Walter Shaub*

## 2. Proposed Outside Board Exemption

*Rick Thomas*

Since a series of opinions in the mid-1990s from the Office of Legal Counsel, 18 U.S.C. § 208 has been interpreted as prohibiting employees from serving in their official capacities as officers, directors or trustees of nonprofit organizations. In the intervening years, some agencies have granted individual waivers under section 208(b) to permit such service, but many agencies have declined to grant waivers for this purpose. In May of this year OGE issued a *proposed* rule that would create a new regulatory exemption under section 208(b)(2) permitting employees to serve in such positions as an official duty activity. The exemption will not become effective until OGE issues a final rule.

- 18 U.S.C. § 208
- OLC Opinion, "Service on the Board of Directors of Non-Federal Entities," November 19, 1996, <http://www.justice.gov/olc/fbimem.2.htm>
- OGE, Report to the President and to Congressional Committees on the Conflict of Interest Laws (January 2006)
- Memorandum from Director of the Office of Science and Technology Policy, "Scientific Integrity," December 17, 2010
- OGE Proposed Regulatory Exemption, 76 Fed. Reg. 24816 (May 3, 2011)

## 3. Proposed Lobbyist Gift Ban Rule

*Rick Thomas*

Executive Order 13490 imposed a ban on gifts from registered lobbyists and lobbying organizations on full-time political appointees as part of President Obama's "Ethics Pledge." The same Executive Order directs OGE to promulgate regulations to apply the lobbyist gift ban to all executive branch employees. After more than two years of experience in applying the

lobbyist gift ban to political appointees, OGE developed a proposed rule to extend the ban to all employees, taking into account the needs and circumstances of career employees.

- Executive Order 13490, sec. 1 & sec. 4(c)(3)(ii)-(iv)
- DAEOgram DO-09-007, "Lobbyist Gift Ban Guidance," February 11, 2009

#### **4. 2010 Report on Executive Order 13490: A Pledge Report Update**

*Leigh Francis*

Executive Order 13490, known as the Ethics Pledge, requires certain full-time, non-career political appointees to abide by heightened ethics restrictions, such as increased post-employment restrictions and a ban on receiving gifts from registered lobbyists or lobbying organizations. The Ethics Pledge also requires that the Office of Government Ethics provide an annual report on the administration of the Pledge. Last month, OGE issued its second annual report, accessible from OGE's new website. There are some significant findings within the Report which will be of interest to all ethics officials.

- Executive Order 13490
- 2010 Report on Executive Order 13490: Ethics Commitments by Executive Branch Personnel

#### **5. Highlights of Ethics-Related Legislation during the 112<sup>th</sup> Congress**

*Shelley Finlayson*

- Presidential Appointments and Senate Confirmation: S. Res. 116, S. 679
- Financial Disclosure: H.R. 203, H.R. 1148, H.R. 1866, H.R. 1950, H.R. 2340, S. 973
- Conflicts of Interest: H.R. 1315, H.R. 1458, H.R. 1468, H.R. 1793, H.R. 1823, H.R. 1923, H.R. 1973, H.R. 2162, H.R. 2572, S. 401, S. 782, S. 917, S. 995, S. 1261, S. 1449
- Ethics—Generally: H.R. 2524, H.R. 2596, H.R. 2625, S. 132
- Gifts: H.R. 1892, S. 1458
- Standards of Ethical Conduct: H.R. 1870
- Federal Advisory Committees: H.R. 1144, H.R. 2521
- Contractor Ethics: H.R. 1262, H.R. 1540, H.R. 2136, H.R. 2219, H.R. 2309, S. 353, S. 1145

**6. OGE's role in OFPP's and FAR Council's PCI rule-making process and participation in the ACUS study recommendations regarding ethical standards for government contractor employees**

*Emory Rounds*

OGE attorneys provided their expertise and experience regarding personal conflict of interest (PCI) issues to the Federal Acquisition Regulatory Council regarding the proposed rule that would, in part, provide a new clause to be used in contracts to prevent PCIs for contractor employees who perform acquisition functions for a Federal agency.

OGE attorneys also assisted the Administrative Conference of the United States as it undertook its Government Contractor Ethics project to evaluate whether and to what extent the government ethics rules should be expanded to government contractor employees.

- Proposed Rule: Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions, 74 Fed. Reg. 58584 (November 13, 2009)
- Proposed Rule: Organizational Conflicts of Interest, 76 Fed. Reg. 23236 (April 26, 2011)
- Government Contractor Ethics Final Recommendation adopted by the Administrative Conference, <http://www.acus.gov/research/the-conference-current-projects/government-contractor-ethics/>

**7. Nominee Financial Disclosure Program Highlights**

*Deborah Bortot*

A discussion of the following initiatives:

A. Sector Mutual Fund Exemption

OGE recently issued a proposed rule clarifying the exemption on sector mutual funds at 5 C.F.R § 2640.201(b).

- 76 Fed. Reg. 24816 (May 3, 2011)
- 5 C.F.R § 2640.201(b)

B. OGE Form 278

OGE replaced the Standard Form 278 (SF 278) with the OGE Form 278, effective December 17, 2010.

- DAEOgram DO-10-020 (December 17, 2010)
- C. Disclosure of Ethics Agreements

OGE will post to the OGE website ethics agreements of nominees for, and appointees to, positions requiring Senate confirmation when the position also requires the individual to file a public financial disclosure report. Ethics agreements for nominees who file public financial disclosure reports need to contain the following language:

“I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with other ethics agreements of Presidential nominees who file public financial disclosure reports.”

- 76 Fed. Reg. 24489 (May 2, 2011)

## **8. Public Access to Ethics Records**

*Elaine Newton*

Many of the ethics-related records that are maintained by agencies are publicly available. However, it is important to understand that not all of these records are available under the Freedom of Information Act (FOIA). Because there are different legal authorities that allow the public access to these records, agencies must pay special attention to the requirements that govern the release of each record. At the end of this handout is a guide to assist agencies in determining which laws govern the release of some of the more common ethics-related records.

## **9. 18 U.S.C. § 209 after Consideration of United States v. Project on Gov’t Oversight**

*Allison George*

In 1998, Robert Berman, a former economist at the Department of Interior, accepted a monetary award from the Project on Government Oversight (POGO) for his work related to a *qui tam* action involving oil extracted on public lands and underpaid oil royalties owed to the Government. The United States sued, claiming that the award violated 18 U.S.C. § 209, which prohibits the supplementation of a Government employee’s salary by an outside source. In 2008, a jury found that POGO and Berman had violated section 209, but on appeal, the Court of Appeals for the District of Columbia Circuit concluded that because intent is a required element of a 209 violation, the trial court failed to properly instruct the jury on that element. Thus, the

Court reversed the 209 charge and remanded for a new trial, but did confirm that section 209 prohibits lump-sum payments as well as periodic, salary-like payments.

- United States v. Project on Gov't Oversight, 616 F.3d 544, 392 U.S. App. D.C. 363 (D.C. Cir. 2010)
- 18 U.S.C. § 209(a)

## **10. "Preview" of the New Outside Activity Legal Advisory**

*Allison George*

OGE recently issued Legal Advisory LA-11-06 that analyzes whether, under 5 C.F.R. § 2635.802 ("Conflicting outside employment and activities"), an agency may issue an across-the-board policy that an employee may not run for or hold nonpartisan elective office because election to that office may have the potential to create the appearance of misuse of the employee's federal position. In the Advisory, OGE analyzes the numerous ethics issues implicated by an employee who engages in local nonpartisan political activity, and concludes that the agency - because of the potentially fundamental constitutional rights involved - should not categorically deny its employees the right to participate in local political activity.

- 5 C.F.R. § 2635.802
- LA-11-06

## **11. The OGE Supplemental Agency Regulation Process**

*Seth Jaffe*

During the last year, largely based on agency requests for assistance in this area, OGE prepared comprehensive guidance on the OGE supplemental regulation process. The resulting Legal Advisory addresses whether an agency needs a supplemental ethics regulation to accomplish its goals, the appropriate subject matter areas to include in a supplemental ethics regulation, and includes a summary of OGE's role in assisting agencies in this process. This presentation will focus on the typical issues encountered by agencies that lead to the preparation of the Legal Advisory.

## **12. Financial Disclosure Guidance for Presidential Candidates**

*Seth Jaffe*

In the year prior to a Presidential election year, OGE receives a large volume of inquiries from potential Presidential candidates, good government groups, and the media concerning

financial disclosure requirements for Presidential candidates. In anticipation of the 2012 Presidential election, OGE issued Legal Advisory LA-11-03 addressing these requirements. This presentation will discuss how the legal advisory developed and recount relevant aspects of the consultation process OGE went through with the Federal Election Commission prior to publication.

- LA-11-03

### **13. OGE's New Website**

*Amy Braud*

Last week, OGE launched a new website with numerous improvements beyond the mere appearance of the website. Among the enhancements are a subject matter index to the substantive ethics guidance on the website and a new search engine for the website. Future improvements include a plan to provide immediate access to certified public financial disclosure reports from the OGE website and a new interactive module to assist public financial disclosure filers in completing their reports.

In addition to this Year in Review preview, OGE is offering a conference session about the new website on Wednesday.

## Public Access to Ethics Records

Ethics Record	Authority	Key Points
Public Financial Disclosure Reports (OGE/SF 278)	Ethics in Government Act of 1978 (EIGA), 5 U.S.C. app. § 105	<p>Must be made available to the public in accordance with § 105 of EIGA -- not FOIA (<u>Church of Scientology v. IRS</u>, 816 F. Supp. 1138, 1152 (W.D. Tex. 1993)).</p> <p>OGE Form 201 was created to simplify the § 105 process.</p>
Confidential Financial Disclosure Reports (OGE 450)	Ethics in Government Act of 1978, 5 U.S.C. app. § 107	Not publicly available under EIGA or FOIA ( <u>Meyerhoff v. EPA</u> , 958 F.2d 1498, 1500-02 (9 <sup>th</sup> Cir. 1992)).
18 U.S.C. § 208(b)(1) and 18 U.S.C. § 208(b)(3) waivers	18 U.S.C. § 208(d)(1)	<p>Must be made available to the public by the agency that issued the waiver (not OGE) and the agency must follow the EIGA § 105 procedures.</p> <p>Also, 18 U.S.C. § 208(d)(1) allows agencies to withhold information under one of the FOIA exemptions. However, OGE advisory opinion 93 x 34 reminds agencies that determining whether to release certain information requires a balance between the public interest and certain private financial/privacy interests.</p>
<u>Other Records:</u> ethics compliance documents (such as written recusals, screening arrangements), advisory opinions, ethics program reviews, cover letters, etc.	5 U.S.C. § 552 (Freedom of Information Act) and 5 U.S.C. § 552a (Privacy Act)	When determining whether to release ethics records that are covered by FOIA and/or the Privacy Act, OGE strongly encourages agency ethics officials to work with their agency FOIA and Privacy Act staff.

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# Government Ethics Year in Review

Office of General Counsel and Legal Policy

18<sup>th</sup> National Government Ethics Conference  
September 13-15, 2011

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# Regulatory Developments

Rick Thomas

# OGE Regulatory Developments

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Two Proposed Rules in 2011:

1. Outside Board Exemption
2. Lobbyist Gift Rule

# OGE Regulatory Developments



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

1996 OLC Opinion

# OGE Regulatory Developments

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- OPM Recommendation
- OSTP Directive

# OGE Regulatory Developments



76 Federal Register 24816 (5/3/11)

# OGE Regulatory Developments



Textual “NOTE” following exemption:

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

# OGE Regulatory Developments

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## Proposed Lobbyist Gift Rule

# Why a Lobbyist Gift Ban?



# OGE Regulatory Developments

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## Executive Order 13490: Lobbyist Gifts

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

# OGE Regulatory Developments

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

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# 2010 Pledge Report- Executive Order 13490

Leigh J. Francis

# Facts and Figures from the 2010 Report

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

# Changes and Trends from the 2009 Report to the 2010 Report

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

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# Legislative Update

Shelley Finlayson

# Legislative Update



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

# The legislative process and you



- Executive branch-wide proposals
- Agency-specific proposals

# Ethics-related trends in the 112<sup>th</sup> Congress

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

# Modernizing the Ethics in Government Act



## Highlights of OGE's Proposal:

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

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# OGE and Contractor Ethics Initiatives

## Emory Rounds

# ACRONYM ROADMAP



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

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in the Executive Branch

# Nominee Financial Disclosure Program Highlights

Deborah Bortot



# Sector Unit Investment Trusts

## Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

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

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

U.S. Office of Government Ethics

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

Executive Branch Personnel PUBLIC

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



# Transparency

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# Public Access to Ethics Records

Elaine Newton

# New Routine Use in OGE/GOVT-1



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



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



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

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

Allison C. George

# U.S. v. POGO



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

**Future of 209?**



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

# Intent is Required



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

# Intent Separates Wrongful from Innocent Conduct



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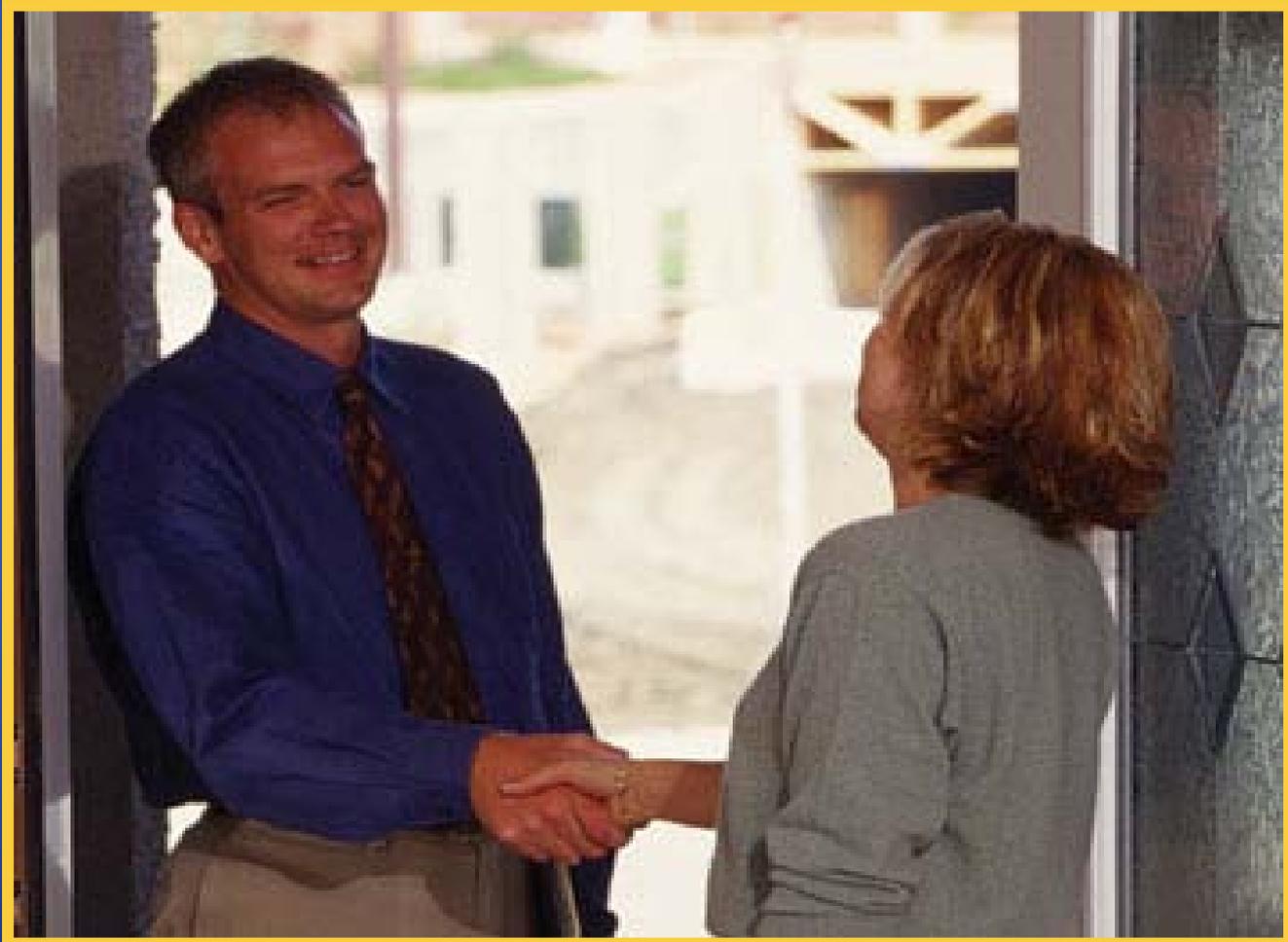


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# Nonpartisan Political Activity: LA-11-06

Allison C. George

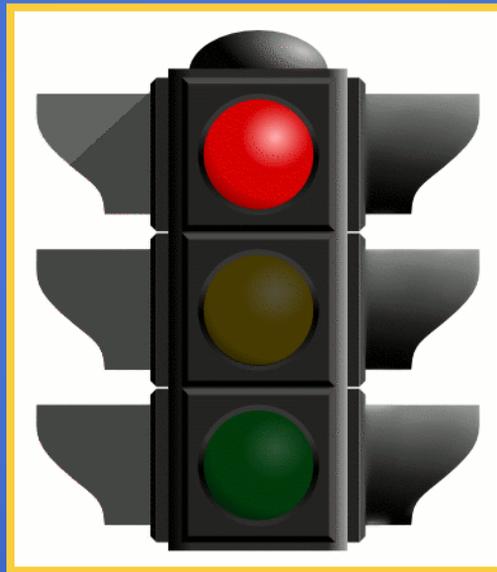
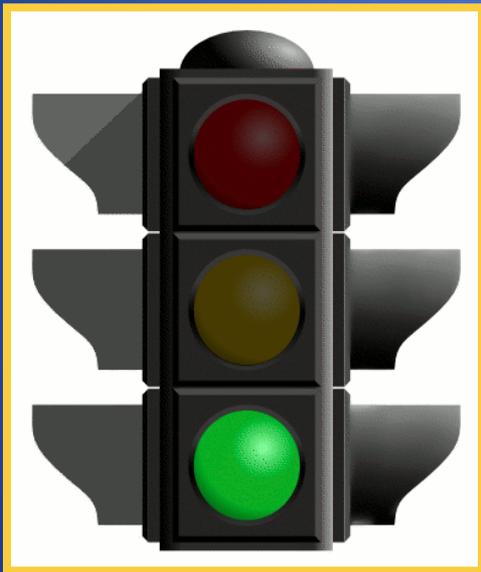
# “John Q. Citizen”



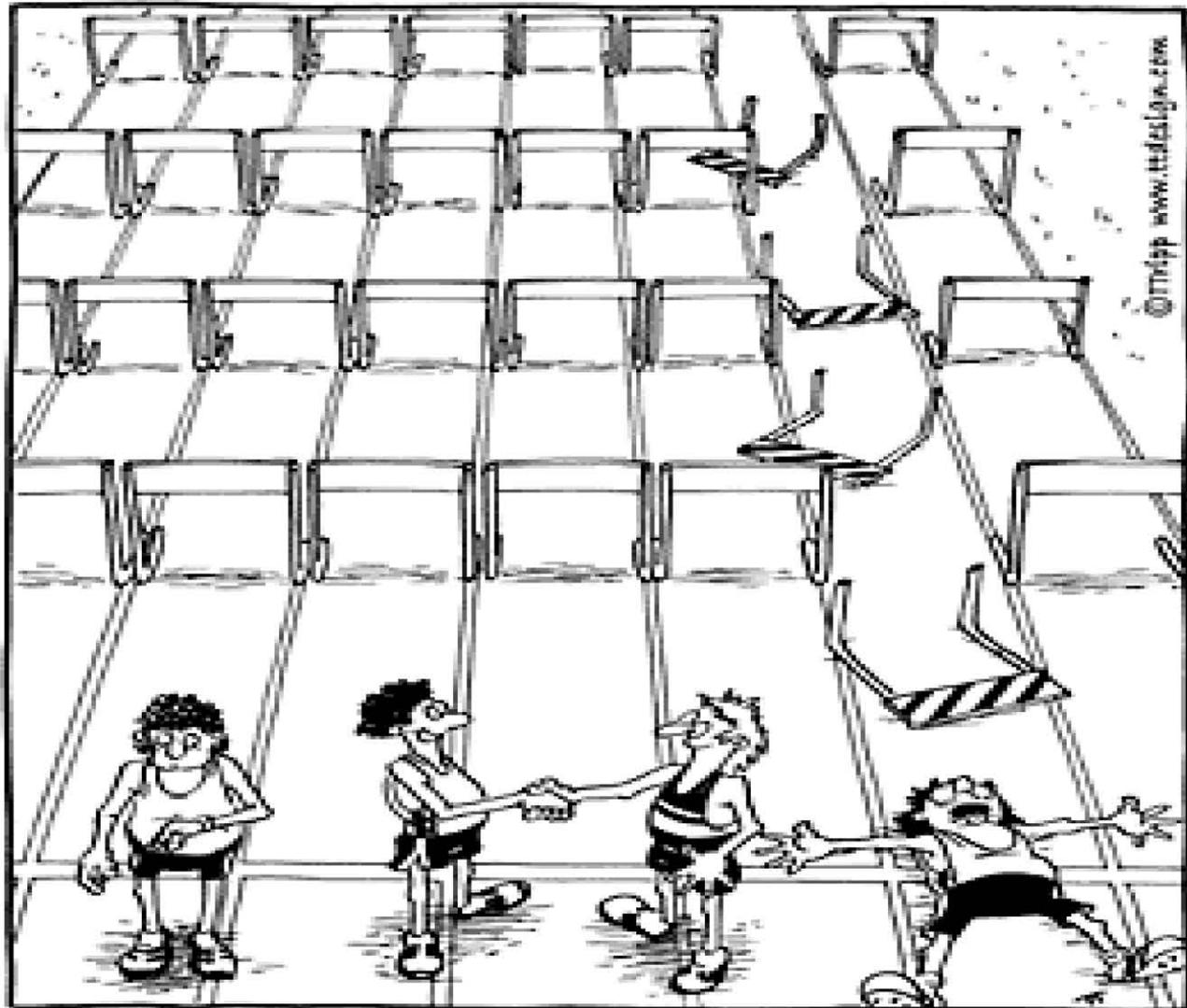
# Nonpartisan Political Office



# What would you do?



# The Novice



# First Amendment Concerns



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

Seth H. Jaffe

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# Candidate Financial Disclosure Requirements: LA-11-03

Seth H. Jaffe

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# OGE Website

Amy Braud

# UNITED STATES OFFICE OF GOVERNMENT ETHICS

Preventing Conflicts of Interest in the Executive Branch

SEARCH

Site Index | Text Size: A A A

TOPICS

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OGE ADVISORIES

PROGRAM MANAGEMENT

EDUCATION

## TOPICS >

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

## THE U.S. OFFICE OF GOVERNMENT ETHICS

- ◆ Establishes standards of ethical conduct for the executive branch
- ◆ Ensures transparency in government through financial disclosure
- ◆ Educates executive branch employees
- ◆ Promotes good governance

Learn More

### This is an Announcement from OGE

Summary text for the announcement.

### Dates & Deadlines RSS

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

### OGE's Latest Advisories RSS

**L** 97x16: Post-employment restrictions; senior employees; 18 U.S.C. § 207(c)  
**Legal**

**T** 98x12

### ★ Open Government at OGE



Presidential Appointee & Nominee Records

Program Review Reports

Travel Reports

## TOPICS

▶ Financial Conflicts of Interest & Impartiality

▶ Gifts & Payments

▶ Use of Government Position & Resources

▶ Outside Employment & Activities

▼ Post-Government Employment

▶ Before Leaving Government

▼ After Leaving Government

▶ Selected Employee Categories

▶ Enforcement

## After Leaving Government

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

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

## Restrictions on Contacts with the Government on Behalf of Others

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

# Current Government Employees



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

## Disqualification Required by Conflict of Interest Statute

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

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

### Laws & Regulations

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

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

Federal Register Issuances: 3

### Legal Advisories & Opinions

Legal Advisories (98)

Judicial Opinions (9)

DOJ Office of Legal Counsel Opinions (15)

## Search Legal Advisories

Keywords:

Topics: Outside Employment & Activities

Subtopics:

--Select--

- Financial Conflicts of Interest & Impartiality
- Gifts & Payments
- Use of Government Position & Resources
- Post-Government Employment

Citation: Selected Employee Categories

Enforcement

Focus: **Outside Employment & Activities**

Year: --Select--

Month:

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Office of Government Ethics - Legal Advisories

Showing 1 — 10 of 177 results found

< 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | ... >

Index to A  
(1979-1980)

Index to A  
(1990-2000)

**February 8, 2011**

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

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

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

**March 19, 2010**

**10x1: Uncompensated Teaching, Writing, and Speaking**

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

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

**December 10, 2009**

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

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

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

# Government Ethics Year in Review

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## Conclusion

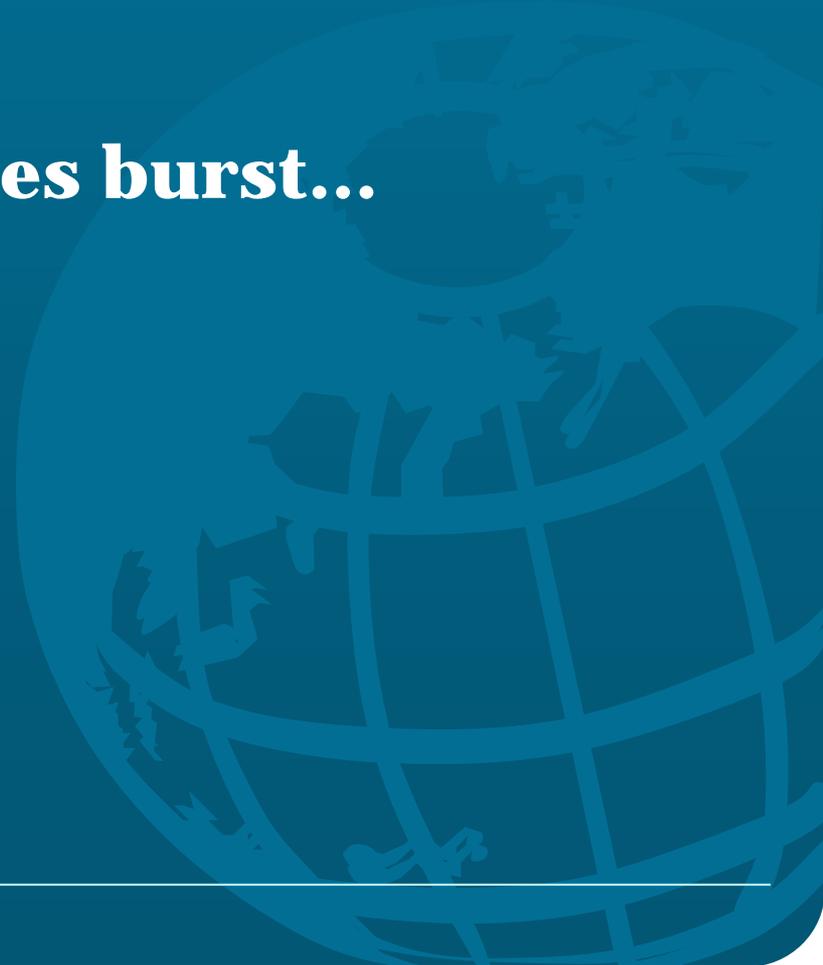
# National Government Ethics Conference

## *Organizational Integrity: A View from the Private Sector*

September 14, 2011

*Keith T. Darcy, Executive Director  
Ethics & Compliance Officer Association (ECO)*

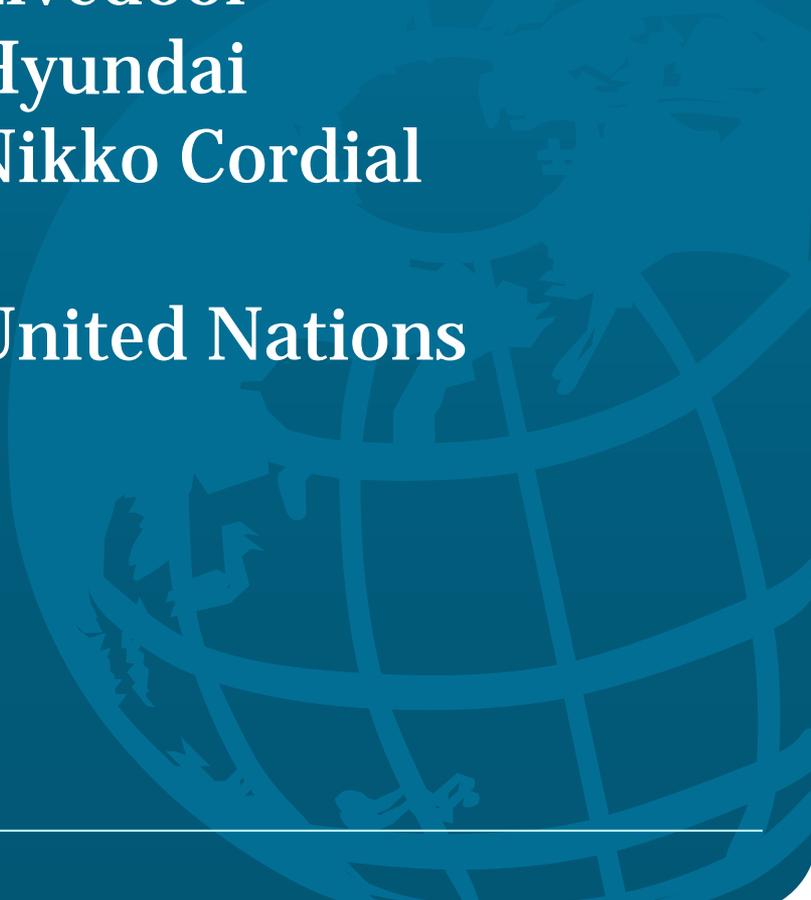
**When bubbles burst...**



# Post-Tech Bubble

- Enron
  - Tyco
  - Adelphia
  - Xerox
  - Rite-Aid
  - Martha Stewart
  - ImClone
  - Aurora Foods
  - Computer Associates
  - WorldCom
  - Accounting
  - Wall St.
  - Mutual Funds
  - Insurance
  - Hospitals
  - Pharmaceuticals
  - Brokers
  - Fannie Mae
  - Freddie Mac
- 

# Not Uniquely American

- Mannesmann
  - ELF
  - Royal Dutch Shell
  - VW
  - ABB
  - France Telecom
  - ABN-Ambro
  - Heidelberg Cement
  - Royal Ahold
  - Bank of Italy
  - Parmalat
  - Samsung
  - Bank of China
  - Livedoor
  - Hyundai
  - Nikko Cordial
  - United Nations
- 

# Settlements

(DPAs and Federal Monitors)

- HCA (\$1.7B)
  - AIG (\$1.6B)
  - Royal Ahold (\$1.1B)
  - Fannie Mae (\$400M)
  - Time Warner-AOL (\$510M)
  - KPMG (\$465M)
  - Adelphia (\$715M)
  - Tyco (\$750M)
  - Prudential (\$600M)
  - CA (\$225M)
  - Marsh McLennan (\$850M)
- 

# Lessons Learned

1. Irrational exuberance + uninhibited self-interest
  2. Arrogance
  3. Fraud
  4. Conflicts-of-interest
  5. Preferential treatment
  6. Accounting arbitrage
  7. Failure of independent auditors
  8. Failure of analysts
  9. Failure of rating agencies
  10. Failure of regulators
  11. Failure of board oversight
  12. ***Culture of greed***
- 

# In Response?

- Sarbanes-Oxley Act (“SOX” - 2002)
- Thompson (2003) + McNulty (2006)
- Revisions to Federal Sentencing Guidelines  
-ethics and corporate culture (2004)
- NYSE + Nasdaq

# Sarbanes-Oxley Act

- CEO/CFO financial certifications
- Loan prohibitions
- Bonus forfeiture
- Blackout trading restrictions
- Internal control certifications
- Codes of ethics
- Whistleblower provisions

## Audit committee

(Section 301) - Must establish procedures for:

- receipt, retention + treatment of accounting issues;
- confidential + anonymous tips regarding questionable accounting.

(Section 406) – Must:

- adopt code for financial officers, or explain why not

# Thompson + McNulty

## Thompson Memo (2003)

- Seriousness of the offense
- Pervasiveness of wrongdoing
- History of serious misconduct
- Timely and voluntary disclosure
- Existence and adequacy of compliance
- Corporate remedial actions
- Collateral consequences of conviction
- Adequacy of non-criminal remedies

## McNulty Memo (2006)

- Adequacy of board oversight
- Did the board perform independent oversight, or merely “unquestioningly ratify officers’ recommendations?”

# Federal Sentencing Guidelines

November 1, 1991

## **-Periodic risk assessments.**

-There must be standards and procedures to prevent and detect criminal conduct.

-The board must be knowledgeable about and reasonably oversee the program.

-There must be a high-level person charged with oversight.

-That person must have appropriate authority and adequate resources and unfiltered access to the board.

-The firm must take reasonable steps to communicate and train...including the governing authority.

**-Evaluate the effectiveness of the program.**

# Federal Sentencing Guidelines

## Revised November 1, 2004

Precondition to an effective program:

“...promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.”

“A good corporate citizen must first and foremost operate ethically.”

Judge Reuben Castillo, Vice Chairman

# Federal Sentencing Guidelines

Revised November 1, 2010

7<sup>th</sup> element - When criminal conduct is detected, a company must take “reasonable steps to respond...”

Now “reasonable steps” may include:

- restitution to identifiable victims;
- self reporting, and/or;
- cooperation with authorities.

Also, to prevent similar misconduct;

- undertake periodic program evaluations, and;
- periodic risk assessments, which may include “use of an outside professional advisor to ensure adequate assessment and implementation.”

# Federal Sentencing Guidelines

## Revised November 1, 2010

The Commission has recommended sentencing reduction when high-level personnel are involved if these conditions are met:

***-if the person with “operational responsibility” for the program has direct reporting obligations to the board.\*\*\****

-the C&E program detected the offense before discovery outside the organization.

-the offense was promptly reported to government authorities.

-no one managing the C&E program participated in, condoned or was willfully ignorant of the offense.

# The Bubble Burst (again)

The Great Recession



# Post 9-11

2001-2006

- Extraordinary growth in mortgages
- Accommodating conditions
- CDO's
- AAA Rating

2007

- Teaser rates begin to expire
- Delinquencies rise
- Foreclosures rise

# The Meltdown

- 3/16/08 Bear Stearns sold to JPM Chase
- 7/11/08 IndyMac Bank (bankrupt)
- 9/7/08 Fannie Mae & Freddie Mac (gov't ownership)
- 9/15/08 Lehman Brothers (bankrupt)
- 9/16/08 Merrill Lynch sold to BofA
- 9/16/08 AIG (77.9% gov't ownership)
- 9/18/09 Money market fund "breaks the buck"

# The Meltdown

***“We need the equivalent of war time powers.”***

-Hank Paulson

***“If you (congress) don’t act today there will be no economy tomorrow.”***

-Ben Bernanke

9/19/08 - Treasury Secretary asks congress for \$700 billion (TARP)

# Headlines

- 9/24/08 WAMU (bankrupt), to JPMorgan Chase
- 9/29/08 ***TARP bill voted down by congress***  
Fortis Bank nationalized  
HYPO Real estate bailed out  
Bradford & Bingley nationalized  
Glitner Bank nationalized  
Ireland guarantees all deposits  
Italy guarantees all deposits
- 10/1/08 Senate passes TARP
- 10/4/08 Germany guarantees all deposits  
Russia discusses bail out of Iceland

# Headlines

- 10/6/08 UK buys 70% RBS, 43% Lloyds Bank
- 10/7/08 UK announces \$500B stimulus
- 10/17/08 Germany approves \$750B stimulus
- 11/10/08 China announces \$600B stimulus

# When the tide goes out...?

- Mark Deier, \$400 million
- Marcus Schrencker, \$100 million
- Arthur Nadel, \$300 million
- Joseph Forte, \$100 million
- Nicholas Cosmo, \$300 million
- Paul Greenwood, \$900 million
- Danny Pang, \$100 million
- Milowe Brost, \$400 million
- Bernard Madoff, \$65 billion**

***“Am I a sociopath?”***

B. Madoff to his therapist  
New York Magazine 3/7/11

# When the tide goes out...?

- ❑ Satyam Computer - \$1 Billion
  - ❑ Siemens - \$1.6 billion settlement
  - ❑ Halliburton - \$599 million
  - ❑ Stanford Financial Group - \$8B
  - ❑ Galleon Group - \$1B
  - ❑ BAE - \$400+ million
  - ❑ Daimler - \$185 million
- 

# When the tide goes out...?

- ❑ “Operation Broken Trust” (>500 prosecutions)
- ❑ “Deutsche Bank pays \$554m to NYS for Tax Evasion”
- ❑ “BofA Pays \$150 million Re Muni Bid Rigging”
- ❑ “UBS Fined \$780 million in Tax Evasion”
- ❑ “Schwab Pays \$119 million to Settle”
- ❑ “FDIC Seeks \$2.5 Billion in Clawbacks”
- ❑ “BofA Pays \$150 Million to Settle Merrill Lynch”
- ❑ “SAC Ex-Manager Set to Plead Guilty”
- ❑ “European Regulators Investigate Banks for Credit Swaps”
- ❑ “HSBC Accused of Helping Mubarak Regime Land Deals”

# When the tide goes out...?

- Pfizer - \$2.3 billion
  - GSK - \$750 million
  - Novartis - \$422.5 million
  - Eli Lilly - \$1.4 billion
- 

## Other Issues - Culture

### **“Secretive Culture Led Toyota Astray”**

The Wall Street Journal  
February 8, 2010

### **“The *Toyota Way* Was Lost on Road to Phenomenal Growth.”**

The Washington Post  
February 13, 2010

# Other Issues - Fraud & Culture

## “Goldman Sachs Charged with Fraud”

Financial Times

April 17, 2010

“The whole building is about to collapse anytime now...Only potential survivor, the fabulous Fab...standing in the middle of all these complex, highly-leveraged, exotic trades he created.”

“Anyway, not feeling too guilty about this, the real purpose of my job is to make capital markets more efficient and ultimately provide the U.S. consumer with more efficient ways to leverage and finance himself, so there is a humble, noble and ethical reason for my job; ***amazing how good I am at convincing myself.***”

# Other Issues - Fraud & Culture

## **“Goldman Blasted for Conflicts of Interest”**

cnbc

April 14, 2011

**“A case study of recklessness and greed”**

# Other Issues – Risk & Culture

## **“BP’s Tony Hayward and the Failure of Leadership Accountability”**

Harvard Business Review  
June 7, 2010

## **“Culture of Complacency at BP Set Stage for Oil Spill, Commission Says”**

The Washington Post  
November 9, 2010



**“Cables Show US Concern on  
Japan’s Disaster Readiness”**

The New York Times  
May 3, 2011

*“Compartmentalization and risk aversion....”*

# Behind the Headlines - Corruption

- ❑ “Four Sama Dubai Employees Are Held In Corruption Probe”
- ❑ “Ex-Head of Bank of Italy to Go on Trial”
- ❑ “Bahrain Kickback Investigation Widens”
- ❑ “Siemens Excluded from World Bank Contracts for Two Years”
- ❑ “Control Components Admits to Violating FCPA in 36 Countries”
- ❑ “Ex-Sinopec Corporate Chairman Sentenced to Death for Bribery”
- ❑ “China Executes 2 For Role in Tainted Milk Scandal”
- ❑ “Chevron Offers Evidence of Bribery Scheme in Ecuador Lawsuit”
- ❑ “Maybey & Johnson To Be Sentenced in Bribery Case”
- ❑ “Postmaster General in India Held for Corruption”
- ❑ “UN Cuts Back on Investigating Fraud”
- ❑ “Rio Tinto Employees Admits to Taking Bribes in China”
- ❑ “Nine British Companies in US Bribe Inquiry”
- ❑ “Alstom UK Directors Arrested in SFO Bribery Investigation”

# Corruption

- “Greece Condemned for Falsifying Data”
- “Nortel Will Liquidate Assets”
- “Italian Notables Feel Heat in Corruption Scandal”
- “Ex-Gome Head is Sentenced”
- “How German Companies Bribed Their Way to Greek deals”
- “Avon Bribery Probe”
- “BHP Billiton in US Anti-Corruption probe”
- “Alcatel Agrees to Pay \$137 Million to Avoid U.S. Prosecution”
- “Russia’s Two Top IKEA Execs Sacked Over Suspected Bribery”
- “Nexus Technologies and Three Employees Plead Guilty to Paying Bribes to Vietnamese Officials”
- “Bribe Case Focuses on Negotiator for Alcoa”
- “Total Indicted for Alleged Corruption in Iraq”
- “Johnson & Johnson Settles Bribery Case”

# Corruption

- ❑ “Russia Leads the World in Economic Crime, Report Says”
- ❑ “Russian Corruption May Force Western Firms to Quit”
- ❑ “Half of Russians Believe Bribery Solves Problems”

***“There is actually no success so far”***  
(Russian President Dimitry Medvedev on his government’s attempts to fight corruption).

# Anti-Corruption

- ❑ “Brazil’s Lula Sends Anti-Fraud Bill to Congress”
- ❑ “Peru Government Announces Creation of Anti Corruption Commission”
- ❑ “Australia Introduces New Laws to Fight Cartels and Corporate Corruption”
- ❑ “Anti-Corruption Candidate Wins Croatia Election”
- ❑ “Italian Cabinet Approves Corruption Crackdown
- ❑ “China Premier Calls for Intensified Fight Against Corruption”

# Anti-Corruption

- ❑ Foreign Corrupt Practices Act
  - ❑ UN Convention Against Corruption
  - ❑ UN Global Compact
  - ❑ OECD Working Group – “Good Practice Guidance”
  - ❑ UK Bribery Bill
  - ❑ G-20
- 

# In Response – U.S.

DOJ -Fraud task forces  
-Anti-trust

## SEC

- FCPA, insider trading
- Risk and BOD governance
- Dodd-Frank - 922 & 748 whistleblower bounty
- Compensation

**“A Whole New Ballgame:  
Dodd-Frank Whistleblower Provisions”**

Forbes 11/2/10

# New Risks for the 21<sup>st</sup> Century

WikiLeaks

Whistleblowing

Social Media

Hacking/Cyber crime

Transparency

***“I intend to take down an American Bank and expose an ecosystem of corruption”***

Julian Assange  
November 29, 2010

# News Corp

“News of the World Hacking Scandal Exposed”

“Australian PM: Murdoch Has Questions to Answer”

“Wall Street Journal Head Resigns”

“Piers Morgan Denies Phone Hacking”

“Head of Scotland Yard Resigns”

“DOJ Preparing Subpoenas”

“PM Cameron Grilled by Parliament”

# Cyber Threats

- “FBI Directors Warns of Growing Cyber Threat”
- “Internal Sabotage Security Risks Rising”
- “Mass Leak of Client Data Rattles Swiss Banking”
- “Social Media Use Puts Companies At Risk”
- “Unseen Security Risks Lurk in the Copy Room”
- “Data Breaches Are Heaviest At Hotels”
- “White House Focus on Nuclear Terrorism Gets Scrutiny”
- “Senators Seek Documents on Fort Hood Suspect”
- “Terror Attack on US Flight to Detroit Investigated”
- “Deloitte Poll: respondents Lack Confidence in Ability of Private Enterprises to Reduce the Occurrence of Cyber Crimes”

# **“China Launches Whistleblower Websites”**

Sify.com India Ltd.  
February 15, 2011





**“Mexico Offers Reward for Reporting  
Money Laundering, Promising to  
Share Loot with Informants”**

AP

April 5, 2011

# Government Issues

- ❑ ***“OIG at Interior Finds A Culture of Ethical Failure at MMS”***
- ❑ “Army Employee Sentenced for Bribery and Supplementation of Salary Violations”
- ❑ “VA Official Abused Position, Misused Official Time and Travel”
- ❑ “Hatch Act Cases Lead to Significant Disciplinary Actions”
- ❑ “NASA-OIG Report Finds Director Violated the Ethics Pledge”
- ❑ “SEC Adopts New Supplemental Ethics Standards for Employees”
- ❑ “Ethical Problems Found Between MMS Employees and Regulated Companies”
- ❑ “MSHA Found Negligent in Training and Safety”
- ❑ “SEC-OIG Find Misuse of Government Resources”
- ❑ “DOD Employee Sentenced for Post-Employment Violation”
- ❑ “SEC Accused of Destroying Files”

# Lessons of the Great Recession

1. Arrogance
  2. Fraud
  3. ***Conflicts-of-interest***
  4. ***Preferential treatment***
  5. Conspicuous consumption
  6. Failure of all the gatekeepers
  7. Culture of greed
- 

# Lessons of the Great Recession

In most cases the culprits believe:

1. They'll never get caught.
2. They're smart enough to get out of trouble.

# Generation Y

- They're plugged in and networked:
  - iPhones, iPods, iPads, iTunes, downloads, blogging, texting, tweeting, FaceBook, LinkedIn, etc.
- Politically savvy
- Socially responsible
- Crave team culture
- Want constant communication
- Driven by a sense of purpose
- Not afraid to challenge the status quo

# Josephson Institute

30,000 H.S. students surveyed in 2008

- 64% admitted cheating on a test in the previous year (up from 60% the year before)
- 38% cheated more than once
- 36% admitted plagiarizing from the Internet
- 33% said they stole something from a store
- 25% admitted stealing something from a parent or relative.

Surprisingly, 93% said they were satisfied with their personal ethics, while 26% admitted lying on one or two questions in the survey.

# Deloitte & Touche with Junior Achievement

750 students 12-17 surveyed in 2008

- 21% indicated cheating was acceptable
- 13% believed plagiarizing was acceptable
- 28% indicated that illegally downloading music and not paying for it was acceptable

Regarding cheating:

- 54% indicated that did it to succeed in school
- 35% said it was pressure from parents
- 18% justified it as “everybody else does it”

On plagiarizing, 49% said they did it because they didn't have enough time to finish assignments

# McCabe, Trevino, Butterfield 2006 survey

- MBA students cheat more than other graduate students (56% MBA v. 54% engineering, 45% law students)
- McCabe earlier discovered:
  - 74% of undergraduates admit relying on the Internet, crib notes, or peeking at classmates' tests to gain a competitive advantage.

# The Chicken or the Egg?

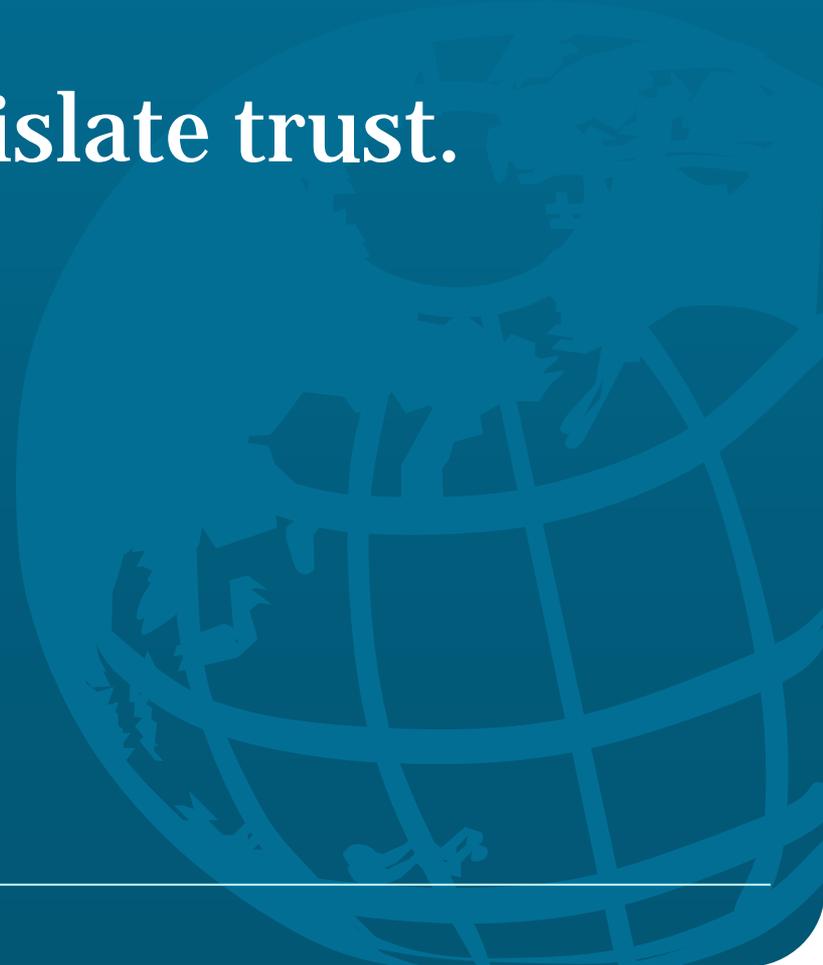
- Pressure to get ahead
  - Pressure from supervisory authorities (parents, etc.)
  - A desire to succeed
  - *Everybody else does it*
- 

- Enron, Tyco, WorldCom
- Skilling, Lay, Koslowski, Ebbers
- Satyam, Siemens
- Goldman Sachs
- Bernie Madoff
- Barry Bonds, Alex Rodriguez, Manny Ramirez, Mark Maguire
- Marion Jones
- Bill Belichick
- Rod Blagojevich

There has been a profound loss of trust in every part of society, including our:

- markets
  - financial institutions
  - organizations
  - government
  - leaders
- 

You can't legislate trust.



What is trust?



How do you build trust?



# Culture

“A system of shared values”

“The underlying assumptions, beliefs, attitudes and expectations shared by an organization.”

*“It’s the way things really get done around here.”*

# Central Concepts of Corporate Culture

1. They're collective.
  2. It's what members agree about.
  3. They're emotionally charged
  4. They're historically based
  5. They're inherently symbolic
  6. They're dynamic
  7. They're vague, at times contradictory
  8. They're paradoxical
- 

# Corporate Culture

Strong cultures have two primary characteristics:

- High level of agreement on what's valued.
- High level of intensity about these values.

# Corporate Culture and Performance



Ikea

Starbucks

Dannon

Michelin

FedEx

Southwest Airlines

Google

Culture trumps compliance!



Strong cultures self-regulate



# OGE Mission

In partnership with executive branch agencies and departments, OGE fosters high ethical standards for employees and strengthens the public's confidence that the Government's business is conducted with impartiality and integrity.

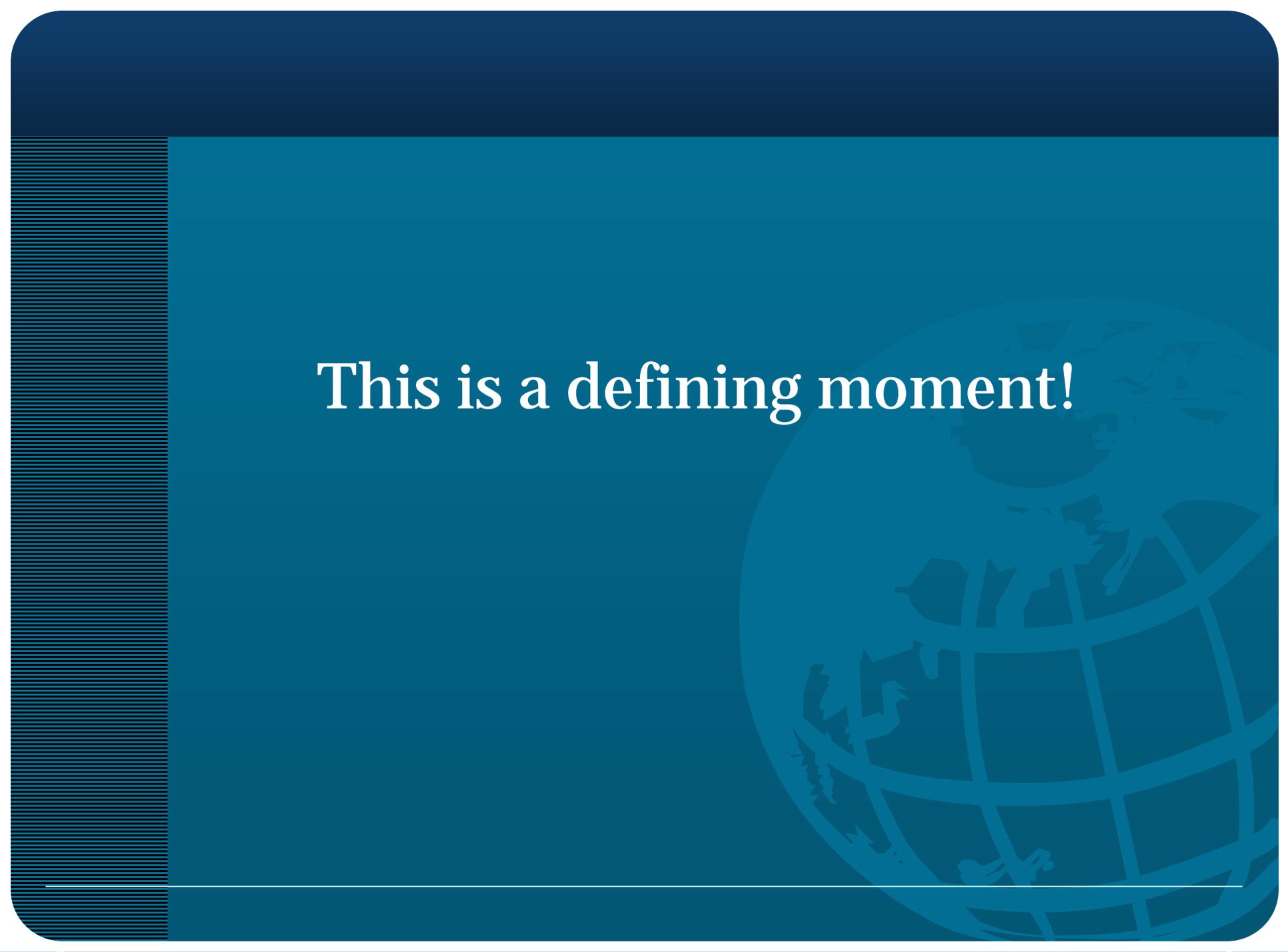


# OGE Mission

The underlying principle of public service is that  
“public office is a public trust.”



**This is a defining moment!**

The image features a dark blue background with rounded corners. On the left side, there is a vertical decorative element consisting of a series of thin, horizontal white lines. On the right side, there is a faint, light blue graphic of a globe with latitude and longitude lines. The text "This is a defining moment!" is centered in the upper half of the image in a white, serif font.

# Roadmap & Planning Workbook: Electronically File (eFile) & Manage Financial Disclosure Reports (FDRs)

[https://www.fdm.army.mil/PM\\_Reference\\_Docs/efilingRoadmap2.doc](https://www.fdm.army.mil/PM_Reference_Docs/efilingRoadmap2.doc)

*Editor's Note: At OGE's request, I updated this 2011 edition for sharing in the 18th National OGE Conference materials. I shared it with eFiling agencies OGE identified for comment and completion of an eFiling Information appendix to share information with other agencies interested in migrating to eFiling.*

*Our roadmap includes what has worked in other agencies to create an actionable model for successful transformation to an eFiling program.*

*Please send comments/suggestions to [geo-hancock@us.army.mil](mailto:geo-hancock@us.army.mil).*

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# Roadmap & Planning Workbook: Electronically File (eFile) & Manage Financial Disclosure Reports (FDRs)

*Software should help its users do their jobs better, easier, and/or faster.  
Note: this does not mean, however, it will help its EVERY user EQUALLY do the job  
better, easier, and/or faster! Some users will benefit more than others.*

## Introduction

Why do you want your agency to electronically file (eFile) and manage Financial Disclosure Reports (FDRs)? No doubt you expect it will help you do your job better, easier, and faster. That is a good reason, but is it enough for your agency decision maker to commit agency money and people to an eFiling initiative? You probably need to show advantages (e.g., faster FDR processing - time savings to Filers, error elimination, other tangible, intangible benefits) to persuade your agency leadership to support and invest in eFiling initiative.

Most everything worthwhile requires careful thought and planning. Implementing eFiling is no different. It is challenging. It is a strategic issue requiring time, money, and coordination. Your agency's needs must be determined, its current FDR processes analyzed, and options evaluated.

Whether you buy and adapt a commercial off-the-shelf solution, have another agency operate a "turn-key" solution, or build a custom system in-house, you (or someone in your agency) must take certain steps to ensure a clear eFiling vision, design meets specific agency needs, progress happens on track and within budget, and proper user support is readily available.

This Workbook should help you along the way and save you some organizing time. Members of the Interagency Ethics Council eFiling Work Group developed it initially as a guide for U.S. ethics officials seeking to implement eFiling. It incorporates the experiences of certain agencies currently eFiling FDRs as well as thoughts of some work group members at agencies investigating eFiling.

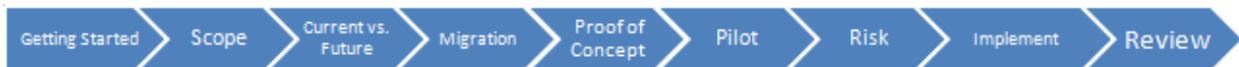
It is organized into several sections. Each represents a major milestone toward successfully implementing an eFiling initiative:

- **Executive Summary:** An overview of the case for eFiling FDRs, the goals of the plan, and how the plan will be executed. When most of the workbook is complete create an Executive Summary.
- **Getting Started:** Some preliminary questions to answer as your eFiling initiative takes shape.
- **Scope:** The overall scope clearly defines the boundaries of what is included in your eFiling initiative. For example, the case for eFiling, along with the timing of the deployment, a budget, how you will gain users' cooperation and engender

enthusiasm, the service level you plan to provide, as well as the results you plan to achieve.

- **Current versus Planned Environment:** An analysis and inventory of the current FDR process and environment as well as the future planned FDR process and environment, including hardware, software, and network infrastructure.
- **Migration Plan:** A detailed plan for migrating from the current environment to the planned environment, including migrating current paper FDRs.
- **Proof of Concept:** Describes the testing of all physical aspects of the eFiling solution.
- **Pilot:** Outlines implementing the entire plan on a representative pilot group of agency users.
- **Risk Assessment:** Documents risks for a successful implementation and how can they be mitigated; is based on the results of the Proof of Concept, the Pilot, and other planning factors such as the budget.
- **Implementation Plan:** A detailed rollout schedule and plan for actual deployment to all agency users.
- **Post Implementation Review:** A review, complete with any changes necessary to move forward, lessons learned for the next deployment, and considerations for application development and use.
- **Maintaining the Solution:** once your eFiling solution is up and running you need to plan for operating it, receiving user feedback, and improving it.

At the start of each section of the workbook is a progress graphic to give you an idea of your progress in completing the entire plan. Use this to “think through” your initiative.



Finally, adapting this workbook to your eFiling initiative should help you present it to your agency Information Technology Office (ITO) staff. Implementing an eFiling initiative requires close coordination with and support of select agency ITO staff.

## Executive Summary

The goal of your executive summary is to quickly inform its readers and agency decision makers of the most pertinent points of the eFiling initiative.

Summarize these sections in the executive summary:

- Scope
- Current versus Planned Environment
- Migration Plan
- Proof of Concept
- Pilot
- Risk Assessment
- Implementation
- Post Implementation Review

***The Executive Summary persuades and interests agency/ethics leadership that the initiative has merits and is achievable.***

**Note:** Traditionally, the executive summary appears near the front of a plan, however, you probably will not have its content until your plan is almost complete.

## Getting Started

Getting Started

An important first step to eFiling (or any initiative) is to have a common understanding of what it is and what it will achieve in your agency and for its users. Equally important is connecting this to the agency's strategic plan to gain leadership support.

Begin by answering a few questions (at least partially) for your agency.

### What is “eFiling” to my agency ethics leadership (or me)?

Initially, think of eFiling as “a purposefully designed system that brings data, computers, procedures, and people together to process and manage FDRs.” Beyond that, what do you want it to be and do in your agency?

- Is it sending a scanned FDR by email? That really is not eFiling – see OGE DAEOgram DO-07-014, *Guidance on Electronic Filing of Public and Confidential Financial Disclosure Reports*, [http://www.usoge.gov/pages/daeograms/dgr\\_files/2007/do07014.html](http://www.usoge.gov/pages/daeograms/dgr_files/2007/do07014.html).
- Is it applying a digital signature to a fillable form that is securely stored on my agency's network?
- Is it a secure, web-based software program that allows agency users world-wide access where Filers login via an Internet browser and enter their financial data? Reviewers login to review their various assigned Filers' reports. Certifying authorities then finally review and approve the eFiled report. The secure online system preserves the data for the requisite record retention period and provides access to authorized organizational users. The system compares and highlights differences between a Filer's subsequent reports. . .

The answer will guide your effort and help you determine your agency eFiling vision and preliminary needs.

For example, if eFiling is merely adding a digital signature capability to a fillable form you may only want software that provides that. Your eFiling implementation could be as easy as contacting your agency's Information Technology (IT) Office and explaining your need (e.g., add digital signature capability to an eForm). That office could “budget” and incorporate your requirement in its operating program, and “buy” you a digital signature solution. Next, is deploying that solution to users and training the users.

**What is my organization vision of eFiling?** What is the “end state” when my agency is eFiling?

You may find it helpful to draft a preliminary eFiling Vision. The vision is for the agency leadership and eventual eFiling users so they understand the goal, end state, or desired results of the eFiling initiative. For example:

Transform our existing paper-based OGE 278 and OGE 450 reporting process to an easy to use, web-based application that is efficient, accurate, and secure, eliminating most common mistakes while saving its users report preparation or review time.

or

Implement a secure, web-based application that automates the financial disclosure report preparation (OGE 278 & OGE 450) and electronic filing process by:

- Guiding a filer through questions about reportable financial information (*TurboTax-like*)
- Validating a filer's data
- Flagging missing and incorrect information
- Displaying a report comparison view
- Starting each report with previous report information
- Reducing common errors
- Increasing data accuracy

Vision is a realistic description of the eventual eFiling system. Vision statements are normally both aspirational and inspirational. When it is not practical, realistic, and achievable, vision is only hallucination. Some visions are inherently flawed because they suggest unattainable results. For example, a vision statement that a system will meet *all* current and future needs of the user community, suggests that programs can be designed to satisfy unstated, even unknown requirements. Limit your vision statement to realistic expectations.

You may prefer a narrative of how select agency personnel will use the eFiling system—a *concept of operations*—to articulate the vision of eFiling. For example:

**Filers** use a secure, web-based system to prepare, review, and submit a required financial disclosure report. **Reviewers** – supervisors and ethics counselors – review the report online before the **Designated Agency Ethics Official, or Designee**, approves the report online.

**Why do I want eFiling? Why does my organization want eFiling? What benefits will my agency get from eFiling?**

A main premise of an eFiling initiative is that paper-based FDR preparation and review, processing and managing, is slow, inadequate, and error-prone. These are good reasons to move to an eFiling approach. Are there others you are considering?

In one case a senior ethics official said “Turbo Tax the FDR process in a web-based program. Find an easier way to process and manage FDRs.” Right away one reason for eFiling was clear.

Some eFiling benefits include:

**Efficient:** a smart form wizard design guides a Filer through the form filling and review process quickly and effectively. Paperless workflow eliminates the physical hand-offs between filers and reviewers.

**Accurate:** the system incorporates Office of Government Ethics (OGE) certified business rules ensuring accurate and consistent financial disclosure reports ***the first time***.

**Secure:** the system limits access to a Filer's information - only a filer and his/her review chain can see the report. All personal information is protected through the use of security features such as SSL 128-bit encryption and user authentication.

### **What are my organizational eFiling needs and wants?**

Start with general features. For example:

- Secure, web-based access world-wide
- Simple to use, leveraging IT skills users already have (e.g., familiarity with eFiling income tax software, MS Word, Internet Explorer (for attachments))
- Minimal user training requirement – Filer's don't have/want to take the time to "learn" a software program
- Report information readily available online (w/o searching file cabinet)
- Improved FDR consistency, accuracy, & timeliness

As you refine the needs and wants, distinguish "*Must Have*" from "*Nice to Do*" (in case your agency cannot afford the "nice to do" at first). For example, you may decide that importing a user's personnel information from an agency personnel system is more of a nice to do than a must have initially. Perhaps you want to add that later after coordination with your agency's personnel system manager.

Scan Appendix B, a sample list of eFiling requirements. For example:

- Pre-population – Information is captured once and reused in later reports during subsequent filing seasons.
- Automatic "flagging" of incomplete and inconsistent report information.
- E-mail alerts that allow for the management of filer and reviewer activity.
- Audit trail captures all report activities.
- The report can only be viewed by the filer and the filer's review chain.

### **What is realistically achievable eFiling?**

Time for a reality or sanity check. You are unlikely to get funding for everything you want the first time around so temper your eFiling appetite to the most important features that you "*must have*."

### Who will help with the eFiling initiative?

Successful eFiling takes a team – ethics personnel and agency IT personnel initially working toward the same vision. Later, the Filer and Reviewers need to cooperate and use the system. It is never too early to identify key personnel to recruit to your eFiling initiative team.

### Who will decide on eFiling in your agency?

Most likely your agency DAEO will have to champion the eFiling initiative to your agency leadership – agency head and CIO. The information you compile using this workbook should go a long way toward success. Also keep in mind the “What’s in it for me?” (W3IFM) that makes the initiative personal to key decision makers. Prepare to tell them the personal benefits they get when they use the eFiling solution to complete an often dreaded, unpleasant, but required task. In at least one case saving a Filer time and making the task easier was persuasive.

#### *What’s in it for me (W3IFM)?*

- *Better report accuracy*
- *Easier filing/management*
- *Faster reporting/reviewing*

### How will your agency eFile?

While it is too early to know how your agency will implement an eFiling initiative you should gather information on the “how” as early as possible. In this regard, consider other agencies that adopted eFiling. See Appendix A for a summary.

With the answers in mind there are a few other “organizing” tasks to move your eFiling initiative forward.

### Establish an Agency Ethics eFiling Decision Making Structure

Doing so is an important start on the road to successful eFiling. It will give the eFiling initiative a foundation in the agency. Successful eFiling implementation depends on senior ethics official leadership, user involvement, strong management, and a sound structure for planning and decision making.

Success also requires buy-in on several levels.

- Your agency leadership and DAEO must support the initiative from a financial, personnel, and business perspective.
- Users must be willing to use the technology once it is in place.
- Technologists must understand the technical environment and successfully support it.

**WHAT** A decision making structure for your eFiling implementation that:

- provides leadership and accountability,
- relates the agency strategic plan to the eFiling initiative,
- analyzes technical environments, policies and solutions, and
- effectively manages the eFiling initiative.

**WHO** Agency Ethics leadership (DAEO), users (e.g., Ethics Office staff, Filers, Report Reviewers), a dedicated eFiling Initiative Manager, and

ITO staff.

**WHY** To ensure a well-defined decision making structure with clear responsibilities and authority, that the structure is officially sanctioned and that it involves users to address problems.

**WHEN** The sooner the better.

Representatives of the Decision Making Structure will:

- Develop a united vision and determine the scope and focus of the initiative.
- Identify legal, policy, administrative, funding, technical, and other obstacles to the initiative.
- Define and sanction initiative objectives, tasks, and timetables.
- Garner support from other relevant decision makers (Agency CIO).
- Monitor planning, implementation, and management of the initiative.
- Define the operational requirements for the initiative.
- Oversee the acquisition.
- Resolve obstacles to implementation.
- Review system performance.
- Make recommendations concerning systems improvements, enhancements, and next steps.

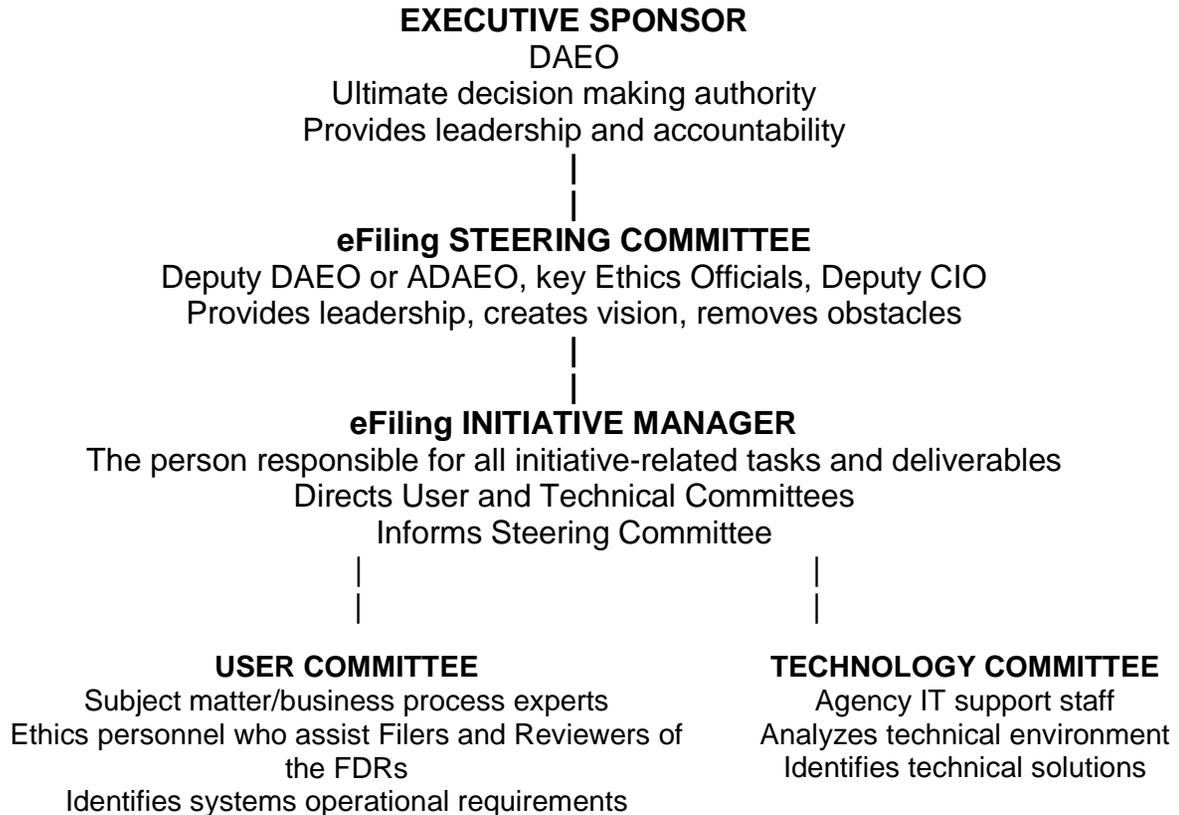
Step 1 **Identify an Agency “Executive Sponsor:”** the one with ultimate accountability for the eFiling initiative with authority to sanction the eFiling initiative and make it an agency priority. This person is the champion, spokesperson and leader for the eFiling effort. Most likely this is your agency DAEO.

Step 2 **Identify Agency Stakeholders:** those agency people who will be affected by the eFiling initiative. Consider the intended users and those who have an indirect role in achieving successful eFiling. It is critical to:

- identify the stakeholders,
- determine their needs and expectations, and then,
- manage and influence those expectations to ensure success.

Step 3 **Establish the eFiling Decision Making Structure** so those involved in the initiative will know roles and responsibilities.

Here is a suggested eFiling decision making structure:



**Steering Committee:** generally high-level managers and/or supervisors who can assign and commit staff to the initiative as needed. This group ensures a structured process for the initiative. The Steering Committee will provide constant guidance and oversight to the effort, its progress and deliverables, and will make most decisions. They will keep the Executive Sponsor informed and advise of specific action the Sponsor may need to take to remove barriers or to garner resources.

**The eFiling Initiative Manager:** Ideally, an individual who has project management skills, experience and/or training, dedicated in a full-time manner to the success of the initiative. This person provides daily direction, manages the schedule, serves as a single point of contact, directs/leads team members toward objectives, reviews and approves deliverables, handles low-level problem resolution, and liaisons to the Steering Committee.

**The User Committee:** Subject matter and business process experts for the initiative functions. Ethics Counselors, staff, maybe select FDR Filers & Reviewers. This group should analyze current agency FDR processes and practices, identify ways to improve workflow and achieve efficiency, and define how the eFiling system will support agency needs to make their work more efficient and effective and solve particular problems. The User Committee will evaluate software and technical solutions to their business requirements.

**The Technology Committee:** Agency technical staff. The Technology Committee takes its cues from the User Committee. Once the User Committee has defined the eFiling needs, the Technology Committee will analyze those needs with a focus on the agency’s current technology environment and potential “solutions.” The Technology Committee may be heavily involved in either “building” the solution in-house or evaluating solutions available elsewhere. This Committee will also have to make important recommendations about training, assigning, and hiring staff to implement, support and maintain the eventual eFiling system.

- Step 4 **Appoint an eFiling Initiative Project Manager (PM):** Pin the rose on someone as soon as possible. This action officer is the single point of contact for the initiative and everyone associated with it. Ideally the PM understands the agency FDR process and is familiar with project management.
- Step 5 **Seek eFiling information:** Gather information on other eFiling systems for consideration and background. (See Appendix A or contact OGE.)

## Scope



Next, get a “big picture” grasp on your agency’s eFiling initiative, limited by what can be accomplished successfully. The overall initiative scope defines the boundaries of what is included in the eFiling initiative. It includes the case for eFiling, along with the timing, a budget, how you will gain user cooperation and engender enthusiasm, the service level you plan to provide, and the projected results. In short, it conveys the purpose and requirements — the ‘who,’ ‘what,’ and ‘why.’

### Key Tasks:

- 1 Establish the agency eFiling Vision:** [If not previously completed] Vision answers the question: “What is eFiling success?” For example:

Replace the existing paper-based OGE 278 and OGE 450 reporting process with an online application that is efficient, accurate, and secure, eliminating most common mistakes.

**Filers** use a secure, web-based system to prepare, review, and submit a required financial disclosure report. **Reviewers** – supervisors and ethics counselors – review the report online before the **Designated Agency Ethics Official, or Designee**, approves the report online.
- 2 Name the initiative:** e.g., **eFiling FDRs**. This gives the effort an identity.
- 3 Get the big picture:** What internal and external issues will affect the eFiling initiative? For example, consider:
  - OGE guidance (e.g., DAEOgram on eFiling; FDR rules)
  - Agency personnel resources
  - Other agency experience with eFiling

- Availability of agency funding
- Current and planned agency technology

- 4 Develop the eFiling initiative’s business case:** your business case demonstrates the need and identifies the benefits of the initiative. A good one persuades its readers of the initiative’s merit and supports its funding and other resources.

It also demonstrates that the status quo (“error-prone, cumbersome paper reporting process”) is unacceptable.

Good business cases show operational benefits to the agency. So for the benefit of direct users of the system and the Executive Sponsor, for example, you may want to discuss broadly how implementing eFiling results in such benefits as:

- More accurate, timely, and accessible FDR information.
- Elimination of common errors that take time of Filers and ethics officials to resolve.
- Significant reduction of paper documents.

System users will want to know how it will make them more efficient and effective (e.g., saves time on preparing/eFiling later reports, avoids common errors), and how they can work better and faster (e.g., prepopulates later reports with “repeated” information from prior reports).

You may want to put a dollar value on any projected time savings. You could begin by identifying each step of the paper-based report preparation and time involved and the role of that person. Then you could apply a salary figure to that amount of time. See Appendix C for a sample to adapt.

- 5 Define the initiative’s scope:** Scope sets the boundaries. Defining scope also identifies which activities are “in” the project and which activities are excluded. Scope explains:

- What users want (functions).
- How well the user requirements are met (quality of).
- When and how it must be developed (constraints).
- Why (the value in the project).

Examples:

By December 1, 2011 develop and implement a secure, web-based, electronic filing system that guides Filers to eFile their FDR (similar to Turbo Tax for income tax returns) that improves FDR preparation and review and eliminates common errors.

Obtain and deploy agency-wide a secure, web-based electronic system for filing and reviewing required Financial Disclosure Reports by [date]. Users will use their Internet Explorer browser to access the software to prepare or review a report online without printing a report. User orientation materials will be prepared and provided to users by [date]. Migrate existing paper reports to the eFiling system by [date].

- 6 List preliminary objectives:** The User Committee could develop preliminary objectives by taking scope to the next level of detail.

For example:

- Secure – the eFiling system must be access-controlled and transmit and receive a user's information securely using SSL
- Eliminates common errors – uses drop down pick lists reducing a user's typos, ability to enter free text

- 7 Identify any assumptions/constraints:** Assumptions and constraints are circumstances and events that can affect the success of the eFiling initiative. They are generally beyond the control of the initiative Team. List those with high likelihood of occurring. For example, a constraint may be that there will not be ample or additional funding for hiring new or additional staff to support the effort. A technology assumption for an eFiling initiative, for example, may be that the agency will continue to use Internet Explorer for at least three more years. Another may address timing associated with filing deadlines (e.g., 15 Feb (OGE 450); 15 May (OGE 278)).

Listing the assumptions will provide assistance in making decisions and, in some cases, explaining some decisions.

- 8 Develop a timeline and preliminary budget estimate:** What is the desired timing for your initiative, including major milestones for kick off, planning, pilot, the implementation start date, and the implementation complete date. Your plan will include detailed milestone and timing information, so just include a high-level summary now. Document any constraints early since timing affects many of the other variables such as budget and training.

For example:

- By September 1 obtain DAEO approval of the eFiling initiative Scope
- By October 1 convene the eFiling Initiative Steering Committee
- ...
- By December 1 identify and train selected FDR Filers to participate in a pilot eFiling of OGE 450s
- By January 15 begin a pilot eFiling with selected Filers
- By March 1 identify and train selected FDR Filers to participate in a pilot eFiling OGE 278s
- By April 15 begin a pilot eFiling with selected Filers
- By . . .

- 9 Discuss Project Planning Methodology:** Briefly discuss the major planning tasks such as conducting a needs assessment, developing a requirements definition, doing a risk assessment, completing budget estimates, and developing the full plan. This gives all stakeholders an outline and order for planning tasks.

- 10 Get the Scope Approved:** With the Steering Committee endorsement, get the Executive Sponsor to approve the finished scope. That weds all to the effort.

## Current versus Future



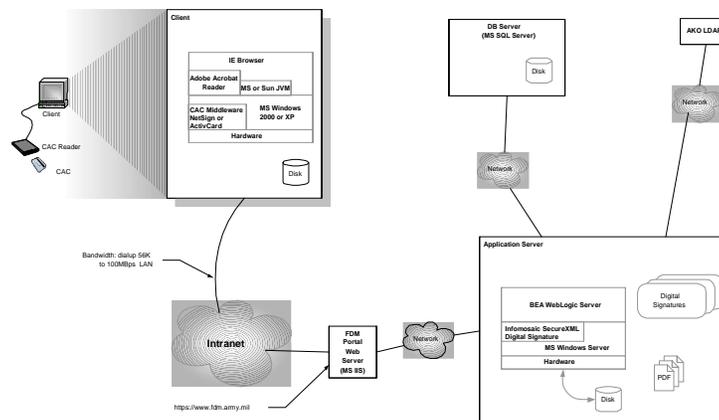
Describe the current as well as the future planned environments.

### Key tasks:

- 1 **List your user technology:** current, and if known, planned migration to other software, network details. Your IT staff should assist with this information. It is important to ensure that your eFiling initiative can operate with your existing IT.
  - What kind of computers will they use to access the eFiling system?
  - What kind of operating system does it use? E.g., Windows 2000
  - What kind of internet browser(s) are used? E.g., Internet Explorer 8.0
- 2 **Do an eFiling Needs/Wants Analysis:**
  - Evaluate Agency's current FDR process identifying weaknesses that eFiling could fix or eliminate
  - Identify needs – features that will help users perform their FDR tasks better, easier, faster – more efficiently, more accurately
  - Identify Agency technology, e.g., hardware, software, that could impact eFiling
  - Develop general eFiling “requirements”
  - Put it together in a conceptual design

For example:

## Conceptual Architecture



Word version:

The Filer accesses the web-based eFiling software, Adds and eSigns the report. Filers with an earlier report in the system use its information to “prepopulate” the new report.

The eFiling software emails the Filer’s reviewers (Supervisor and/or Senior Legal Counselor/Ethics Counselor) that the report is ready for their online review.

Reviewers complete and inform report Certifying Authority (DAEO) who reviews and completes the report.

## Migration Plan



Once an organization has envisioned the eFiling system, the next step is planning to get there. The migration plan is your roadmap to changing from your current paper-based environment to your desired eFiling one. It includes both what you will do and how you will do it. View this plan as "in progress" so that everyone who uses it is confident that it is accurate and current.

### Key tasks:

- 1 **Do the Agency eFiling Migration Plan:** the detailed roadmap guiding planning, acquisition, implementation, and management. It is a disciplined effort to produce decisions and actions. It should catalog the decisions about what to do, and when, why, and how. It is an inclusive process that should keep all initiative stakeholders “on the same page.” It has the specifics of getting eFiling in place in the agency.
  - Evaluate Agency’s current FDR process especially identifying weaknesses that eFiling would fix or eliminate

### Planning Principles:

- Planning is a creative and dynamic process. Given the pace at which technology and business are changing, ideas and decisions made at a particular time may be altered significantly as new thoughts and information become available. Your plan will evolve and change as the scope and objectives become clearer and more mature.
- Planning is not linear. Some activities relate to and depend on other decisions. For instance, developing detailed objectives depends on finalizing the scope statement, while detailing deliverables can only occur after both scope and objectives are completed. However, scope, objectives, and deliverables may be revisited and modified pending the results of a thorough risk assessment and/or the resource requirements analysis.
- Effective plans are used, reviewed, maintained, and updated regularly.
- Successful planning requires management and control so that it does not go on indefinitely. Don’t fall victim to



“planning paralysis.” Instead, the project manager should set realistic timeframes and develop a schedule to control the planning process.

- 2 **Identify initiative team or workgroup:** If not done previously, identify who will assist and what their roles and responsibilities are. Assemble and involve them in these products.
- 3 **Scope review:** Carefully review your prior scope. Consider:
  - a. A scope statement that provides scope definition with supporting detail;
  - b. Objectives (measures for success) [Objectives are yardsticks to measure success. They are a critical part because they help the team, stakeholders, and users assess whether or not the finished eFiling product does what it was supposed to do, how well it works, and, ultimately, if it is a success. Thus, objectives must include measures of quality, time, cost, performance, reliability and/or functionality.]; and a
  - c. Scope Management Plan to control scope changes and avoid “scope creep.”Note: once a project starts:
  - Those involved learn more and realize that what they originally asked for may not be exactly what is needed, so a change in scope or requirements is necessary;
  - The business needs may change so that what was originally “in scope” is no longer needed (e.g., OGE changes FDR regulations or definitions – don’t report diversified mutual funds on OGE 450); or
  - Newer technology is available (e.g., another agency has a better solution).
- 4 **Schedule & Milestones:** Add detail to the earlier preliminary schedule with more milestones and the projected date of full agency-wide use of the eFiling system. If already out of FDR filing season (e.g., after 15 Feb for OGE 450 or after 15 May for OGE 278) consider focusing on New Entrant filers at first.
- 5 **Budget:** Estimate the expected direct and indirect costs for planning (e.g., any outside agency consultants), for obtaining the eFiling solution, for implementing it, and for sustaining and operating it.
- 6 **Risk Management Plan:** Identify potential risks to the initiative. Discuss how you anticipate preventing or minimizing them.
- 7 **Support Plan:** What is the model for support, including supporting the different eFiling system users (e.g., Filer, Reviewer, Ethics Staff)? Include steady-state support policies and levels, escalation paths, any third-party involvement, and how to reduce the need for application help desk support.

How your agency acquires the eFiling solution will affect what you do here. For example, if you build or operate the eFiling solution yourself you will need Help Desk and functional experts who understand it better than most users. These super users should be prepared to help other users and prepare training and training materials, including user self-help materials and any user guide(s). If, however, you do a “fee for services” acquisition by having another agency “turn key” it then that agency provides your technology support (if the terms of your agreement include it). You may need to anticipate eFiling questions for your

ethics staff along the lines of substantive reporting using the eFiling program. For example: a Filer might ask about reporting underlying assets in a managed investment account.

If your agency's Help Desk will have any eFiling application responsibilities address staffing issues, training of those personnel, supplementing the Help Desk with additional personnel, features to plan for, implementation escalation paths, and end-user self-help such as intranet content, Quick References.

- 8 **Communications Plan:** Decide how to inform agency users about the eFiling solution. Determine who and when that information will be distributed. Draft the information.
- 9 **Training Strategy & Plan:** Identify who will be trained, how and when that training will occur, and what training materials are needed. Document these. Include information on both end-user and support personnel training. Be sure to evaluate all training methods for the migration, including instructor-led training, brown-bag sessions, and “on-demand” computer-based training (CBT).
- 10 **Test Plan:** Include information on how you plan to test your new eFiling system. For example, you may plan to have several staff access the system as “pretend” Filers, others as report reviewers, and still others as certifying authorities. Someone will need to “register” each of the users in the appropriate roles and provide introductory guidance to them on their respective test roles and responsibilities. If that succeeds then consider a limited test with real filers, reviewers, and certifying authorities. Once that succeeds, consider a pilot of a significant portion of the agency users, perhaps New Entrant filers, before full agency-wide deployment.

Identify:

- Test scenarios
- How to measure success of the test
- Who decides on success

## Proof of Concept



The goal of the Proof of Concept (PoC) phase is to carefully evaluate the eFiling solution to see how it performs the desired tasks. This can also be a showcase for final agency approval. This phase enables further feedback and refinement on the eFiling solution and is another opportunity for “fixing” it. Many agencies will use their ethics staff for the PoC. If you do that, temper the findings based on how representative these users are of your general Filer population.

## Pilot



The goal of the Pilot is to validate the eFiling solution. Basically, prove that a select pilot group representative of the real agency users, successfully uses it. You also want their user experience feedback.

This validates the eFiling solution. In addition, it provides an evaluation of the readiness of the eFiling team and support staff to properly deploy and support the eFiling solution. The lessons learned here will help further refine the agency-wide implementation.

### Key tasks:

- 1 **Identify pilot activities:**
  - What is required? For example, register users, have users prepare a report, have reviewers review a report, then have a Filer amend a previously submitted report.
  - Select and notify pilot participants; train as necessary
  - Identify user support and feedback mechanisms
  - Create the pilot schedule
  - Inform pilot participants
- 2 **Review the pilot:** Cover
  - Issues
  - Successes
  - Failures
  - Lessons Learned

## Risk Assessment



A risk assessment documents risks and how they can be mitigated. It is based on the results of the Proof of Concept, the Pilot, and other planning factors such as the budget. Its primary purpose is to increase the probability of a successful implementation by decreasing the degree of project risk. The items listed below will help focus your project on areas that may pose risk.

**Key Task:** prepare a risk assessment checklist covering these areas:

- Envisioning
  - Are there conflicting or competing projects?
  - What are the “real” deadlines?
  - Do members of various sponsoring organizations have differing visions of initiative methods and outcomes?
  - Are any other business or political considerations involved that might impact deployment?

- Budget
  - Has the budget been approved at the appropriate agency level?
  - What factors could cause cost overruns? How will overruns be handled?
- Human Resources
  - Are there an appropriate number of people on the team? If not, identify:
    - Identify how this could impact deployment.
    - Plan to add people for those areas that are lacking support, including timing.
    - Are people with the appropriate technical and subject matter skills available? If not, identify:
      - Which areas need additional technical skills.
      - How to provide the necessary technical training or hire those with the desired technical skill.
      - Are the people involved in the project dedicated or part-time?
- Technology
  - Are new technologies being deployed other than the eFiling solution?
  - What risks do those pose to the successful deployment of the eFiling solution?
  - How do you plan to mitigate or remedy those risks?

## Implementation



implement your eFiling. Plan how you will get your intended users using the eFiling solution. Detail these tasks:

- Communicate with users – What do they need to know and when? Who tells them to use the new eFiling solution? Draft what that person says.
- Conduct user training – Which roles will be trained? How much is enough? Is it so simple even a cave man can do it (without formal training)? Will a short, 2 or 3-page screen shot Quick Reference be enough? Consider techniques other eFiling agencies have used.
- Migrate any paper reports – how will you manage the prior paper reports?
- Ensure ethics support staff are prepared and ready to assist Filers and reviewers
- Obtain user feedback – will you survey the agency users or let them send comments? Explain how to provide feedback in the eFiling announcement about preparing the FDR.

## Post Implementation Review



Now, review how everything went. Include future needs discovered during the implementation and use. User feedback is particularly useful. Several users will readily tell you any shortcomings. Include a critical review of the overall process, team, and results. Collect and evaluate user feedback. Review all major areas of the implementation, especially:

- Communication
- Migration
- Support
- Training
- Future Directions

Cover:

- Issues
- Successes
- Failures
- Lessons Learned

## Prepare the Executive Summary

Summarize these sections in the executive summary:

- Scope
- Current versus Planned Environment
- Migration Plan
- Proof of Concept
- Pilot
- Risk Assessment
- Implementation
- Post Implementation Review

***The Executive Summary persuades and interests agency/ethics leadership that the initiative has merits and is achievable.***



## Conclusion

Three Basic Rules for eFiling Success:

1. Moving an agency to eFiling is challenging. Successful eFiling requires strong agency leadership, good planning, some heavy lifting (“sweat equity”), and skillful management.
2. Planning and deploying eFiling in an agency takes a coordinated team and continuous nurturing. Think of it as a lifecycle, a process with several stages, including planning, procurement, implementation and management.





Successful implementation of a system really signals the beginning of a new phase of evaluating the recently adopted system and planning for maintenance, upgrade, enhancement, and replacement. With rapid advances in hardware and software, new system functionality is available almost immediately after a system is implemented.

3. Your opportunity to implement a eFiling initiative improves when it is appropriately linked to the agency's strategic mission, goals, and objectives.



## **Appendix A**

### **Agencies eFiling FDRs (July 2011)**

OGE invited several agencies to provide information on their eFiling programs. Four chose to do so:

- Army
- DoJ/Executive Office for United States Attorneys
- National Technical Information Service (NTIS), US Department of Commerce
- National Aeronautics and Space Administration (NASA)
- National Science Foundation

Their information follows.

## Agencies eFiling FDRs (July 2011)

**Agency Name:** Army

**Contact:** George Hancock, Associate Deputy General Counsel (Ethics & Fiscal), FDM Program Director, 703.696.5512; email: [geo-hancock@us.army.mil](mailto:geo-hancock@us.army.mil); Gilbert Carlson, Deputy FDM Program Director, 703.696.5506; email: [gilbert.carlson@us.army.mil](mailto:gilbert.carlson@us.army.mil). Software: Dave Garrett, Chief, Architecture Services Division, US Army Software Engineering Center, 443-861-9048 [David.k.garrett.civ@mail.mil](mailto:David.k.garrett.civ@mail.mil)

**Description:** Financial Disclosure Management (FDM) is a secure, web-based software program that helps/guides Filers to accurately prepare and electronically file an OGE 278, Public FDR, or an OGE 450, Confidential FDR. It simplifies FDR preparation and review, saving time and eliminating common errors.

**Used since:** 2004 (278s); 2005 (450s); over 9,000 SF/OGE 278s, over 230,000 OGE 450s eFiled

**Functions/features** (mark all that apply):

- Electronically linked into human resources system
- Master list of Filers (*agency-wide; DAEO-wide; local Ethics Official view*)
- Notices and reminders to Filers (*standard agency-wide; local tailoring*)
- Notices and reminders to Reviewers (*Filer eSign triggers*)
- Tracks receipt of report (*Filer eSign puts report Under Review*)
- Tracks date of initial review (*Reviewer eSign or end review screening*)
- Tracks extensions (*Ethics official may record extension*)
- Tracks certification date
- Prepopulates in subsequent years following initial filing
- System displays comparison view of filers last two reports
- Archives reviewer notes and comments
- Notifies Filer of report certification
- System displays oversight/management views of report processing
- Other (describe): Users may add Notes, Comments, Attachments; Review aids – flagging system of incomplete information; 450 Certifier Success Score (compares report processing to OGE 60-day review rule); data extraction for annual agency ethics report; data extraction on Filers/Reports for OGE Program Reviews (e.g., master filer list, report status, processing, ethics training of Filers)

*Filer Features:*

- ★ Filers can prepare the report themselves or delegate entry to an assistant.
- ★ Wizard guides the filer through the financial disclosure reporting process.
- ★ Filers can attach electronic documents to their report (e.g., job descriptions).
- ★ Filer “eSigns” the report securely online.
- ★ e-mail notifications to reviewers when the report is complete or amended.

*Reviewer Features:*

- ★ Online work list to track status of disclosures “in-process”.
- ★ Automatic “flagging” of report issues using OGE business rules.
- ★ Comments can be added electronically.
- ★ Report “Compare” view when Filer has 2 or more reports online
- ★ Reviewer “eSigns” report securely online.
- ★ Automatic e-mail notifications “*move a report*” along.
- ★ Audit trail tracks significant events.

*Agency Benefits:*

- ★ Secure
- ★ More accurate reporting the first time
- ★ Real time visibility of report processing agency-wide
- ★ Data extraction tools to support the annual agency ethics report and OGE Program Reviews

**Secure:** Access to a Filer's reports is limited to specifically authorized personnel. Security features include user authentication, SSL 128-bit encryption, and network and physical security protection.

FDM’s Resources page, <https://www.fdm.army.mil/helpSupport/resources.htm>, is a financial disclosure knowledge inventory of SOPs, checklists, and references.

**Informational website:** <https://www.fdm.army.mil>

Get FDM information: <https://www.fdm.army.mil/whatIsFDM/getFDM.htm>

FDM Brochure: [https://www.fdm.army.mil/documents/FDM\\_Brochure.pdf](https://www.fdm.army.mil/documents/FDM_Brochure.pdf)

***FDM is secure, professional OGE 278 & OGE 450 reporting***



## Agencies eFiling FDRs (July 2011)

**Agency Name:** DOJ/Executive Office for United States Attorneys

**Contact:** Lucy Hurley, Management Analyst (202) 252-1557

**Description:** (including number of e-filed reports and types of forms accommodated)  
3,645 reports filed to date, OGE 278 reports only.

**Used since:** January 2009

**Functions/features** (mark all that apply):

- Electronically linked into human resources system
  - Master list of Filers
  - Notices and reminders to Filers built in, not using entirely yet
  - Notices and reminders to Reviewers
  - Tracks receipt of report
  - Tracks date of initial review
  - Tracks extensions
  - Tracks certification date
  - Prepopulates in subsequent years following initial filing
  - System displays comparison view of filers last two reports
  - Archives reviewer notes and comments can enter on report/does not carry over
  - Notifies Filer of report certification
  - System displays oversight/management views of report processing
  - Other (describe) \_\_\_\_\_
- 

**Informational website:**

## Agencies eFiling FDRs (July 2011)

### Agency Name:

US Department of Commerce, National Technical Information Service (NTIS)

### Contact:

Patricia S. Gresham  
Sr. Program Manager  
Office of Federal Services  
National Technical Information Service  
Department of Commerce

Office: 703-605-6123

Cell: 571-259-8306

Fax: 703-605-6373

Email: [pgresham@ntis.gov](mailto:pgresham@ntis.gov)

### Description: (including number of e-filed reports and types of forms accommodated).

**FDonline** is a government-wide, SaaS-based Financial Disclosure automation system securely hosted and provided to other federal entities through NTIS' e-Gov initiatives. Over 60,000 reports have been e-filed in the system. Agencies using NTIS' FDonline and its Common Service Platform to support their Financial Disclosure, Entry on Duty, and Telework programs include USDA, DOI, FAA, TSA, DOJ, PBGC, SIGIR, NLRB, OPIC, and IMLS.

Used since: 2005

### Functions/features (mark all that apply):

- ✓ Electronically linked into human resources system (can be integrated but customers have not requested that at this time)
- ✓ Master list of Filers
- ✓ Notices and reminders to Filers
- ✓ Notices and reminders to Reviewers
- ✓ Tracks receipt of report
- ✓ Tracks date of initial review
- ✓ Tracks extensions
- ✓ Tracks certification date
- ✓ Prepopulates in subsequent years following initial filing
- ✓ System displays comparison view of filers last two reports
- ✓ Archives reviewer notes and comments
- ✓ Notifies Filer of report certification (adding this)
- ✓ System displays oversight/management views of report processing

Other (describe):

*Agency Benefits:*

- ✓ Less time on paperwork means more time to improve ethics and avoid potential conflicts

*Filer Benefits*

- ✓ Intuitive TurboTax<sup>®</sup> like intelligent interview wizard guides filer through process
- ✓ Wizard skips unnecessary pages based on filer answers to questions to save time
- ✓ Context sensitive help hyperlinks make instructions easy to reach – “1 click away”
- ✓ Saves information from year to year so filer only has to update and maintain information
- ✓ Ability to enter investment vehicles and underlying assets to reduce data entry year to year
- ✓ All work is done online at the desktop with full ability to enter, edit, correct and delete text
- ✓ Drop down lists of stocks and mutual funds provide easy click and fill data entry
- ✓ Automated notifications and reminders ensure paperwork is completed in a timely fashion

*Reviewer Benefits*

- ✓ Save time by eliminating incomplete forms - forces filers to complete required fields
- ✓ Review filings electronically from anywhere the internet can be accessed 24/7/365
- ✓ Provides online information about stocks and mutual funds to aid conflicts review
- ✓ Multiple email templates for quick generation of written communications to filers
- ✓ Provides online list of prohibited holdings to flag potential conflicts
- ✓ Provides ability to compare to filer’s forms from prior year to aid conflicts review
- ✓ Reviewer page organizes data for reviewer and provides .pdf view of 278/450/450A form
- ✓ Reviewers can add comments to note actions and keep other reviewers informed
- ✓ E-Stack allows reviewer to “flip” through multiple filings
- ✓ Ethics Officials can electronically review and approve completed forms
- ✓ Managers can more easily balance workload among multiple reviewers

*Program Administrator/DAEO Benefits*

- ✓ Current status of all filings can easily be seen and acted on
- ✓ Full system notification capabilities to draft and send scheduled notices and reminders
- ✓ Easy entry of new filers with automatic notices of filing obligations and deadlines
- ✓ All records are easily accessible online to OGE and other reporting requirements
- ✓ Full security (access and modification, audit traceability, disaster recovery, COOP, C&A)
- ✓ Robust online help for all users to reduce questions from program participants

Informational web site link: [www.ntis.gov](http://www.ntis.gov)

## Agencies eFiling FDRs (July 2011)

**Agency Name:** National Aeronautics and Space Administration (NASA)

**Contact:**

- For information about the eFiling system or to schedule a demo, contact Daniel Mangieri, Program Specialist at the NASA Shared Services Center, at (228) 813-6008 or [daniel.w.mangieri@nasa.gov](mailto:daniel.w.mangieri@nasa.gov).
- For information from an attorney's perspective, contact the Adam Greenstone, NASA's Alternate Designated Agency Ethics Official at (202) 358-1775 or [adam.f.greenstone@nasa.gov](mailto:adam.f.greenstone@nasa.gov).

**Description:** The Ethics Program Tracking System (EPTS) is a secure, web-based management system for NASA's financial disclosure process and for tracking completion of annual ethics training. The EPTS system provides secure electronic notification, tracking, filing, signature, review, and storage of the Office of Government Ethics (OGE) Confidential Financial Disclosure Report (OGE-450 and 450-A) and the Public Financial Disclosure Report (SF 278).

**Used since:** January 2007

**Functions/features:**

- X Electronically linked into human resources system
- X Master list of Filers
- X Notices and reminders to Filers (The EPTS system keeps an archive of the date/time notices were sent to the filers.)
  
- X Tracks receipt of report
- X Tracks date of initial review
- X Tracks extensions
- X Tracks certification date.
- X Prepopulates in subsequent years following initial filing
- X Allows reviewer to make corrections on form
- System displays comparison view of filers last two reports
- X Archives reviewer notes and comments
- X Notifies Filer of report certification
- X System displays oversight/management views of report processing
- X Other (describe): EPTS also supports other capabilities and features such as:
  - Employees can file their forms at work or at home, on PCs or Macs, because the system is web-based and secure.
  - Filers and reviewers can electronically sign the forms.
  - Reviewers can annotate corrections on forms and make comments.
  - Forms can be set up for supervisory review and for initial review by a paralegal and can be easily reassigned from one reviewer to another if the need arises.

- A cautionary letter builder allows reviewers to check boxes indicating the holdings that are actual or potential conflicts. The letter builder then compiles these holdings into a customized letter template which can be edited by the reviewer and sent to the filer.
- Copies of all forms, letters, and training information are stored for easy retrieval at any time.
- Annual ethics training is tracked in the system for each filer. NASA uses live and computer-based training and the EPTS system is set up to import course completion data from the training system.
- A variety of reports can be run, including: form status (who filed or did not file), status of review, numbers of forms filed, completion of annual ethics training, ethics pledge, late fee, and statistical information for the OGE annual report.
- Folders are available in each filer's profile for the upload of attachments and other scanned ethics documents, including: waivers, recusals, ethics opinions, ethics pledges, evaluation board reviews, outside employment approvals, and post-employment opinions.
- Forms are archived for 6 years and then destroyed in accordance with regulation.

**Informational Web Site Link:** <http://epts.nssc.nasa.gov>.

## Agencies eFiling FDRs (July 2011)

Agency Name: National Science Foundation

Contact: Robin Clay

Description: Ethics program management tool using Sharepoint. Used for financial disclosure filing (900 Form 450 Filers and 200 Form 278 Filers), tracking ethics training, and maintaining ethics advice folders.

Used since: 2009

Functions/features (mark all that apply):

- Electronically linked into human resources system
- Master list of Filers
- Notices and reminders to Filers
- Notices and reminders to Reviewers
- Tracks receipt of report
- Tracks date of initial review
- Tracks extensions
- Tracks certification date
- Prepopulates in subsequent years following initial filing
- System displays comparison view of filers last two reports
- Archives reviewer notes and comments
- Notifies Filer of report certification
- System displays oversight/management views of report processing
- Other (describe) \_Master list also tracks ethics training requirement. Separate library for advice folders for each filer so that reviewer can access all advice, waivers, etc. online while reviewing report, and ethics officials can see all prior advice provided to employee. Separate library for snapshot view of potential employee conflicts/resolution that is filled in by ethics official when providing pre-employment interviews.

Informational web site link:

Internal to NSF.

## **Appendix B**

### **Sample eFiling System Requirements**

Developing the list of needs and wants is one of the fun parts of any eFiling initiative. Do so without constraint initially. You can always cut the list to the “must haves” later.

This is a partial sample list of possible system requirements for an eFiling FDR system. Decide whether your eFiling initiative will include both the OGE 278 and OGE 450 or only one FDR type. This list does not include OGE access to the system to review FDRs or see agency eFiling progress.

#### **Must Have**

#### **System**

The system shall support the online and manual completion of the OGE-278, the Public Financial Disclosure Report, and the OGE 450, Confidential Financial Disclosure Report, and the reporting/review process. The system must be accessible via the web using Internet Explorer and SSL should be the primary encryption transmission method for the Web application.

The system must accommodate and comply with record retention requirements and the Government Paperwork Elimination Act (GPEA) and its associated implementation guidance; the requirements specified in Section 508 of the Rehabilitation Act of 1973, as expanded under the Workforce Investment Act of 1998; the Privacy Act; the Freedom of Information Act (FOIA); and applicable federal regulations.

#### **Pre-registration**

The system must have an authorization service that is capable of supporting a scripted or batch pre-registration of authorized users.

#### **Registration**

The System shall allow new Filers and Reviewers to self-register. Pre-registration data will be available to the system for user name validation.

#### **Login/Logout**

The system will have a login prompt for the user to access the system.

The system shall validate user names and passwords against a user data source.

The system must use “smart card” technology or enable authorized Filers and Reviewers to establish new PINs or passwords and change existing PINs or passwords through confidential web page.

The system will use standard encryption techniques (i.e., SSL) for all operations.

Expired or disabled credentials will not permit system entry and will direct the user to contact an administrator.

#### **OGE-278 Form**

The system shall enable authorized Filers to start a new OGE-278 report for online completion, edit an online OGE-278 Form in process, and to view a Filer’s previous report(s).

The system shall allow a user to create a new report using information from a Filer’s prior report (e.g., “pre-populate”).

The system shall guide a Filer through a smart form wizard to complete all required data fields on the OGE-278 report, including Filer and position information, Schedule A, Schedule B Parts I & II, Schedule C Parts I & II, and Schedule D Parts I & II.

The application shall provide Filers with a Form navigation capability to facilitate access to all Form sections, sub-sections, and comment areas.

The system must record all data input by the Filer.

The system must provide pull-down lists for each field where this is possible to expedite Filer input and increase data consistency.

The system shall auto-fill fields that required identical data that has been previously input into the report.

The system shall pre-fill fields where possible.

The system shall provide automatic field syntax enforcement and corrections throughout the application.

The system shall allow the Filer to return to a previous screen to add or change data during a single session.

The system must allow the Filer to save partially completed reports (before submission); it must allow the Filer to complete the report in one or more "sessions."

The system should link any Reviewer comments to the item or section to which they apply upon selection of a "view comments" mode by the Filer.

The system shall allow the filer to upload files as attachments to the OGE-278 report in various formats such as word processing files, spreadsheets, and image files.

The system shall provide online help to assist the Filer in completing all sections of the OGE-278 report.

The system shall provide access to a User's Guide that provides text instructions or directions for all areas of the OGE-278 Form.

The system shall provide Filers with the ability to print the complete User's Guide.

The system shall provide access to a user glossary.

The system shall provide access to Common Questions & Answers (and/or helpful hints) associated with each section of the OGE-278 report.

The system shall provide access to an OGE provided OGE-278 Reviewer's Guide.

The system shall provide authorized Reviewers to view the OGE-278 report contents, insert comments and view comments.

The system must allow Reviewers to retrieve and view all reports created by Filers for whom they have a review relationship/access authority.

The system must allow Reviewers to input and save comments associated with each section on a Filer's report.

The system should allow multiple Reviewers to simultaneously view the same report.

The system shall allow the Reviewer comments to be selectively deleted following approval of the OGE-278.

The system shall allow the Filer to apply for a Late Fee Waiver.

The system shall allow authorized Reviewers to approve or disapprove a Late Fee Waiver request.

The system shall be capable of tracking the status of an individual OGE-278 report and associated components based upon its location in the process.

The system shall allow the automatic update of the tracking fields for those reports that are being filed electronically.

The system shall allow for the manual input of data into the tracking fields for those forms that are being filed manually.

The system shall identify the current status of an OGE-278 report.

The system's audit trail shall capture tracking data such as date and time stamps of report progress beginning after the Filer eSigns the report (e.g., Filer eSign, amendment, comments, Reviewer eSign).

The system shall track changes made to any Filer eSigned/submitted version of an individual OGE-278.

### **Products and Reports**

The system shall be capable of printing an individual OGE-278 report and associated schedules as they exist at any point in the application workflow.

The system should provide facilities that enable authorized users to query a database of all OGE-278 reports and associated information for all Filers over time and create reports based on the queries. (i.e., access the data and using SQL, generate a custom report)

The system shall generate reports that can be viewed on screen and printed without special configuration by the print hardware and software of leading printer manufacturers.

The system shall output reports in a read-only file for electronic distribution.

The system shall provide an administrative interface to facilitate the creation of reports associated with an individual OGE-278 report.

The system shall generate a signed on-line tracking report for an individual OGE-278 report that show what stage of the application workflow the report is in, time tags associated with its movement across the workflow, and identification of individuals involved in the steps of the workflow.

The system shall provide an administrative interface to facilitate the creation of reports to assist authorized users in the review of OGE-278 reports

The system shall permit authorized reviewers to compare the OGE-278 Form of an annual filer to a previously approved OGE-278 report. The application shall highlight those fields that have been modified when compared to the previously approved OGE-278 report.

The system should provide tools that enable authorized users to query a database of all report data for all Filers using a text search.

The system should create an easily accessed list of current Filers and their status by using agency.

The system shall provide an administrative interface to facilitate the creation of tracking reports of all OGE-278 reports in the system.

The system shall be able to generate status reports of the OGE-278 reports being tracked in the application.

The system shall generate a report of the current completion status (e.g., Draft, Under Review, Amendment, Complete) of each report, including time, who, where, next steps, and completed steps.

The system shall provide an ad-hoc query tool/capability to facilitate the generation of additional reports.

The system shall generate required statistical reports used to prepare the annual OGE report.

### **Report Submission & Approval**

The system shall allow the Filer to submit the report electronically.

The system shall allow the filer to electronically draft an OGE-278 that may be reviewed by members of the Filer's report review chain.

The system shall allow the filer to electronically submit and amend a FDR.

The system shall allow the DAEO to electronically submit the FDR and any Draft Ethics Agreement for OGE Pre-Clearance Review.

The system shall allow an authorized OGE Reviewer to electronically approve the FDR and Draft Ethics Agreement following a successful Pre-Clearance Review.

The system shall allow the filer to electronically submit the Final FDR and Final Ethics Agreement to the agency DAEO.

The system shall allow the DAEO to electronically submit the Final OGE-278 Form, Final Ethics Agreement, and any DAEO Opinion Letter to OGE.

The system shall require that all users be required to confirm that the OGE-278 FDR is being submitted or approved.

### **Workflow Administration**

The system shall provide a facility for authorized administrators to create, modify, and delete User Groups that contain predefined sets of permissions for different user types

The system shall support the definition of up to 10 User Groups having different permissions for different phases of the application workflow. User Groups may include: Filer, Filer's Assistant, DAEO, DAEO staff, OGE Reviewer, OGE Director, OGE staff, Other (TBD).

The system should enable an OGE manager with staff assignment authority to assign an individual Filer's FDR to a specific Reviewer or multiple Reviewers.

The system shall allow the appropriate DAEO staff to be provided access to the FDR during its initial completion by the Filer prior to the Filer eFiling the FDR.

The system will permit only one editable copy of a Form or Form Package at one time.

The system shall allow only authorized users be capable of viewing Comments to an individual OGE-278 FDR.

The system shall require that only the Filer or the Filer's designated Assistant may create or modify a draft OGE-278 FDR.

The system shall allow the Filer to delegate permissions or authority for the creation and/or completion of the Filer's OGE-278 FDR to an Assistant(s).

The system shall permit only the Filer to eSign/submit the OGE-278 FDR.

The system shall provide an interface for workflow participants to be identified and validated in the system. The system shall provide a facility for authorized administrators to assign all application users to appropriate user roles.

The system will provide automatic electronic validation of FDRs at major stages of preparation.

The system will allow for the creation and modification of business rules associated with the workflow participants.

The system shall have the capability to automatically distribute e-mail notification based upon the completion of specified tasks in the workflow.

The system shall automatically generate an email notification to the Filer.  
The system shall automatically generate an email notification when the Filer eSigns/submits the the OGE-278 FDR.  
The system shall automatically generate an email notification to the Reviewer when the Filer eSigns/submits an OGE-278 FDR.

The system shall allow authorized users to generate an ad hoc e-mail.

### **Form Administration**

The system shall allow authorized users to access an "Application Administration View" to perform administrative functions.

The system shall provide an interface for the administrator to create and maintain referential data used in the FDR (i.e. drop-down lists).

The system shall allow administrators upon direction of the DAEO (or designee) to delete erroneous records (even if submitted).

The system will allow the administrator to maintain saved records by initiating, either manually or automatically, the archiving or de-archiving of FDRs based on established criteria. In this regard, see the National Archives and Records Administration (NARA), toolkit for managing electronic records, <http://toolkit.archives.gov/pls/htmldb/f?p=102:1:11077972001844564795::NO>. The NARA eRecords Management Resource Guide includes links to records management principles that apply to electronic signature technology generally, <http://www.archives.gov/records-mgmt/policy/electronic-signature-technology.html>, and records management guidance to Federal agencies for PKI digital signature authenticated and secured electronic transaction records. <http://www.archives.gov/records-mgmt/policy/pki.html>. The latter includes:

Requirements Definition and Implementation Planning

Information Systems (IS)11 <http://www.archives.gov/records-mgmt/policy/pki.html#footnote11#footnote11>, including those that agencies use to implement PKI-based electronic transaction applications, will produce new records or augment existing records. A critical first step in several of the system development stages is the identification, definition, development, and refinement of the data model that includes treatment of the PKI-based digital signature transaction records that will be created and should be managed. ...

### **Technical Architecture**

Network facilities within the security architecture should enable session timeouts based on configurable inactivity thresholds.

The system must support 50,000 users and be capable of scaling to support 300,000 users.

The architecture must not require the installation of software on end-user computers beyond standard browsers.

Web servers in the e-Form computing environment providing confidential information or financial transactions must securely identify and authenticate themselves to users. The system should not permit web server's to be positioned in front of the firewall.

The application and security architecture must support the defined user roles and levels of permissions/access to FDR data.

The system should provide a standards-based Relational Database Management System (RDBMS).

The system shall support the following environments.

- Microsoft SQL Server 2003
- Internet Explorer
- E-mail platforms – Exchange/Outlook

### **Administration**

The system must provide an administrative interface to facilitate the creation and deletion of user accounts, and modify associated account permissions. The system should provide for this capability to be delegated to any level of an agency.

The system should offer a facility, for use by select authorized administrators, which would enable the locking of a selected user account.

The system should provide a capability that enables data to be securely retained for a period of time definable by the system administrator in accordance with OGE retention policies (e.g., 6 years for all submitted reports).

The system should provide a capability that enables data to be archived after a set period of time and to retrieve data from archives in original and FDR Format.

The system shall provide an Audit Event Recording Tool to record FDR events.

The system must establish and maintain secure audit logs of system administrator and security administrator activities within the computing environment.

The audit trail shall be protected from unauthorized modification. Log entries should be digitally signed by the server to guarantee authenticity.

## **OTHER Ethics Agreement**

The system shall allow authorized users to view and input data into an Ethics Agreement summary form for each filer. An ethics agreement may consist of five components: Blind Trusts, Recusals, Waivers, Divestitures, and Resignations.

The system shall allow authorized users to view and input data on Blind Trusts including if a Blind Trust is a part of the Ethics Agreement, if the agreement is satisfied, and the date that compliance was attained.

The system shall allow authorized users to view and input data on Recusals, including if a Recusal is a part of the Ethics Agreement, if the agreement is satisfied, and the date that compliance was attained.

The system shall allow authorized users to view and input data on Waivers, including if a Waiver is a part of the Ethics Agreement, if the agreement is satisfied, and the date that compliance was attained.

The system shall allow authorized users to view and input data on Divestitures, including if a Divestiture is a part of the Ethics Agreement, if the reporting official has applied for a Certificate of Divestiture, if the agreement is satisfied, and the date that compliance was attained.

The system shall allow authorized users to view and input data on Resignations, including if Resignations are part of the Ethics Agreement, if the agreement is satisfied, and the date that compliance was attained.

### **Blind Trusts**

The system shall allow authorized users to view and input data concerning multiple Blind Trusts for an individual Filer.

The system shall allow authorized users to view and input tracking data on each individual Blind Trust, including settler, trustee, contact information, date of certification, last report, attorney and accountant information, and additional details.

### **Certificate of Divestiture**

The system shall provide the capability for authorized users to input data concerning multiple Certificates of Divestiture for an individual user account.

The system shall capture detailed tracking information on each individual Certificate of Divestiture, including CERT #, date logged, request initiator, date materials were received, date certification was issued, the assigned reviewer, and additional comments.

### **Agency Letters**

The system shall allow authorized users to create and modify a standard Ethics Agreement Letter.

The system shall allow authorized users to create and modify a standard DAEO Opinion Letter.

The system shall allow authorized users to create and modify a standard OGE Opinion Letter.

The system shall allow authorized users to create and modify a standard OGE Director's Letter.

The system shall allow authorized users to create and modify a standard Earned Income and Honoraria Update Letter.

## Appendix C

### Sample Time Savings Valuation Methodology

Saving users time is one key eFiling benefit justifying eFiling. To calculate savings, first determine the approximate time required in the paper-based reporting system. Then, estimate the time that will be saved over several year's use for each user role. Next, assign a dollar value to that time based on the user's salary and role.

Time saved/value realized varies based on grade/experience of different users involved in the report preparation and review process.

Base salary used	Time (hours)	Cost	FDM Time Saved Year 1 Use (hours)	Savings (Projected) Year 1 Use	FDM Time Saved Year 2 & Beyond (Projected)	Savings (Projected) Per Year Year 2 & Beyond	Accumulated Savings Years 1 – 3 per report
<b>278</b>							
Filer (GO/SES \$140,000 ÷ 2008 hrs per year = \$70/hr)	3.0	\$210			1.0	\$70	\$140
Supervisor (GO/SES \$160,000 ÷ 2008 hrs per year = \$80/hr)	1.0	80	.25	\$20	.5	40	100
Technical Reviewer (GS 7/7 \$18/hr)	2.0	36	1.0	18	1.5	27	72
Conflict of Interest Reviewer/Legal Advisor (GS 13/7 \$38/hr)	2.0	76	1.0	38	1.5	59	156
Report Certifier Staff to Track Reports (GS 7/7 \$18/hr)	0.5	9	0				
Report Certifier (DAEO/ADAEO/DDAEO) (\$70/hr)	1.0	70	0.5	35	.5	35	105
<b>Total</b>	<b>9.5</b>	<b>\$481</b>	<b>2.75</b>	<b>\$111</b>	<b>5.0</b>	<b>\$231</b>	<b>\$573</b>
<b>450</b>							
Filer (\$96,000 ÷ 2008 hrs per year = \$48/hr)	1.5	\$72			1.0	\$48	\$96
Supervisor (GO/SES \$140,000 ÷ 2008 hrs per year = \$70/hr)	0.5	35			.25	15	30
Report Certifier Staff to Track Reports (GS 7/7 \$18/hr)	0.5	9					
Report Certifier (\$70/hr)	1.0	70	.5	35	.5	35	105
<b>Total</b>	<b>3.5</b>	<b>\$186</b>	<b>.5</b>	<b>\$35</b>	<b>1.75</b>	<b>\$98</b>	<b>\$231</b>

Value of time saved:

- OGE 278 report preparation and processing at \$573 per filer;
- OGE 450 at \$231 per filer.

This estimate does not include value for improved report processing efficiency (e.g., elimination/avoidance of passing paper reports through the report review chain). It also does not include preparation/review of “Nominee” reports, which are processed outside FDM.

It does presume use “agency-wide” over three years.

The table below shows projections at 100%, 90%, and 80% Army-wide for the first 3 years FDM usage after FDM 450 is deployed. The 90% and 80% figures recognize that it is unlikely that every agency filer will use FDM initially.

<b>Filers</b>	<b>100%</b>	<b>Savings @ 100% FDM Use</b>	<b>90%</b>	<b>Savings @ 90% FDM Use</b>	<b>80%</b>	<b>Savings @ 80% FDM Use</b>
Army 278s	800	\$458,400	720	\$412,560	640	366,700
Army 450s	38,000	\$8,788,000	34,200	7,900,200	30,400	7,022,400
<b>Total</b>		<b>\$9,246,400</b>		<b>\$8,112,760</b>		<b>\$7,389,100</b>

You could prepare a similar calculation for your eventual agency-wide use of your eFiling solution.

## Appendix D Interagency Ethics Council eFiling Work Group Members

(formed July 2007)

Chair: George Hancock, [geo-hancock@us.army.mil](mailto:geo-hancock@us.army.mil)  
Michelle Sharrow, [mpsharro@oge.gov](mailto:mpsharro@oge.gov)  
Jennie Keith, [keith.jennie@epa.gov](mailto:keith.jennie@epa.gov); [vjkeith@oge.gov](mailto:vjkeith@oge.gov)  
Cynthia Morgan, [Cynthia.Morgan@dhs.gov](mailto:Cynthia.Morgan@dhs.gov)  
Erica M.Dornburg, [dornbure@dodgc.osd.mil](mailto:dornbure@dodgc.osd.mil)  
Lisa Baccus, [Lisa.Baccus@faa.gov](mailto:Lisa.Baccus@faa.gov)  
Patrick Carney, [Patrick.Carney@fcc.gov](mailto:Patrick.Carney@fcc.gov)  
Jerry Lawson, [Jerry.Lawson@sba.gov](mailto:Jerry.Lawson@sba.gov)  
Robert Fagan, [RFagan@FDIC.gov](mailto:RFagan@FDIC.gov)  
Michael Korwin, [MKorwin@FDIC.gov](mailto:MKorwin@FDIC.gov)  
Mariaelena Apuzzo, [MApuzzo@FDIC.gov](mailto:MApuzzo@FDIC.gov)  
Mary Pat Donals, [MPDonals@FDIC.gov](mailto:MPDonals@FDIC.gov)  
Bonita Manago, [Manago.Bonita@pbgc.gov](mailto:Manago.Bonita@pbgc.gov)  
Scott Sadler, [Sadler.Scott@pbgc.gov](mailto:Sadler.Scott@pbgc.gov)  
Neaclesa Anderson, [Neaclesa.Anderson@mda.mil](mailto:Neaclesa.Anderson@mda.mil)  
Robin Clay Fritsch, [rfritsch@nsf.gov](mailto:rfritsch@nsf.gov)  
Lucy Hurley, [Lucy.Hurley@usdoj.gov](mailto:Lucy.Hurley@usdoj.gov)  
John Dolan, [jdolan@CFTC.gov](mailto:jdolan@CFTC.gov)  
Jason Redwood, [Jason.Redwood@occ.treas.gov](mailto:Jason.Redwood@occ.treas.gov)  
Chris Barnett, [Christine.Barnett@cms.hhs.gov](mailto:Christine.Barnett@cms.hhs.gov)  
Mike Edwards, [MikeM.Edwards@usda.gov](mailto:MikeM.Edwards@usda.gov)  
Ellen Pearson, [Ellen.Pearson@usda.gov](mailto:Ellen.Pearson@usda.gov)  
Chip Brooks, [BrooksWW@state.gov](mailto:BrooksWW@state.gov)  
Susan Taylor, [TaylorSE2@state.gov](mailto:TaylorSE2@state.gov)  
Jodi L Cramer, [jodil.cramer@dhs.gov](mailto:jodil.cramer@dhs.gov)  
John Szabo, [JLS@nrc.gov](mailto:JLS@nrc.gov)  
Rebecca Gilchrist, [rebecca.l.gilchrist@nasa.gov](mailto:rebecca.l.gilchrist@nasa.gov)

### **Work Group Mission/Purposes:**

1. Collaborate on eFiling FDRs
2. Develop "Vision" of eFiling FDRs in the Executive Branch, including OGE visibility
3. Evaluate and promote electronic filing and review of Financial Disclosure Reports (FDRs) through a web-based electronic filing system
4. Identify desired eFiling features (e.g., prepopulate from prior report, highlight changes in reports, stock/mutual fund drop down list, Filer Assistant), "best practices" & policies (e.g., mandate eFiling to drive per report cost down)
5. Share information with agencies interested in implementing eFiling

First draft: [https://www.fdm.army.mil/PM\\_Reference\\_Docs/eFilingRoadmapDraft1.doc](https://www.fdm.army.mil/PM_Reference_Docs/eFilingRoadmapDraft1.doc)

## **Appendix E OGE eFiling References\***

OGE DAEOgram DO-07-014, *Guidance on Electronic Filing of Public and Confidential Financial Disclosure Reports*,  
[http://www.usoge.gov/pages/daeograms/dgr\\_files/2007/do07014.html](http://www.usoge.gov/pages/daeograms/dgr_files/2007/do07014.html)

OGE Report: *Elements of a Successful Financial Disclosure Program* (March 2009)  
[http://www.usoge.gov/ethics\\_docs/office\\_agency\\_prog/prdrptfocused\\_0309.pdf](http://www.usoge.gov/ethics_docs/office_agency_prog/prdrptfocused_0309.pdf)

*NASA-Electronic Filing of Financial Disclosure Reports May Increase Timeliness, Consistency, and Accuracy of the Financial Disclosure Program* (2009)  
[http://www.usoge.gov/ethics\\_docs/agency\\_model\\_prac/nasa\\_efiling\\_fin\\_discl.aspx](http://www.usoge.gov/ethics_docs/agency_model_prac/nasa_efiling_fin_discl.aspx)

*Army-Electronic Filing of Financial Disclosure Reports May Increase Timeliness, Consistency, and Accuracy of the Financial Disclosure Program* (2009)  
[http://www.usoge.gov/ethics\\_docs/agency\\_model\\_prac/efiling\\_fin\\_discl.aspx](http://www.usoge.gov/ethics_docs/agency_model_prac/efiling_fin_discl.aspx)

\*These links are to the OGE website from mid-August 2011.



# Financial Disclosure eFiling

A Small Agency's Journey  
NSF Initiative  
Robin Clay



## Initiative Description and Goals

- △ **Initiative Background:**
  - The Ethics in Government Act requires employees to file a public (SF 278) or confidential (OGE Form 450) financial disclosure statement based on their grade and the duties and responsibilities of their position.
  - The majority of NSF employees are required to complete financial disclosure forms given the amount of grant and contract management activity at NSF. Users were previously required to complete and submit hard copies of these reports to the Ethics Office.
- △ **Initiative Goals – to streamline and automate the financial disclosure process:**
  - Enable users to electronically file ethics reporting forms
  - Assist the Ethics Team in tracking, managing and organizing the submission and review process
- △ **Business Function Components:**
  - Forms
  - Filers (Key Stakeholders)
  - Business Process

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**Initiative Sponsors:**

Sponsors	Role
Robin Clay, OGC; Faith Hixson, OGC	Business leads for Financial Disclosure eFiling

**Key Support Teams:**

Team	Role
SharePoint Team	Site Development and maintenance
Abigail Marchetti, DIS; Gartner, DAS; Edillon, DAS; Rhinehart, DAS; SharePoint Technical Team	
Communications Team	Communications, emails, flyers, posters and roll out plan
IT Help Central	Technical support

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## Business Function Overview: Forms

► **Forms:**

► The two forms affected are the "Executive Branch Confidential Financial Disclosure Report" (OGE Form 450) and the "Executive Branch Public Financial Disclosure Report" (SF 278)

Form	Filer Type	Filing Deadline	Approx. # of NSF Employees Affected
OGE Form 450 "Executive Branch Confidential Financial Disclosure Report"	New Entrant	Within 30 days of appointment	n/a
	Annual	January 1 and February 15	900
SF 278 "Executive Branch Public Financial Disclosure Report"	New Entrant	Within 30 days of appointment	n/a
	Annual	January 1 and May 15*	200
	Terminated	Within 30 days of termination	n/a

\* \$200 late filing fee may be assessed for filing more than 30 days late

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## Business Function Overview: Filers (Key Stakeholders)

► Filers:

Filer Type	Stakeholder	Roles
OGE Form 450 Filers  (900 employees affected)	General Schedule Employees	GS Employees who can effect the interests of a non-Federal entity (e.g. Program Officers, COTRs, auditors, investigators)
	Visiting Scientists and IPAs	All IPAs AD4 and below equivalents All AD3 and AD4 Visiting Scientists
	Special Government Employees (SGEs)	All SGEs (unless filing SF 278)
SF 278 Filers  (200 Employees Affected)	Senior Executive Service (SES)	Members of the SES or holding some other position classified above the GS-15 level or its equivalent (AD-5 or above)
	IPAs	IPAs serving in a position normally classified as SES
	Special Government Employees (SGEs)	SGEs paid at a rate greater than 120% of the basic rate of pay for a GS-15 and who will serve for more than 60 days

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## Business Function Overview: Business Process

► Business Process Outline:

► Business process changes: Few changes were made to the business process. The most significant change is electronic submission, signing of financial reporting forms, and automatic reminders and notifications of delinquency through SharePoint

Current Process	New Process	Changes
1. Filer receives email from Ethics Team initiating reporting process	1. Filer receives email from Ethics Team initiating reporting process with instructions on reporting through SharePoint	Instructions are for reporting through SharePoint. Ethics Team sends email using SharePoint tools.
2. Filer completes a PDF version of the required form	2. Filer completes a PDF version of the required form	No Changes
3. Filer prints and signs form	3. Filer signs form electronically	Signature is now completed electronically.
4. Filer submits form by either: - Bringing form to Ethics office - Faxing form to Ethics office	4. Filer uploads PDF copy of form to SharePoint	Submission now occurs online.
5. Ethics Team reviews forms and contacts filer for additional information if necessary via phone or email	5. Ethics Team reviews form and contacts filer additional information if necessary via SharePoint	Ethics Team requests for additional information are now sent through SharePoint
6. Ethics Team follows up with delinquent filers via phone or email	6. Ethics Team follows up with delinquent filers via phone, email, or SharePoint	Ethics delinquency notices are now sent through SharePoint

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## Overview of Roll-Out Plan

- ▶ **The e-Filing system will be rolled out in two phases**
  - ▶ OGE Form 450 filing process
    - ▶ Jan. 12, 2009: Robin initiates process in SharePoint, filers receive e-mail notification of process initiation
    - ▶ Submission deadline is Feb. 15
  - ▶ SF 278 filing process
    - ▶ March 1, 2009: Robin initiates process in SharePoint, filers receive e-mail notification of process initiation
    - ▶ Submission deadline is May 15
- ▶ **The system sends notifications, confirmations and alerts to stakeholders throughout the process/lifecycle.**
- ▶ **Hard copy filing will not be necessary**

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## Key Dates

Summer 08    Fall 08    Dec. 08    Jan. 09    Feb. 09    Mar. 09    Apr. 09    May 09

Task Kick-off

Requirements/Design

Development

Internal Testing

Conflicts Official Testing begins 12/22/2008

ITBSS Testing Completed 1/7/09

Readiness Review 1/7/09

PIA Approved 1/6/09

Site open to 450 filing 1/12/09 –

**Dec. 08**

Conflicts Official Testing Complete 12/31/2008

**OGE Form 450 filing**

Site open to 278 filing 3/1/09 –

**SF 278 filing**

\* No Architecture Review required based on the existing SharePoint architecture and software.

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## Outreach and Communications

- ▶ **eCommunications from the Office of General Council**
  - ▶ Robin to send email to filers announcing new system and process - 1/5/09
  - ▶ Email from Robin (through SharePoint) initiating OGE Form 450 filing process and distributing instructions for sending out forms – 1/12/09
  - ▶ Email from Robin (through SharePoint) initiating SF 278 filing process and distributing instructions for sending out forms – 3/1/09
  - ▶ Reminders and Notification re-sends implemented as functionality in the system.
  
- ▶ **Agency-wide outreach activities will include:**
  - ▶ Posters
  - ▶ Fliers
  - ▶ Announce Channel Ad
  - ▶ Inside NSF Posting
  - ▶ SharePoint Announcement
  
- ▶ **Planned Demos to key target audiences:**
  - ▶ SharePoint User Group – 1/7/09
  - ▶ RRB – 1/8/09

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## Sample eFiling Outreach 2010

- Outreach to inform OGE Form 450 filers of the improved eFiling system included:
  - Emails to staff who were required to file
  - Fliers posted around NSF in January 2010 announcing the launch and detailing the dates of the training sessions
  - Announce Channel ads
  - Announcements posted on Inside NSF and on the SharePoint Page

**Financial Disclosure with e-File is back!**

NSF's Financial Disclosure e-filing solution provides you with a fast, secure, and easy way to submit your annual report online.

If you are required to file an Annual Confidential Financial Disclosure Report (OGE Form 450), you received email from the Office of General Council (OGC) with financial disclosure@nsc.gov with instructions on how to get started.

For more information about the reporting process, e-filing, and training sessions, visit [www.nsc.gov/ocfo](http://www.nsc.gov/ocfo).

If you have comments or questions, send an email to [financial.disclosure@nsc.gov](mailto:financial.disclosure@nsc.gov).

NSF Announce Channel

**Financial Disclosure Reporting with e-File is back!**

NSF's Financial Disclosure e-filing solution provides you with a fast, secure, and easy way to submit your annual SF 278 Public Financial Disclosure Report online! If you are required to file, you will receive an email from the Office of General Council (OGC) with financial disclosure@nsc.gov with instructions on how to get started.

The filing team will hold 6 training sessions where participants will receive instructions for filing, a demo of the electronic submission process, and have an opportunity to ask general questions about Financial Disclosure. If you attend a session, you will also receive credit for your Annual (SF) training requirement.

Training sessions will be held in the following dates:

• Tuesday, 4/20/10, 9 AM - 12:00 PM	• Tuesday, 4/20/10, 3 PM - 5:00 PM
• Tuesday, 4/27/10, 9 AM - 12:00 PM	• Tuesday, 4/27/10, 3 PM - 5:00 PM
• Tuesday, 5/4/10, 9 AM - 12:00 PM	• Tuesday, 5/4/10, 3 PM - 5:00 PM

For more information on NSF's Financial Disclosure Reporting requirements, see [www.nsc.gov/ocfo](http://www.nsc.gov/ocfo).

If you have comments or questions about Financial Disclosure Reporting, send an email to [financial.disclosure@nsc.gov](mailto:financial.disclosure@nsc.gov).

- Outreach to inform SF 278 filers of the improved eFiling system included:
  - Emails to staff who were required to file
  - Postcards delivered to mailboxes announcing eFiling and detailing the dates of training sessions
  - Announce Channel ads
  - Announcements posted on Inside NSF and on the SharePoint Page

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## Testing

**Testing:**

In December '08 and January '09, the SharePoint Team conducted testing of the new eFiling system and process to ensure usability and readiness. Testing reviewed the user interface, functional business process, 508 accessibility/browser capability, security and performance

**User Interface:**

- ▶ **End-to-end business process testing involving OGC staff and Conflicts Officials**
  - ▶ **OGE Form 450 testers were asked to review the following scenarios**
    1. Filing as a new entrant (and responding to a request for missing information).
    2. Filing as an annual filer (and requesting an extension).
  - ▶ **SF 278 testers were asked to review the following scenarios**
    1. Filing as a new entrant (and responding to a request for missing information).
    2. Filing as an annual filer (and requesting an extension).
    3. Filing as a terminated employee.

Form	Tester
<b>OGE Form 450</b> "Executive Branch Confidential Financial Disclosure Report"	Leslie Jensen, OGC Matt Powell, OGC Ann Noonan, OGC Sandra Scholar, OGC Robin Clay, OGC Faith Hixson, OGC Daniel Mc Enrue, DIS
<b>SF 278</b> "Executive Branch Public Financial Disclosure Report"	Michael Reischman, ENG/OAD Debbie Crawford, CISE/OAD Penelope Firth, BIO/DEB Karen Santoro, OGC Amy Northcutt, OGC Joanna Rom, BFA/OAD Robin Fritsch, OGC Faith Hixson, OGC

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## Testing Cont.

- Δ **Functional**
  - DIS Testing - James Graham, Abigail Marchetti, Stacie Boyd
- Δ **508 Accessibility/Browser Compatibility**
  - SharePoint product is compliant with the accessibility guidelines
  - SharePoint product is compatible with the following browsers: Internet Explorer, Mozilla Firefox, Safari
- Δ **Security**
  - Test scenarios executed to validate end-user access permissions
- Δ **Performance**
  - SharePoint approved enterprise system; supporting 1300 unique users with minimal utilization of hardware resources
- Δ **Peer reviews conducted on all custom development**
- Δ **All testing was conducted in the existing SharePoint environment; no new hardware or software changes**

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## Sample Testing Results

Feedback	Defect	Enhancement	Future Enhancement	Action
I don't know my username and password.		✓		Added text to email communication instructing users to enter LAN ID and password if using a web browser other than Microsoft IE.
I filled in my report and saved it, but now it's just a blank form.			✓	Added text to email communication instructing users to verify they have Adobe Acrobat Reader 7 or higher loaded on their system, and that they use it to complete their report.
I'm in BFA Front Office, but there's no option for Front Office under BFA.	✓			Added Front Office as an option under BFA
My LAN ID appeared in the Last Name, First Name field	✓			Corrected the logic for LAN ID to populate the LAN ID field
The reminder to file emails do not read like reminders.			✓	The SharePoint reminder email is standard across all sites.

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## Security

△ Authority to provide eFile service was granted by the U.S. Office of Government Ethics Memo dated May 16, 2007 DO-07-014 Guidance on Electronic Filing of Public and Confidential Financial Disclosure Reports

△ Security readiness:

- Security Review conducted with security team
- PIA conducted and approved – Two areas of improvement identified and remediate
  - Added Privacy Act text to screens
  - Prohibited the ability to email a version of the submission back to users
- Ethics Financial Disclosure eFile System Security Document Developed
- Enabled enhanced audit logging; conducting weekly review of logs
- Limited Admin access to SharePoint site

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## NSF's Comprehensive Approach to SharePoint Security

- △ SharePoint is an NSF managed service. SharePoint security includes:
  - Access to SharePoint sites and data
  - Administration of SharePoint services
  - Deployment in NSF's production environment

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## Secure Access to Sites and Data

- △ Access to SharePoint is limited to users with a valid and active NSF LAN account
- △ SharePoint can be accessed remotely using Access NSF and two-factor authentication
- △ SharePoint provides "fine-grained permissions". This means that permissions can be set for individual documents. Fine-grained permissions ensure that NSF staff can only view and update documents that belong to them.
  - For a SharePoint site such as eFile, each NSF staff member would only be able to view or update their own Form 450. Additional access is limited strictly to Ethics Officials in the Office of General Counsel and to 3 SharePoint administrators (for user support)
- △ Encryption (NIST-certified) of documents is available for sites that require extra security. For the eFile site, this means that all 450s are stored encrypted.
- △ NSF Security Officer signed off on eFiling site. Review included:
  - Server and Site Architecture
  - Document Life Cycle
  - Role-based Permissions Model
  - System Auditing

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## Administration Is Secured

- △ All SharePoint Administrators sign the SharePoint Administrator Rules of Behavior
  - Some SharePoint sites, such as eFile, have extra restrictions on administrators. Only 3 SharePoint administrators can access the eFile site in order to support users
  - Logging and auditing of SharePoint activity (accessing sites, viewing documents, etc.) by any user, including SharePoint administrators, is enabled by default. SharePoint logs cannot be changed by administrators
- △ All users of SharePoint are under the Federal IT Rules of Behavior
- △ The eFile SharePoint Site has a current Privacy Impact Assessment reviewed by NSF's Office of General Counsel

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## Secure Deployment As An Enterprise Service

- △ NSF SharePoint servers are located on the internal NSF network
  - They are protected by firewalls
  - Kept current with the latest security patches, and
  - Scanned routinely for any potential vulnerabilities
- △ NSF SharePoint servers are located in NSF's Data Center
  - Physical access is secured
  - Provides 24x7 equipment monitoring and user support
  - Redundant power systems
  - Environmental controls
- All data backups are encrypted

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## Risks

Risk	Assessment
Known Bugs and Open Issues	No Defects
Security Issues	<p>No Known Security Issues</p> <p>SharePoint is a fully supported enterprise application with security and maintenance support. Details of the security activities are listed in section 6.</p>
Team concerns	None at this time

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## Training and Customer Support

△ Training

- Demos Conducted – to DIS, DAS, Senior Management and OGC Office
- Demos/Outreach Scheduled – SharePoint User Group, RRB, IT Specialists meeting
- ITHC Demo Conducted – with ITHC staff to provide overview of system functionality. Provided SharePoint and Financial Disclosure eFile FAQs and technical contact information.
- Tier I Support – provided by ITHC and is consistent with other SharePoint Tier I support
- Tier II Support – provided by ITBSS SharePoint team

△ Customer Support and User Documentation

- Admin Quick Reference Guides will be provided to Business Owners (Ethics Team)
- Hands-on support to Business Owners during first 2 weeks, then ongoing
- System notifications and end-user instructions reviewed for usability by DAS and DIS Communications team.

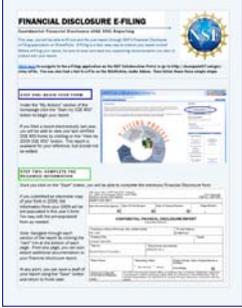
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## Sample eFiling Training 2010

- Training sessions were provided for OGE 450 and SF 278 filers
  - OGE 450 Training sessions
    - 340 people attended 5 sessions
    - Held from January to March
  - SF 278 training sessions
    - 67 people attended 5 sessions
    - Held from April to June
  
- Tips sheets were provided to both SF 278 filers and OGE 450 filers





- For future staff who need to eFile, Tips Sheets are available through a link on the eFiling homepage
  - In the email notification alerting users to the filing requirement, they are provided with the link to the eFile homepage
  - New Employee Orientation training being coordinated

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# eFiling

A Small Agency's Journey  
NSF Initiative  
Robin Clay



## System Philosophy

- Instead of developing a system focused on allowing filers to submit electronic financial disclosure reports, we decided to develop a system that would serve as an Ethics Program Management Tool. Our vision was to not only allow filers to submit reports electronically, but to ensure that electronic reviewing of reports and management of the ethics program could be accomplished within the same system. We started working on this during the anthrax scares and heightened terror alerts so portability – the ability to do our jobs from anywhere – was foremost in our minds.
- We have been meeting weekly as a team for a few years and improving the system with each new roll-out. Calendar Year 2011 is the first 450 and 278 annual cycle for which we've had a prior report for each annual filer in the system to pre-populate the new reporting requirement. That process has gone very well so far. We have additional enhancements to the system scheduled for a January 2012 release date.

**Key Information**

**1<sup>st</sup> Release Date:**  
January 2009

**2<sup>nd</sup> Release Date:**  
January 2010

**3<sup>rd</sup> Release-Upgrades:**  
January 2011

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## Sending Notification to File

The Ethics Team fills in information about the task and filer including Form Type, Due Date, Name, and Employee Type, then clicks OK to send a task notification email to the filer.

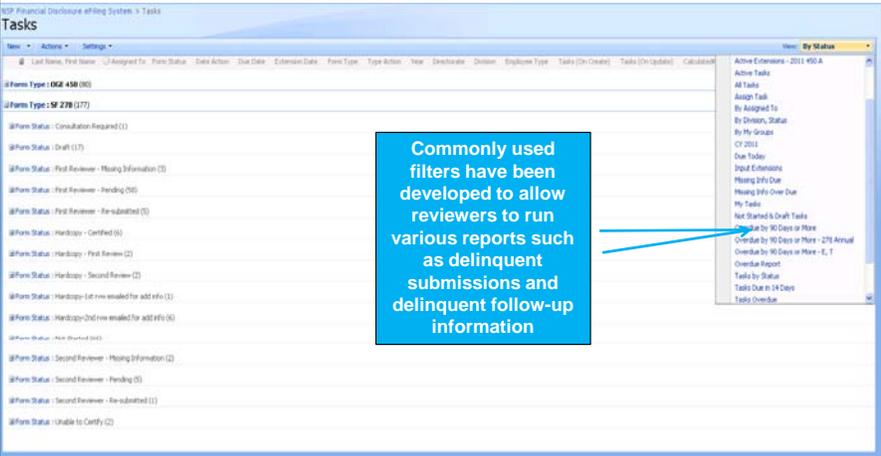
## Task Library – Form Status

The status of each report is tracked in the "Task Library". When a task is created, the report's status defaults to "Not Started". If the report is started but not submitted, the status moves to "Draft". After a report is submitted, the task moves through the various review status' until the report is certified. Once the report is certified, the task is moved by the system to a "Certified Task" Library. The goal is to have zero tasks in the library at the end of the calendar year. The OGE annual report can easily be completed by using the data in this library and the Certified Tasks Library.

Task Name	Status	Created Date	Due Date	Extension Date	Form Type	Type Action	Year	Directorate	Division	Employee Type	Tasks On Hold	Tasks On Hold	Calculations	Missing Information
NSF Form 450 (30)	Not Started	4/20/11	7/20/11 6:00 PM											
NSF Form 278 (17)	Not Started	5/20/11	5/20/11 5:00 PM											
NSF Form 278 (17)	Not Started	6/10/2011	6/10/2011 12:00 AM	6/20/2011	SP 278	A	2011	OISM	DIE	GS 14				
NSF Form 278 (17)	Not Started	6/10/2011	6/10/2011 12:00 AM	6/20/2011	SP 278	F	2011	OISM	DIE	GS 14				



## Task Library – Standardized Reports

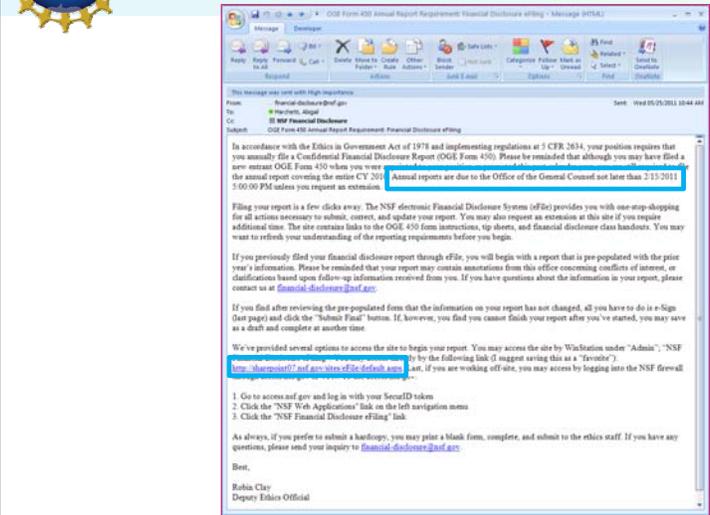


Commonly used filters have been developed to allow reviewers to run various reports such as delinquent submissions and delinquent follow-up information

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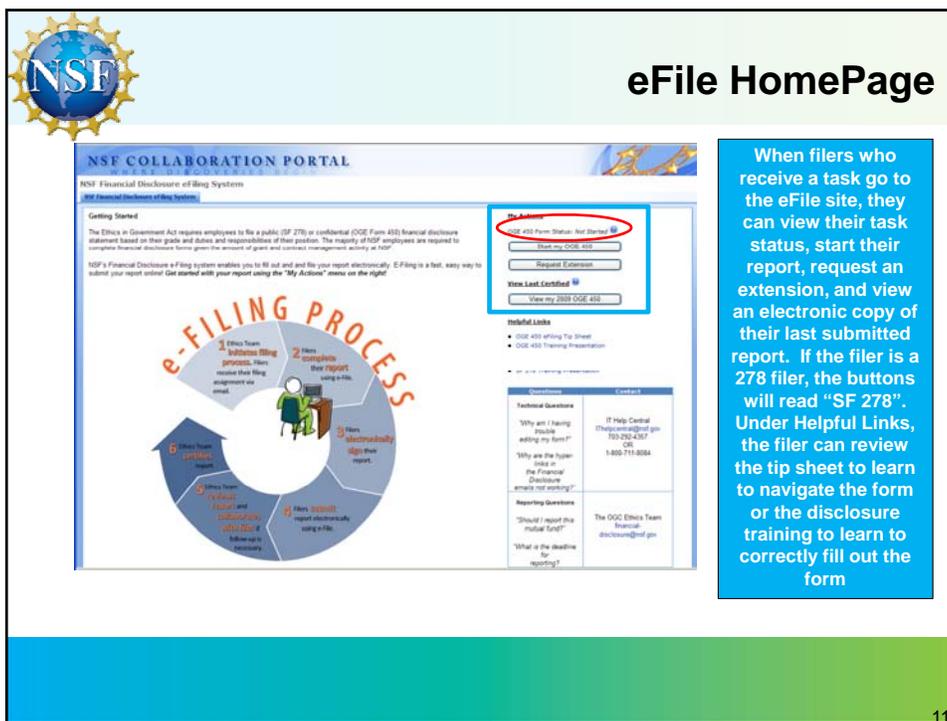


## The Notification



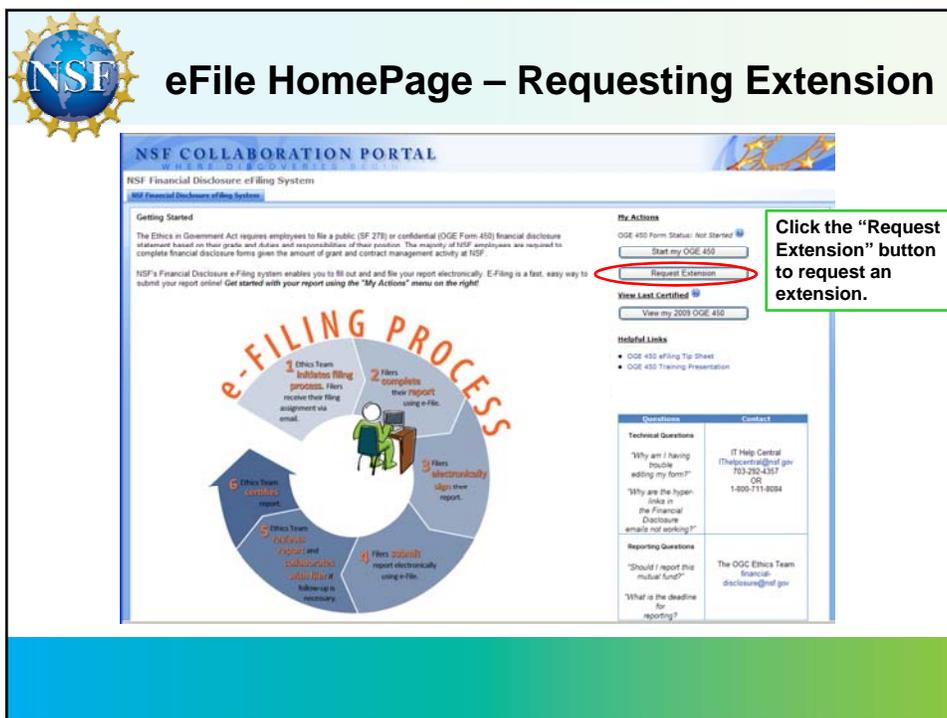
After the task is input, the filer receives an email, which includes important information about the filing requirement, the filing Due Date and a link to the eFiling site.

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**NSF eFile Home Page**

The screenshot shows the NSF Collaboration Portal for the Financial Disclosure eFiling System. A circular diagram titled "e-FILING PROCESS" outlines six steps: 1. Ethics Team initiates filing process, 2. Filers complete their report using e-File, 3. Filers electronically sign their report, 4. Filers submit report electronically using e-File, 5. Ethics Team review and submission with their follow-up if necessary, and 6. Ethics Team certifies report. On the right, the "My Actions" menu includes "Start my OGE 433" (circled in red), "Request Extension", and "View my 2009 OGE 433". A blue callout box on the right contains the text: "When filers who receive a task go to the eFile site, they can view their task status, start their report, request an extension, and view an electronic copy of their last submitted report. If the filer is a 278 filer, the buttons will read 'SF 278'. Under Helpful Links, the filer can review the tip sheet to learn to navigate the form or the disclosure training to learn to correctly fill out the form".



**NSF eFile Home Page – Requesting Extension**

This screenshot is similar to the first one but highlights the "Request Extension" button in the "My Actions" menu with a red circle. A green callout box next to it contains the text: "Click the 'Request Extension' button to request an extension." The "e-FILING PROCESS" diagram and other page elements are identical to the first screenshot.



## Extension Request

NSF Financial Disclosure eFiling System

**Extension Requests**

1. Complete the following information. Please make sure you select the correct form type for the report you are submitting (2008 402 or SF 276) and provide a reason for requesting an extension.  
 2. Click "OK" to submit your request.

Attach File | Opening...

Last Name, First Name \*  (e.g. Smith, John)

Form Type \*  (e.g. SF 276)

Extension \*

Reason \* 

Please select the number of days you would like to request

Year \*

Current Date

Due Date

Extension Date

OK

The filer chooses the number of days to be requested and provides the reason for the request

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## Ethics Office Notification of Extension Request

**From:** NSF Financial Disclosure  
**Sent:** Thursday, January 30, 2011 9:24 AM  
**To:** NSF Financial Disclosure  
**Subject:** Extension Approval Request: Financial Disclosure eFiling  
**Importance:** High

Dear Ethics Staff:

I've received an extension request from NSF\rclyar for 30 Days

My records indicate that the original due date is: 2/15/2011 5:00:00 PM  
 The current extension date (if applicable) is: 2/15/2011 5:00:00 PM

The reason this employee requires additional time is :  
 All of my financial records are in storage and I need to find the time to go through them and complete my report.

To approve this request [please Click Here](#)

Your friend,  
 eFile

The note to the ethics staff from eFile provides the due date of the report and the current extension date so that it is easy to determine whether the due date may be extended further (i.e. not over 90 days)

Reviewer clicks on this link to approve or deny the extension

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## Extension Approval Screen

Requests, approvals, and denials are filed in Extension Library.

The reviewer approves or denies the request and may add comments that appear in the automatic notification sent from eFile to the filer (generally used when extensions are denied). If the extension is approved, the filer's notification provides the new extended due date.

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## Extension Library

The extension library tracks the status of each extension request and provides an accurate count of the number of extensions submitted, number approved, and number denied for the OGE annual report

Name	Action	Extension	Status	Request Extension (Days)	Created By	Modified By	Expires
Allen, Sue		90 Days	Pending		NSF/juallen	Allen, Sue	5/23/2011 10:13 AM 5/26/2011 5:00:00 PM
Allen, Sue		90 Days	Pending		NSF/juallen	Allen, Sue	5/18/2011 3:07 PM 5/18/2011 5:00:00 PM
Herman, George		45 Days	Pending		NSF/jphson	Herman, George	5/18/2011 10:32 AM 5/18/2011 5:00:00 PM
Seaton, Suzanne		30 Days	Approved	Completed	NSF/jacomo	Seaton, Suzanne	5/18/2011 10:28 AM 5/18/2011 5:00:00 PM
Cramer, Rachel		90 Days	Approved	Completed	NSF/jphson	Cramer, Rachel	5/18/2011 10:30 AM 5/18/2011 5:00:00 PM
Halliday, Service		30 Days	Approved	Completed	NSF/jandino	Halliday, Service	5/18/2011 10:51 AM 5/18/2011 5:00:00 PM
Wardlaw, Frederic		30 Days	Approved	Completed	NSF/jphson	Wardlaw, Frederic	5/18/2011 10:15 AM 5/18/2011 5:00:00 PM

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## eFile HomePage – Starting Report

**Click the "Start my OGE 450" button to get started.**

## Drafting Report

**The eFile System automatically populates the form with the date the filer submits the report in the space provided.**

**Basic information including Name, E-mail Address, Title, Agency, Address, and Phone Number is pre-populated from the filer's corporate profile.**

**Drafting Report**

**Hyperlinks to each Part so a filer can review the part or input information as they answer questions.**

**Filers answer a series of Yes/No questions and use the links to navigate through the report. Buttons allow filers to add attachments, view a printable version, save their report, save and close their report, and submit their report to the Ethics Team for review. If the filer answers "No" to a question, that schedule becomes "read only".**

**Filers may attach year-end statements, supervisory permission to participate in outside activities, etc. Reviewers may also attach documents.**

**Click "Next" to go to the next page of the report. Use of navigation link saves current progress of report.**

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**Drafting Report**

**Links to specific examples and instructions are available from each section of the report**

**Navigation links and buttons are available on the bottom of all pages. The filer has the option of saving the report prior to completion and returning at a later time.**

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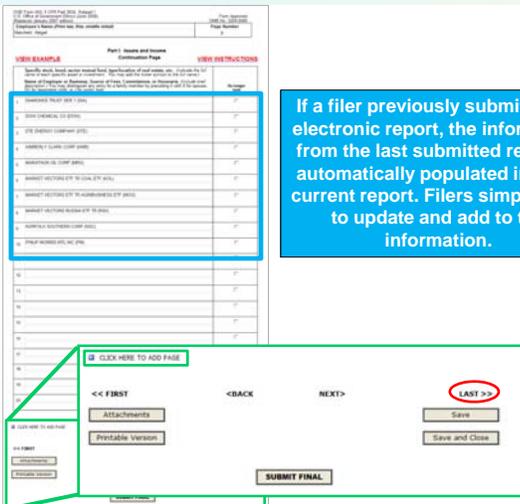


## Drafting Report

Filers can use the "Click Here to Add Page Link" to insert more pages with additional lines to report their holdings, if necessary.

If a filer previously submitted an electronic report, the information from the last submitted report is automatically populated into the current report. Filers simply need to update and add to the information.

Click "Last" to jump to the signature page of the report.



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## Signing and Submitting Report

Clicking the signature checkbox adds the filer's e-signature and date to the report

The filer clicks the "Submit Final" button to submit the report to the Ethics Team.





## eFile Homepage – After Submission

**NSF COLLABORATION PORTAL**  
WHERE DISCOVERY MEETS

**NSF Financial Disclosure eFiling System**

**Getting Started**

The Ethics in Government Act requires employees to file a public (SF 278) or confidential (OGE Form 450) financial disclosure statement based on their grade and duties and responsibilities of their position. The majority of NSF employees are required to complete financial disclosure forms upon the amount of grant and contract management activity at NSF.

NSF's Financial Disclosure eFiling system enables you to fill out and file your report electronically. E-Filing is a fast, easy way to submit your report online! Get started with your report using the "My Actions" menu on the right.



**My Actions**

OGE 450 Form Status: Submitted 10

View my Submitted OGE 450

View my 2009 OGE 450

**View Last Certified**

View my 2009 OGE 450

**Useful Links**

- OGE 450 eFiling Tip Sheet
- OGE 450 Training Presentation

Questions	Contact
<b>Technical Questions</b>	IT Help Central (fthompson@nsf.gov)
"Why am I having trouble adding my form?"	703-292-4367 OGE
"Why are the hyperlinks in the Financial Disclosure emails not working?"	1-800-711-8854
<b>Reporting Questions</b>	The OGE Ethics Team financial-disclosure@nsf.gov
"Should I report the mutual fund?"	
"What is the deadline for reporting?"	

**After submitting:**

- Filer receives a confirmation email
- Task status is updated
- Report is available in read-only mode
- Option to request an extension is removed



## Reminders and Delinquency Notices

From: fthompson@nsf.gov  
To: CDR, John  
Cc: Outgoing Financial Disclosure Report: Financial Disclosure eFiling  
Subject: Outgoing Financial Disclosure Report: Financial Disclosure eFiling

According to my records, your financial disclosure report is overdue. To request an extension (if applicable) or begin finish your report, please [click here](#). The site may also be accessed via the WinStation under "Admin".

Please remember, when working remotely you must first log into the NSF firewall through accessworkspace.nsf.gov, access.nsf.gov or VPN in order to access the site. To use accessworkspace.nsf.gov:

1. Go to accessworkspace.nsf.gov and log in with your security system.
2. Select "Admin" from the "NSF WinStation Online" on the InsideNSF site (InsideNSF will launch within a web browser after you log in).
3. Click the "NSF Financial Disclosure eFiling" link (last link under "Admin").

Please be reminded that 278 filers (SES or equivalents and above) are subject to a \$200 late filing fee when their reports are filed more than 30 days late. Form instructions as well as instructions on using the eFile system may be accessed at the above link.

If you have any questions, please contact us at [financial\\_disclosure@nsf.gov](mailto:financial_disclosure@nsf.gov).

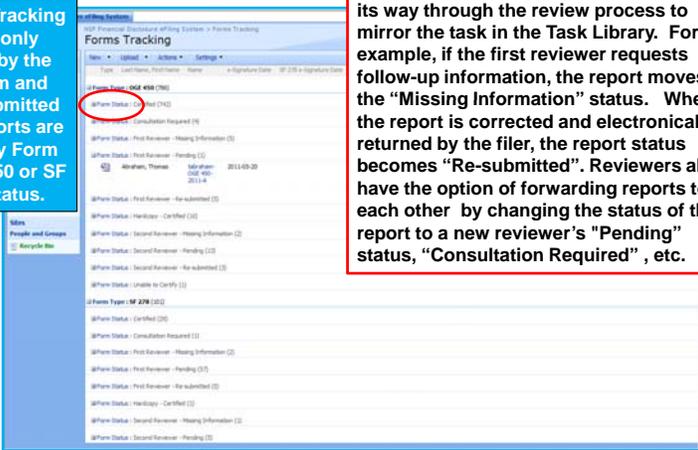
Thanks,  
eFile

Filers receive automatic reminders from eFile to submit their financial disclosure reports two weeks prior to their due date and again on the day it is due. Once the report is overdue, the system sends a delinquency notice to the filer every other day until the report is filed.



## Reviewing Reports

The Forms Tracking Library is only accessible by the Ethics Team and holds all submitted reports. Reports are organized by Form Type (OGE 450 or SF 278) and status.

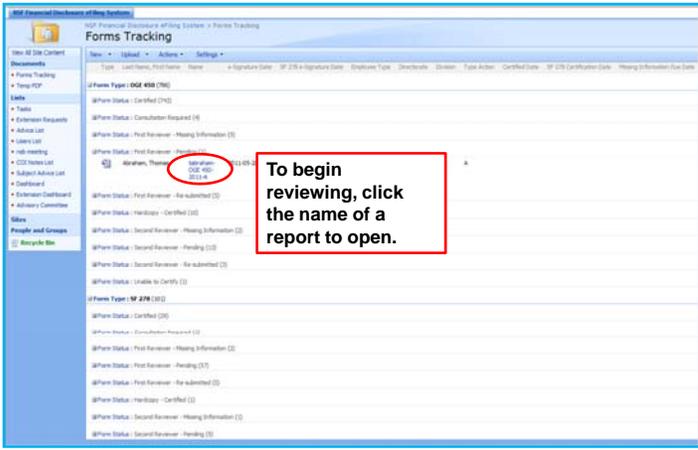


Form status' change as the report makes its way through the review process to mirror the task in the Task Library. For example, if the first reviewer requests follow-up information, the report moves to the "Missing Information" status. When the report is corrected and electronically returned by the filer, the report status becomes "Re-submitted". Reviewers also have the option of forwarding reports to each other by changing the status of the report to a new reviewer's "Pending" status, "Consultation Required", etc.

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## Reviewing Reports



To begin reviewing, click the name of a report to open.

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## Reviewing Reports – Reviewer Comments

OGE Form 450, 5 CFR Part 2634, Subpart 1  
U.S. Office of Government Ethics (June 2008)  
(Replaces January 2007 edition)

Form Approved  
OMB No. 3209-0006

Employee's Name (Print last, first, middle initial)  
Abraham, Thomas

Comments of Reviewing Official  
Supervisory permission granted for independent research activities listed.

Add More Reviewer Comments

**Reviewer comments are copied over from the filer's previous report and additional comments can be added. These comments are printed with the report.**

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## Reviewing Reports – Requesting Corrections

OGE Form 450, 5 CFR Part 2634, Subpart 1  
U.S. Office of Government Ethics (June 2008)  
(Replaces January 2007 edition)

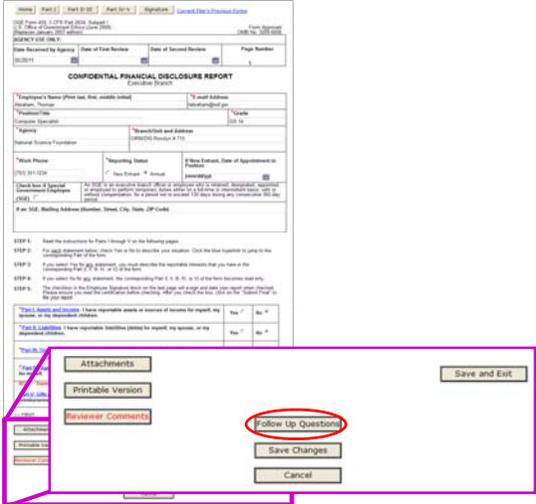
Form Approved  
OMB No. 3209-0006

Employee's Name (Print last, first, middle initial)  
Abraham, Thomas

Comments of Reviewing Official  
Supervisory permission granted for independent research activities listed.

Add More Reviewer Comments

**Reviewer comments are copied over from the filer's previous report and additional comments can be added. These comments are printed with the report.**



**Click the "Follow Up Questions" button to add questions for the filer to answer.**

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## Reviewing Reports – Requesting Corrections

Reviewers choose their name and the date of their comments and enter questions for the filer within the "Follow Up Questions" area.

**\* Part IV: Agreements or Arrangements** - I have reportable agreements or arrangements for myself.

Yes  No

**\* Part V: Gifts and Travel Reimbursements** - I have reportable gifts or travel reimbursements for myself, my spouse, or my dependent children.

Yes  No

**Follow up Questions for Filer**

Reviewing Officials:  Date of Comments:

What are the underlying holdings of your Fidelity account? Please list

Filer Response (Optional)

Reply Date:

[CLICK HERE TO ADD ANOTHER COMMENT](#)

[<< FIRST](#)   [< BACK](#)   [NEXT >](#)   [LAST >>](#)

[Attachments](#)

[Printable Version](#)

[Reviewer Comments](#)

[Save and Exit](#)

[Follow Up Questions](#)

[Save Changes](#)

[Cancel](#)

The follow-up screen stays open while reviewing each schedule so that the reviewer can move back and forth – adding additional questions with ease. After the review is complete, click the "Save and Exit" button to save the questions and return to the Forms Tracking Library.

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## Missing Information Workflow

Reviewers choose their name and the date of their comments and enter questions for the filer within the "Follow Up Questions" area.

Once a reviewer returns to the Tracking Library, the reviewer starts the "Missing Information" workflow by selecting the workflow from a drop-down menu.

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## Missing Information Workflow

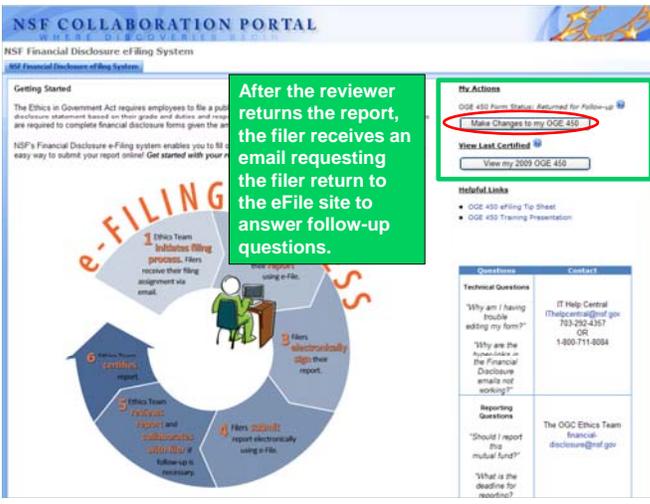


Reviewers can choose to email the filer, set a due date for the filer's response, and then click the "Start" button. If the filer does not re-submit the report with corrections by the due date, the system sends an overdue notice.

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## Getting Started



Click the "Make Changes to my OGE 450" button to open the returned report.



## Correcting Report

Since the report was returned with questions, the "Follow Up Questions" button is now visible to the filer.

*Part I: Assets and Income: I have reportable assets or sources of income for myself, my spouse, or my dependent children.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
*Part II: Liabilities: I have reportable liabilities (debts) for myself, my spouse, or my dependent children.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
*Part III: Outside Positions: I have reportable outside positions for myself.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
*Part IV: Agreements or Arrangements: I have reportable agreements or arrangements for myself.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
NOTE: Statement V is for annual filers only. It does not apply to new entrants and SGEs.		
Part V: Gifts and Travel Reimbursements: I have reportable gifts or travel reimbursements for myself, my spouse, or my dependent children.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

<< FIRST
< BACK
NEXT >
LAST >>

Attachments
Save

Printable Version
Save and Close

Follow Up Questions  
SUBMIT FINAL

Click the "Follow Up Questions" button to see the reviewer's comments.



## Correcting Report

Filers can either write a response in the Filer Response area or update the report as requested.

*Part IV: Agreements or Arrangements: I have reportable agreements or arrangements for myself.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
NOTE: Statement V is for annual filers only. It does not apply to new entrants and SGEs.		
Part V: Gifts and Travel Reimbursements: I have reportable gifts or travel reimbursements for myself, my spouse, or my dependent children.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

Follow up Questions for Filer

Reviewing Officials: Clay Rubin      Date of Comments: 08/24/11

What are the underlying holdings of your Fidelity account? Please list:

Filer Response (Optional)

Reply Date:

[CLICK HERE TO ADD ANOTHER COMMENT](#)

<< FIRST
< BACK
NEXT >
LAST >>

Attachments
Save

Printable Version
Save and Close

Follow Up Questions  
SUBMIT FINAL

Click the "Submit Final" button to send the updated report back to the Ethics Team.

## Certifying Report



Home | Part I | Part II-III | Part IV-V | Signature | Current Filer's Previous Forms

OGE Form 400 - 5 CFR Part 2634, Subpart 1  
U.S. Office of Government Ethics (June 2008)  
Effective January 2007 edition

Form Approved  
OMB No. 3208-0008

Employee's Name (Print last, first, middle initial)  Page Number

I certify that the statements I have made on this form and all attached statements are true, complete, and correct to the best of my knowledge.

**Click the checkbox below to electronically sign your report**

\*Signature of Employee  Date (mm/dd/yy)

Miller, Maureen B.

**FOR REVIEWERS' USE ONLY:**  
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations, except as noted in the "comments" box below.

Signature and of Supervisor/Other Intermediate Reviewer (if required by the agency)  Date (mm/dd/yy)

E-mail Address  Phone Number

Signature and Title of Agency's Final Reviewing Official  Date (mm/dd/yy)

Clay, Robin

<< FIRST      < BACK      NEXT >      LAST >>

Clicking the signature checkbox adds the certifying official's e-signature and date to the report.

Click Save and Exit to return to Forms Tracking. The status of the report will automatically update to Certified.

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## Additional 278 Review Features



Home | Schedule A | Schedule B | Schedule C | Schedule D | Signature | Current Filer's Previous Forms

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

FOR AGENCY USE ONLY

Date of First Review  Date of Second Review

Name of Appointment, Candidate, Director or Representative (Last, First, Middle Initial)	Reporting Status	Reporting Period	Calendar Year Covered by Report	New Entries	Termination	Termination Date (if applicable)
<input type="checkbox"/> Full <input type="checkbox"/> Part	<input type="checkbox"/> Candidate	<input type="checkbox"/> Representative	<input type="text"/>	<input type="checkbox"/> New Entries	<input type="checkbox"/> Termination	<input type="text"/>

Reporting Individual's Name: Last Name  First Name and Middle Initial

Title of Position  Department or Agency (if applicable)

Address (Number, Street, City, State, and ZIP Code)  Telephone No. (Area and No.)

Agency Use Only:

**FOR THE FILER ONLY**

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period shall be subject to a \$200 fee.

**Reporting Periods**

**Schedule A:** The reporting period in the preceding calendar year except Part 4 of Schedule C and Part 1 of Schedule D where you must also include the filing year up to the date you file. Part 8 of Schedule D is not applicable.

**Termination Dates:** The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part 8 of Schedule D is not applicable.

**Resigners, New Entrants and Candidates for President and Vice President**

**Schedule A:** The reporting period for income (BLOCK-C) is the preceding calendar year and the current calendar year up to the date of filing. Value enters in of any date you choose that is within 30 days of the date of filing.

**Schedule B:** Also applicable.

**Schedule C, Part 4 (Candidates):** The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 30 days of the date of filing.

**Schedule C, Part 8 (Agreements or Arrangements):** Show any agreements or arrangements as of the date of filing.

**Schedule D:** The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

<< FIRST      < BACK      NEXT >      LAST >>

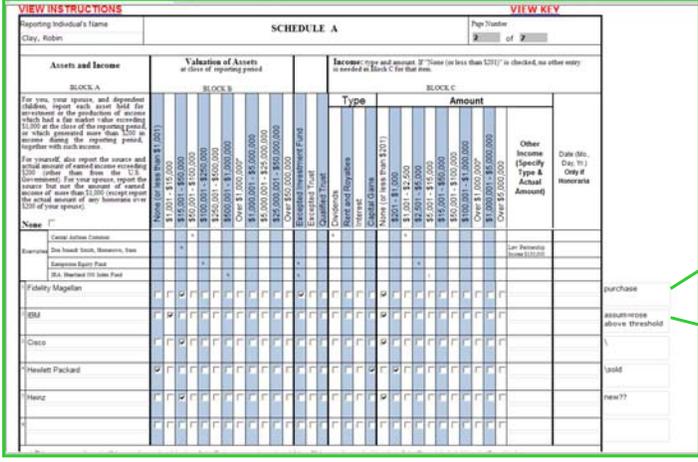
Basic information - Name, Title, Agency, Address, and Phone Number is pre-populated from the filer's corporate profile. The date submitted is populated by the system

Much of the same features found on the OGE 450 are also on the SF 278. Reviewers input their review dates, and the same navigation buttons and functions are available

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## Additional 278 Review Features

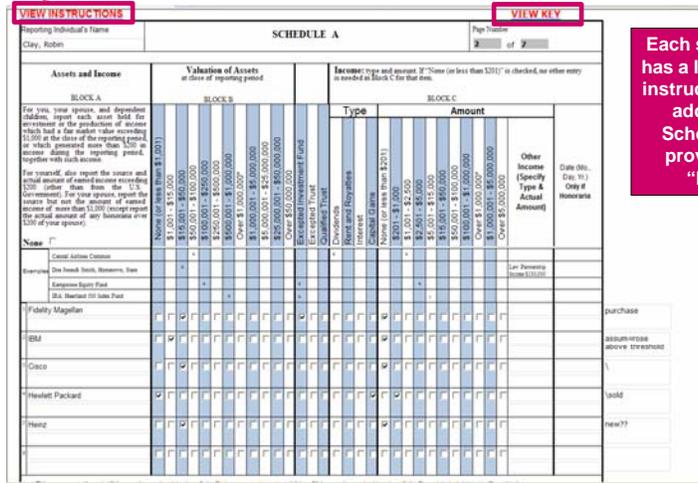


Schedule A has a space to the side of each line item to add review notes such as those used by the reviewer when comparing prior and current reports. These review notes are not printed.

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## 278 Additional Review Features



Each schedule has a link to the instructions. In addition, Schedule A provides a "key".

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## **OBSERVATIONS**

### A Small Agency's eFile Odyssey

The eFile experience for a small agency may deviate, and in some cases, follow a more streamlined path than that of a larger, cabinet level agency. This will document a small agency's winding path to successful eFiling. If you compare NSF's journey to the Army's comprehensive roadmap, you will probably find many of the same steps, minus multiple review levels:

#### **Got Vision? AKA – In the Beginning...**

1. **It is all about trees** – The amount of natural resources we can save is tremendous.
2. **It is all about me** – I cannot get up at 3:45 every morning to go to work. Therefore, I need a system that allows seamless off site work.
3. **It is all about workload** – A system that automatically sends reminders, delinquency notices, provides online extensions, and allows online corrections will save a significant amount of administrative manpower. In addition, a reports progression through the review cycle that is automatically tracked by the system saves even more time and scarce manpower.
4. **It is all about them** – A system that allows the filer to start with a template of their last report each year, provides a copy of their last report for reference, allows them to file their report from home, request an extension online, communicate with the reviewer within the report, and correct the report within the system makes for a much happier and timelier filer.
5. **A more perfect union** – eFile allows us to better serve our clients by creating a more comprehensive ethics profile of each employee by providing access to financial disclosure reports, ethics advice and ethics training for each filer. Ethics officials can access the system and provide advice from anywhere, anytime.

#### **Got Plan? Cheerleading IS a Sport...**

1. **Robin, Robin, You're the Man, If You Can't Do It...** - If you are the one with the vision, you probably need to be the one in charge of the plan. In a small agency, we are fortunate in that decisionmaking is more streamlined – I say “please” – you say “why” (a scientist joke...) and eventually we work towards our goal.
2. **The Powers that Be** – Go to the experts in your agency for advice regarding options—especially if your agency's ethics program has absolutely no budget and there is no push or “buy in” for eFile. I went to a manager in the Division of Information Services who was coincidentally an OGE Form 450 filer and who personally wanted to electronically file her report. She thought it a worthwhile project and was able to assign an internal team.

3. **Make Sure YOU Understand All of the Requirements for eFile (before you set up your first requirements meeting)** – What are your internal requirements? What are OGE’s requirements? As an example of NOT understanding all of the requirements, our first eFile project director interpreted OGE’s requirements for e-signature as allowing for a “checkbox” since the checkbox met the requirements of the E-Sign law and other requirements as stipulated in the DAEOgram. Not so – there has to be a physical signature...
4. **Some Things Are NOT Worth Repeating** – Figuring out what you do not want is just as important as what you do want. DO look at other systems before you jump feet first. Learn from our mistakes – functions we did not include in our systems, the things we did a poor job of incorporating into our systems, the things that could use a bit of tweaking. Take the best ideas and use those to build a better system.
5. **Rome was not Built in a Day** – Do not try to do too many things at once. Some of the systems I’ve seen started big, but missed a lot of detail because the initial scope of the system was too large. NSF’s team has been meeting weekly for four years – making changes, improving the system and its performance, adding additional features each year.
6. **Use Your Best Courting Skills** – Filer buy-in should be a forethought, not an afterthought. Start romancing your filers early – know what makes them happy. If you work for a tree-hugger agency, emphasize resource savings – my scientists wear Birkenstocks and wool socks – **with everything**. If time-management is an issue, emphasize that issue. I pretty much threw in the kitchen sink to get my people on board. We have about 99% of our filers who are able to file electronically, doing so.

## Got Whip?

1. **YOU GET WHAT YOU ASK FOR** – Please remember that programmers are not ethics officials and have never read 5 CFR 2634, never filed a financial disclosure report, never reviewed a financial disclosure report, and are going to give you exactly what you ask for – no more, and sometimes a lot less due to ignorance and miscommunications. DO NOT provide your programmers with a list of requirements in one meeting and go back to the daily grind. Your final product will NOT turn out to be anything like you’ve envisioned. You have to meet with them, meet with them, meet with them; test it, test it, test it. REPEAT AFTER ME – meet with them, test; meet with them, test... AND make them re-do it your way WHEN it is incorrect.
2. **Whose the Boss?** – The subtitle to this is “You get what you ask for, Part II”. Requirements are an ongoing process. Do not let the programmer tell you – too bad, so sad – that you did not think of it earlier. Many requirements do not become “known” until you are pretty far along in the process. Therefore, meet, test, meet, test, meet, test... and insist on necessary changes.

3. **Time IS Your Friend** – When you sign off on the requirements document and the timeline, think of it as your guide. If you are dogmatic and do not allow for flexibility, you may miss out on some necessary and crucial features.
4. **Have Fun** – Who cares if you use the system to amuse yourself by writing love letters and other letters of adoration from your main man eFile Dude. No one sees those letters but you – and it is nice to have a complimentary note every now and then – at least someone likes the ethics official...

### Got Beta?

1. **No One Knows the Trouble I've Seen** – Hello, my name is Robin, and I'm not perfect. If not for the Beta Testing that we did with our Conflicts Officials prior to deployment, our first roll-out would have been a disaster. As much as I had already worked with the system, the flaws with the process did not rear their ugly heads until we sent out tasks for our officials to file reports. I cannot stress enough the importance of Beta Testing prior to actual deployment of the system. It will save your reputation – and maybe you won't have to admit publicly that you are not perfect...
2. **My Friend the Geek** - After all of the issues discovered during Beta are fixed, it is time for the IT folks to perform all of the final internal tests encompassing functionality, 508 accessibility/compatibility, security, and performance.

### Got Clearance?

1. **It's All Fun and Games Until Someone Needs the Paperwork** – You must develop for approval a Privacy Impact Assessment (PIA) for eFile. The PIA ensures that electronic collections of information on individuals are evaluated for privacy risks, conforms to Privacy Act life cycle management requirements, and ensures that privacy protection measures are in place. You will need to consult with your Privacy Act Officer.
2. **Gotta Clean Up Your Act** – Your eFile system must go through a security review that requires approval from your Chief Information Officer prior to deployment. The PIA and development of a security plan is part of this review.
3. **On Strike – REALLY?** – After serving for 15 years in an agency where labor union issues and ethics issues very rarely coincided because most positions were non-collective bargaining, I did not understand the IMPORTANCE of clearing this “change in procedure”, even though not mandatory, through our Union. Two Unfair Labor Practice filings later, we are all on the same page. As a result, NSF now has consultation with the Union as a standard step when converting a paper process to electronic format.



## Let's Give Them Something to Talk About

1. **I Say Tomahto...** - As important as developing your system is to your program, developing a communication plan is just as or even more important. Having an electronic system in place may not provide the benefits you envision if only 25% of your filers use it. You have to make them want to use it.
2. **Demo It** – Prior to rollout, schedule demos to as many groups in the agency as possible. We conducted demos with the Division of Information Systems, Division of Administrative Systems, Senior Management, Office of the General Counsel, the SharePoint User's Group, the Business Applications Requirements Review Board, IT Specialist's Group, and IT Help Central – which provides technical support for the system.
3. **Outreach** – Prior to rollout, reach your target audience through a variety of mediums. We sent personal emails extolling the benefits of electronic filing, personal emails letting filers know what to expect and when to expect it, hung posters and fliers, and sent postcards to 278 filers. We also made announcements on electronic medium such as our Announce Channel, Inside NSF website, and SharePoint website.

## I Want to Hold Your Hand...

1. **When You Turn 18, You Are On Your Own!** – What can I say – I have teenagers... Unlike them, there is probably a light at the end of the eFile tunnel – but it is not with rollout. If you want eFile to be successful, you should plan to spend a lot of time handholding – meaning deskside assists as well as training on the system.
2. **Overachieving - Killing Three Birds** - The eFile Project Director and I offered many training sessions for the eFile system the first and second years. We combined the system training with a course on the financial disclosure requirements of the specific form we were targeting AND ethics training. Because our filers were provided credit for ethics training if they attended, they were motivated. Both years, approximately one third of our filers attended our training. For example, NSF has approximately 900 OGE Form 450 Filers and 200 OGE Form 278 Filers. In 2010, 340 OGE Form 450 Filers attended the five sessions held between January and March and 67 OGE Form 278 Filers attended the five sessions held from April to June. The Director of NSF signed up for my first 278 session – he did not even draft his own report – I did.
3. **No Pressure – REALLY** – Consider an across-the board extension. The first year of eFile – because it was a new system and I wanted as many filers as possible to be able to train – we provided an automatic 30 day extension to all filers. This helped with easing into the 450 requirement especially.



## Rollin, Rollin, Rollin Down the River...

1. **Slow Train** – Just as you Beta tested the system prior to finalization, you should Beta Test your roll out. Each year we've made changes to eFile – fixes, improvements. We roll out the system the first week of January to 450 filers in our Division of Information Services for testing purposes. These are our IT folks in the agency. They have a one to two week head start to file their annual 450s and let us know of any issues. If all goes well, we roll out the annual requirement to the rest of the Foundation.
2. **Distance Just Might Make the Heart Grow Fonder** – Our team has been together for several years with some minor adjustments. We still meet weekly to discuss issues or plan for the future. I have a rule that if we work on the weekend, we are supposed to use our codenames. Mine used to be "the Sparrow". However, Faith and I have most recently been known as "Pinky and the Brain"...

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



Preventing Conflicts of Interest  
in the Executive Branch



# GOVERNMENT ETHICS CONFERENCE

*Organizational Integrity is a Shared Responsibility*

September 13-15, 2011

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Back to the Basics Camp

## Back to the Basics

Even the most conscientious ethics official can miss some of the fine details required to comply with ethics-related statutes and regulations. And missing some of those fine details can result in an otherwise model ethics program getting less credit than it deserves because a few easily implemented steps were overlooked. This session is intended to encourage ethics officials to re-examine their processes and procedures to ensure they don't miss the little things that are important, but often forgotten.

Below are some common examples of requirements that can easily be met, but are often overlooked.

### **Financial Disclosure**

Agencies must review each public and confidential financial disclosure report filed. Even if you "trust" your employees to self identify conflicts and automatically recuse when they think there's a conflict, **it's the ethics official's statutory obligation to review each report for conflicts of interest before signing as a reviewer or certifying official.**

**Reports must be reviewed and certified within 60 days of the date of filing, unless ethics officials require additional information to complete their review or ensure that required remedial action is taken. The need to delay certification beyond 60 days should be clearly documented.** Delaying certification for protracted periods for the convenience of the certifying official is not in compliance with relevant requirements.

Every agency is required to have written procedures for the administration of the public and confidential financial disclosure systems. **If an agency has an alternative financial disclosure system approved by OGE, written procedures for the administration of that system are also required.**

Written procedures **must also include steps to be taken when reports are delinquent and collection of the \$200 late filing fee for public reports is necessary.**

If an agency allows employees to use the *OGE Optional Form 450-A Confidential Certificate of No New Interest (Executive Branch)* the OGE Form 450 which supports it must be retained beyond the normal 6 year retention period. **The OGE Form 450 should be retained until the OGE Forms 450-A it supports are destroyed in accordance with the 6 year retention requirement.**

### **Ethics Training and Education**

Initial Ethics Orientation (IEO) and Annual Training **must address all of the content requirements specified at 5 CFR §§ 2638.703 and .704, respectively.** While it is encouraged that agencies vary the content of training and entirely acceptable to focus on one or two aspects of the required content, training must address each of the specified subjects. (Also

## Back to the Basics

remember that training on the Hatch Act, EEO principles, or sexual harassment does not count as ethics training.)

### **Enforcement**

Agencies are required to concurrently notify OGE when they make a referral to the Department of Justice concerning a violation of a criminal conflict of interest statute. **Agencies must also provide a report on the final disposition of the case.**

### **Advice and Counseling**

When appropriate, **records must be kept when advice is rendered.** See OGE's DAEOfgrams DO-08-025 and DO-05-19.

There is **no attorney-client privilege** involved when an ethics official provides advice or counseling to an agency employee. This includes the head of an ethics official's agency.

### **Semiannual Reports of Payments Accepted from a Non-Federal Source (31 U.S.C. § 1353 Travel Reports).**

Even if an agency has a strict policy against accepting such payments or simply did not receive any during a reporting period, **negative reports are required.**

# Off Duty Employment Outside Activities

Jason Kaar

Uniformed Services University of  
the Health Sciences

# Other Issues

- Use of Government Resources & Time
- Interactions with other employees
- Tracking/filing of requests
- Relationship with Financial Disclosure Reports
- Investigation of Violations



# Activities Covered

- Compensated
- Professional
- Management of Organization



# Compensated

- \$\$\$\$\$\$
- Products, Travel, other things of value
- Including that directed to a third party



# Professional

- Relates to the employee's training
- Relates to the employee's government duties



# Management

- Is involved in the governance of an organization
- Private School Board
- BOD of Association



# Activities Not Covered

- Civic (uncompensated Scout Master)
- Basic Membership
- Non-Management of Organization but engaged such as an Education Committee



# Example

- A Physician acting as a Scout Master would not require approval, however volunteering to perform physicals (compensated or not) would require an outside activity request/approval, as would management of the organization



# Concerns and Considerations

- Foreign Government
  - Article 1 Section 9, Emolument (compensation) requires Congressional Approval
    - **Supplementation Prohibition 18 USC 209**
- Government Insider Information
  - Grants, Research, CRADAs, etc
- Representation Prohibition 18 USC 205
  - Buffer to ensure no undue influence



# Concerns Considerations (2)

- Supplementation Prohibition 18 USC 209
  - Impact Objectivity
- Type of Activity (DoD prohibitions)
  - AD Military – will it impact readiness?
- Amount of time devoted to activity
  - DoD Health Care – 16 hour rule
  - TriCare billing rule



**Social Media Lab\***  
Office of Government Ethics Conference  
Orlando, Florida  
Wednesday, September 15, 2011

**SESSION DESCRIPTION:** This will be a precursor to the two part panel discussion on government ethics and social media for those who need a primer in what social media is and how it works. This will be a hands- on demonstration of social media tools such as: Facebook, You Tube, Twitter, Blogs, Widgets, and mobile devises where attendees can see how the tools work and learn what they should look for when evaluating these tools.

Facebook – [www.facebook.com](http://www.facebook.com)



Facebook has two types of pages:

1. Personal Pages
2. Fan Pages
  - a. Agencies should use Federal Government Fan pages.

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You Tube – [www.youtube.com](http://www.youtube.com)



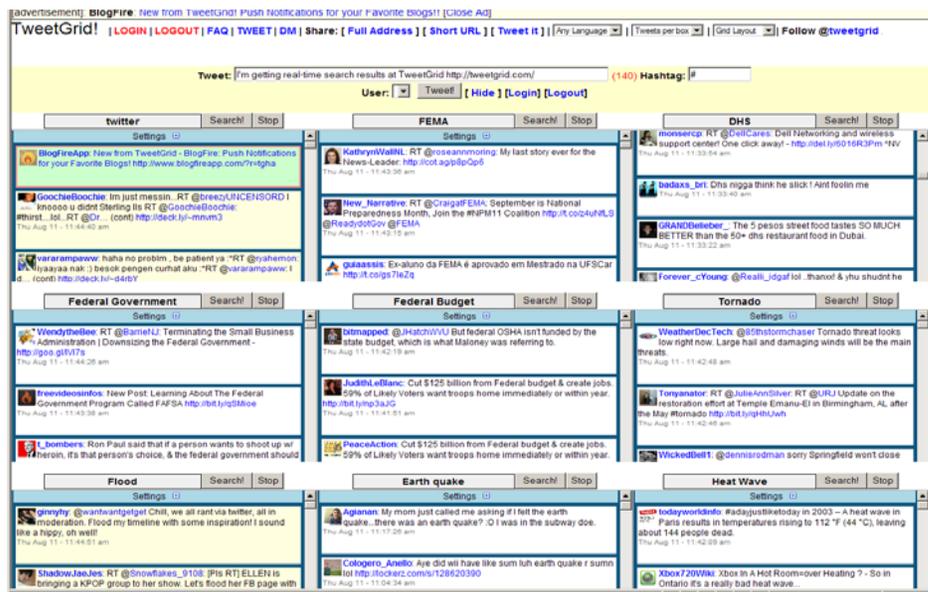
You Tube is a video sharing site. Videos must be under 10 minutes. Videos should include close captioning to comply with Section 508.

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Twitter- [www.twitter.com](http://www.twitter.com)

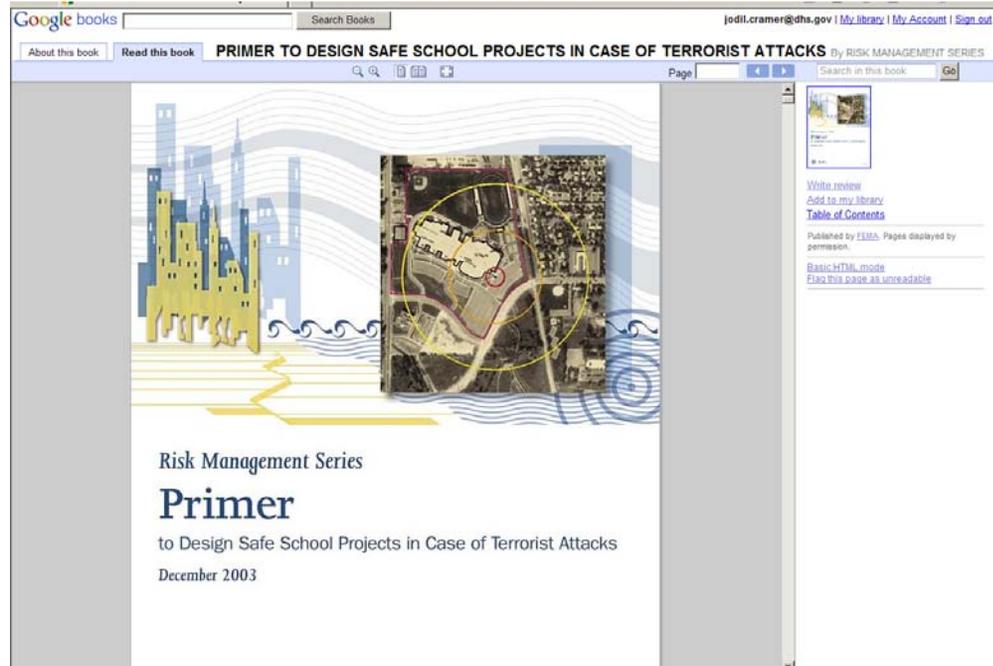


Twitter allows the user to post messages of up to 140 characters. Twitter messages are public and can be searched on tools like Tweet Grid. – [www.tweetgrid.com](http://www.tweetgrid.com)



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Google Books – [www.books.google.com](http://www.books.google.com)



Google Books is an online library that allows users to read/purchase books. They can also be downloaded to an e-reader.

Blogs – Blogs are e-journals where users can comment on the original post.



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Wikis – are electronic encyclopedias that can be updated by users.



# FEMA

## The Full-Spectrum Risk Knowledgebase

This site may contain **FOR OFFICIAL USE ONLY** information  
Access to this site is restricted to authorized users only

Search

Log Out History View source Page

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Navigation
<a href="#">Main Page (Site Home)</a>
<a href="#">BLRI Home</a>
<a href="#">Methodology Playbook</a>
<a href="#">Reference Library</a>
<a href="#">Glossary</a>
<a href="#">Partners</a>
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<a href="#">Log Out</a>

### NUCLEAR/RADIOLOGICAL EMERGENCY

A nuclear incident or radiological emergency, generally referred to on this page as a nuclear/radiological emergency, is any event that results in the [release or potential release of radioactive materials](#), whether intentional or accidental. Nuclear/radiological emergencies are generally described in terms of two categories:

- Inadvertent or otherwise accidental releases* – to include accidents at nuclear facilities, loss radioactive material sources, transportation accidents involving nuclear/radioactive material, domestic nuclear weapons accidents, and foreign accidents involving nuclear/radioactive material that impact the United States
- Releases related to deliberate acts* – to include attacks using a [nuclear weapon or improvised nuclear device \(IND\)](#) and attacks using [radiological dispersal devices \(RDDs\)](#),<sup>2</sup> as well as other radiological exposure devices (REDs).

Most nuclear/radiological emergencies are caused by "the loss, theft, or mismanagement of relatively small radioactive material sources" or incidents involving human exposure or introduction to the environment of naturally occurring radioactive material.<sup>3</sup>

A nuclear power plant may inadvertently release radioactive material as the result of human error, [damage](#) caused by a natural disaster, or as a mitigation strategy during an incident within the plant to prevent its radioactive fuel from overheating and melting down. Unsafe radiation may also emit directly from a nuclear power plant's reactor or from damaged containment vessels used to store or transport radioactive materials. The [U.S. Nuclear Regulatory Commission \(NRC\)](#)<sup>4</sup> is responsible for regulating the use of radioactive materials for civilian purposes and ensuring the protection of public health and safety and the environment and promoting nuclear security.<sup>5</sup> ([Additional information on emergency preparedness at nuclear power plants](#))

Nuclear/radiological emergencies may also spur from transportation accidents as radioactive materials frequently undergo transit, often via truck or rail. Each year, the [U.S. Department of Energy \(DOE\)](#)<sup>6</sup> transports approximately three million packages of radioactive materials and radioactive waste. These materials have wide-ranging uses for both military and civilian organizations, such as isotopes for medical, industrial, and research purposes, materials for weapons, and reactor components. The shipment of radioactive materials is regulated by the [NRC](#)<sup>7</sup> and [U.S. Department of Transportation \(DOT\)](#)<sup>8</sup>; certain DOE shipments may also be regulated by DOE yet also remain subject to NRC and DOT regulation and other federal

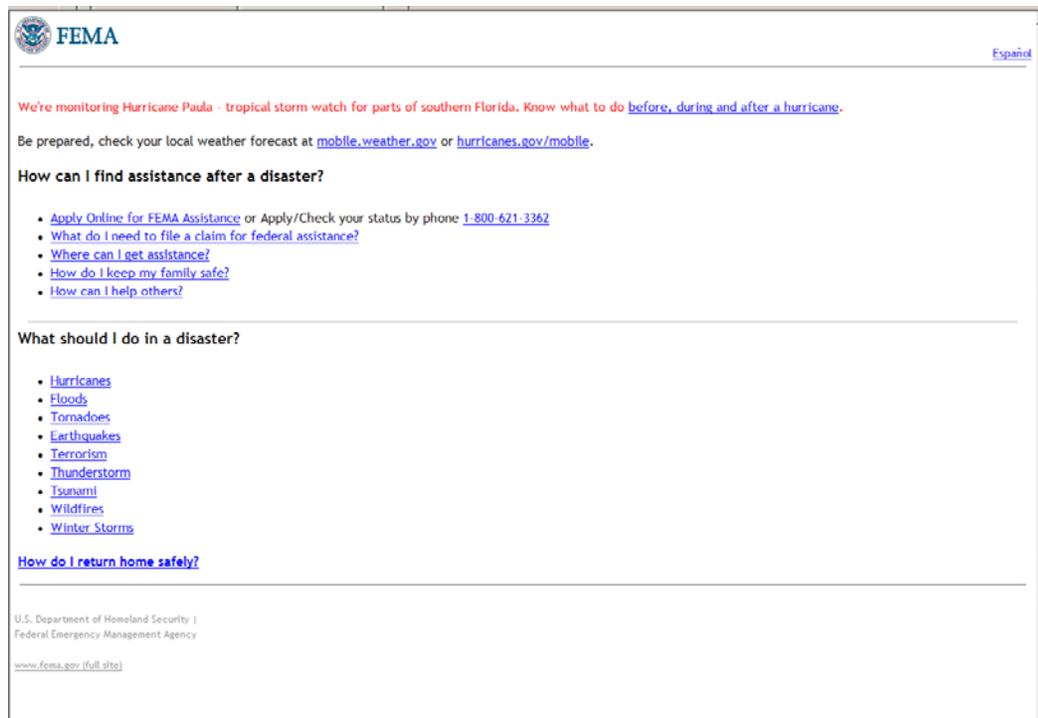


Big Rock Point Nuclear Power Plant - aerial view.<sup>9</sup>

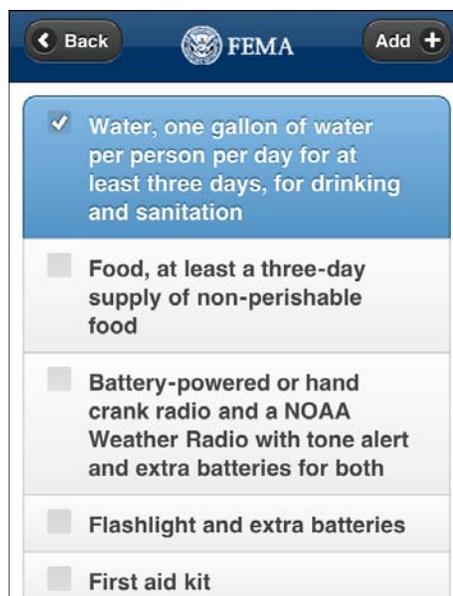


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Mobile – Mobile websites have fewer graphics and are quicker to load so that users can access content on their smart phones.



Mobile Apps – Apps are content placed on the user's smart phone that links to the internet or other applications on their phone.



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Community sites – community.fema.gov



This is where the Agency creates their own social media network. It allows registered users to add content and images.

Multimedia Site – Agencies need to store their multimedia on their own site as well.



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Widgets – are web content that the Agency creates and users may place on their website. Content can be static or dynamic.



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## Agency's Social Media Page

Home Plan & Prepare Recover & Rebuild Apply for Assistance Disasters & Maps FEMA Audiences About FEMA News & Media

Site Help  
Site Map  
FOIA  
Privacy Policy  
Accessibility  
RSS  
Link to FEMA  
Federal Register  
Notices

### Our Internet Presence

We utilize numerous digital communication channels and tools as part of our mission to provide information to the public before, during, and after a disaster. This page outlines all of our official communication channels and resources and why we use them.

#### Mobile Website - [m.fema.gov](http://m.fema.gov)

The mobile website allows the public to easily access preparedness and disaster-related information directly on their smartphone. The site also includes a registration form that the public can fill out to apply for disaster assistance after a Presidential declaration.

#### FEMA Blog - [blog.fema.gov](http://blog.fema.gov)

The blog provides a place for agency senior leaders to discuss the current topics of the day. It encourages open conversation and is open to user comments.

#### Tools on FEMA.gov

- RSS/Data Feeds** - [www.fema.gov/help/rss.shtm](http://www.fema.gov/help/rss.shtm)  
RSS/data feeds automatically provide the public with updated information as soon as it's available.
- Widgets** - [www.fema.gov/help/widgets](http://www.fema.gov/help/widgets)  
Widgets provide information through web-based graphical interfaces. The public can place the widgets on their personal websites, allowing their visitors to see information that we provide.
- Multimedia Library** - [www.fema.gov/medialibrary](http://www.fema.gov/medialibrary)  
The Multimedia Library has all of our videos, photos, and audio files in one location.

#### Email Updates - [www.fema.gov/help/getemail.shtm](http://www.fema.gov/help/getemail.shtm)

Email updates provide information to the public directly in their inbox. We never send unsolicited emails and the public can choose which updates they would like to receive. Our email updates are provided by a third-party company called GoDelivery.

#### Challenge.gov - [www.challenge.gov/fema](http://www.challenge.gov/fema)

The website allows the public to submit solutions for specific challenges posted by FEMA and other federal agencies.

#### Official FEMA Channels on Third Party Social Media Sites

We are providing the following links to FEMA's presence on other third party sites for your reference. FEMA does not endorse any non-government websites, companies or applications.

- Facebook** - [www.facebook.com/fema](http://www.facebook.com/fema)  
A social media website that allows us to provide information (including photos and videos) and interact with the public in a two-way conversation.
- Facebook: Alabama Emergency Management Agency and FEMA** - [www.facebook.com/AlabamaEMA](http://www.facebook.com/AlabamaEMA)  
A joint Facebook page created by the Alabama Emergency Management Agency and FEMA to provide information and interact with the people of Alabama to support the recovery efforts after the tornadoes and severe weather.
- Twitter & TwitPic**  
Twitter is microblog service ([twitter.com/fema](http://twitter.com/fema)) that allows us to provide information and interact with the public in a two-way conversation via short messages (in 140 characters), just like text messages. TwitPic is a photo social media site that allow us to provide pictures to the public via Twitter and the web. ([twitpic.com/photos/CraigatFEMA](http://twitpic.com/photos/CraigatFEMA))  
  
This is a list of all of our Twitter accounts:
  - Administrator Craig Fugate** - [twitter.com/CraigatFEMA](http://twitter.com/CraigatFEMA)
  - FEMA** - [twitter.com/fema](http://twitter.com/fema)
  - Ready** - [twitter.com/ReadydotGov](http://twitter.com/ReadydotGov)  
The Ready Campaign is designed to educate and empower Americans to prepare for and respond to emergencies including natural and man-made disasters. [www.ready.gov](http://www.ready.gov)
  - Citizen Corps** - [twitter.com/citizen\\_corps](http://twitter.com/citizen_corps)  
Citizen Corps helps coordinate volunteer activities that will make our communities safer, stronger, and better prepared to respond to any emergency situation. [www.citizencorps.gov](http://www.citizencorps.gov)
  - U.S. Fire Administration** - [twitter.com/usfire](http://twitter.com/usfire)  
The U.S. Fire Administration provides national leadership to foster a solid foundation for our fire and emergency services stakeholders in prevention, preparedness, and response. [www.usfa.dhs.gov](http://www.usfa.dhs.gov)
  - Louisiana Recovery Office (LRO)** - [twitter.com/femalro](http://twitter.com/femalro)  
The Louisiana Recovery Office serves LA communities recovering from hurricanes Katrina and Rita. [LRO on FEMA.gov](http://LRO.on.FEMA.gov)
  - Region 1** - [twitter.com/femaregion1](http://twitter.com/femaregion1)  
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont ([Region\\_1 on FEMA.gov](http://Region_1.on.FEMA.gov))
  - Region 2** - [twitter.com/femaregion2](http://twitter.com/femaregion2)  
New Jersey, New York, Puerto Rico, and the Virgin Islands ([Region\\_2 on FEMA.gov](http://Region_2.on.FEMA.gov))
  - Region 3** - [twitter.com/femaregion3](http://twitter.com/femaregion3)  
Delaware, District of Columbia, Maryland, Pennsylvania, Virginia and W. Virginia ([Region\\_3 on FEMA.gov](http://Region_3.on.FEMA.gov))
  - Region 4** - [twitter.com/femaregion4](http://twitter.com/femaregion4)  
Alabama, Florida, Georgia, Kentucky, Mississippi, N. Carolina, S. Carolina and Tennessee ([Region\\_4 on FEMA.gov](http://Region_4.on.FEMA.gov))
  - Region 5** - [twitter.com/femaregion5](http://twitter.com/femaregion5)  
Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin ([Region\\_5 on FEMA.gov](http://Region_5.on.FEMA.gov))
  - Region 6** - [twitter.com/femaregion6](http://twitter.com/femaregion6)  
Arkansas, Louisiana, New Mexico, Oklahoma and Texas ([Region\\_6 on FEMA.gov](http://Region_6.on.FEMA.gov))

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- o **Region 7** - [twitter.com/femaregion7](https://twitter.com/femaregion7)  
Iowa, Kansas, Missouri and Nebraska ([Region 7 on FEMA.gov](#))
- o **Region 8** - [twitter.com/femaregion8](https://twitter.com/femaregion8)  
Colorado, Montana, N. Dakota, S. Dakota, Utah and Wyoming ([Region 8 on FEMA.gov](#))
- o **Region 9** - [twitter.com/femaregion9](https://twitter.com/femaregion9)  
Arizona, California, Hawaii, Nevada, American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Republic of the Marshall Islands, and Federated States of Micronesia ([Region 9 on FEMA.gov](#))
- o **Region 10** - [twitter.com/femaregion10](https://twitter.com/femaregion10)  
Alaska, Idaho, Oregon and Washington ([Region 10 on FEMA.gov](#))

- **Google Books**  
We are using the Google Books digital library to share publications with stakeholders so we can provide published content in a free online format that is easy to access.

If you think FEMA should use other third party sites or communications tools, then please contact us at [FEMA-New-Media@dhs.gov](mailto:FEMA-New-Media@dhs.gov).

Please see our [privacy policy](#) to learn about privacy with new media tools.

Last Modified: Sunday, 01-May-2011 18:55:15 EDT

[Home](#) [Contact Us](#) [Español](#) [Privacy Policy](#) [Important Notices](#) [Accessibility](#) [Download Plug-ins](#) [FOIA](#) [No FEAR Act Data](#) [USA.gov](#) [DHS](#)

\* The social media links provided are for reference only. FEMA does not endorse any non-government Web sites, companies or applications.



**FEMA** Federal Emergency Management Agency  
U.S. Department of Homeland Security  
500 C Street SW, Washington, D.C. 20472  
(202) 646-2500

**DisasterAssistance.gov**  
ACCESS TO DISASTER HELP AND RESOURCES  
(800) 621-FEMA / TTY (800) 462-7585  
3 Step Guide for Assistance



Ready  
Prepare. Plan. Stay Informed.

## Privacy Policy on Social Media

### Social Media

FEMA has been engaging in Web 2.0 tools and on social media sites nationwide as part of its mission to prepare the nation for disasters. To view how FEMA is using Web 2.0 tools and for a complete list of FEMA's on and off network Web 2.0 tools please see [www.fema.gov/help/social\\_media.shtm](http://www.fema.gov/help/social_media.shtm).

FEMA is not collecting or retaining any privacy information from our use of third party Web 2.0 application. We are however, retaining a copy of all comments posted to our sites as required by our records retention policy and will only be releasing them when required by Federal law. We ask that you do not provide any personally identifiable information such as: a FEMA case number, social security number, or any other information you do not want available to the general public in your comments to FEMA when using these applications. FEMA will attempt to remove any personally identifiable information from these sites, but may not be able to do so until after it has been made publically available. If you choose to post personally identifiable information on any public site you do so at your own risk. FEMA disclaims any liability for any loss or damage resulting from any comments posted on these applications. The privacy policies of all third party sites apply in the collection and dissemination of user data. FEMA encourages all users to read the privacy policies before registering or posting to any application. If you have any comments that you wish to share with FEMA involving personally identifiable information please contact the appropriate [FEMA program](#).

Agencies should have a page on their website that tells the public what social media they are using and how it can be accessed. They should also include a social media section in their privacy policy.

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# *Capturing Criminals But Maybe Not The Reward Money*

**(An 18 U.S.C. § 209 \$25,000 Question)**

Presenters:

**Stuart Bender**

**Director, Office of Ethics**

**U.S. Department of Agriculture**

**Lorraine “Rainee” Luciano**

**Branch Chief, Office of Ethics**

**Forest Service Ethics Branch**



# The Story



- **Private Prison near Kingman AZ**
- **Serving Murder Sentences**
- **Only a Medium Security Prison**

# The Girlfriend & the Get-a-Way Car

**Carolyn Welch**



**Bolt Cutters**



# The Prison Break



# The Escapees



**Tracy Province**



**Daniel Renwick**



**John McCluskey**

# Gary and Linda Haas

- Oklahoma Residents
- On their way to Colorado to meet up with some camping buddies



- Charred remains behind a barn in Santa Rosa, N.M.
- Forensic evidence links Province, McCluskey and Welch

# The 3 Week Nation-wide Manhunt

- Sited in Canada
- Sited in Montana
- Sited in California





# Reward Money Offered for Information



# The Story Continued



- Around noon on Thursday, August 19, 2010, at an Apache-Sitgreaves Forest campground
- A Forest Service Employee in Uniform
- An unattended campfire & an ax in a dead tree
- An old dented car hidden in the trees.
- A man & woman
- The man seemed suspicious, but the woman smiled

# The Fugitives



**John McCluskey**



**Carolyn Welch**

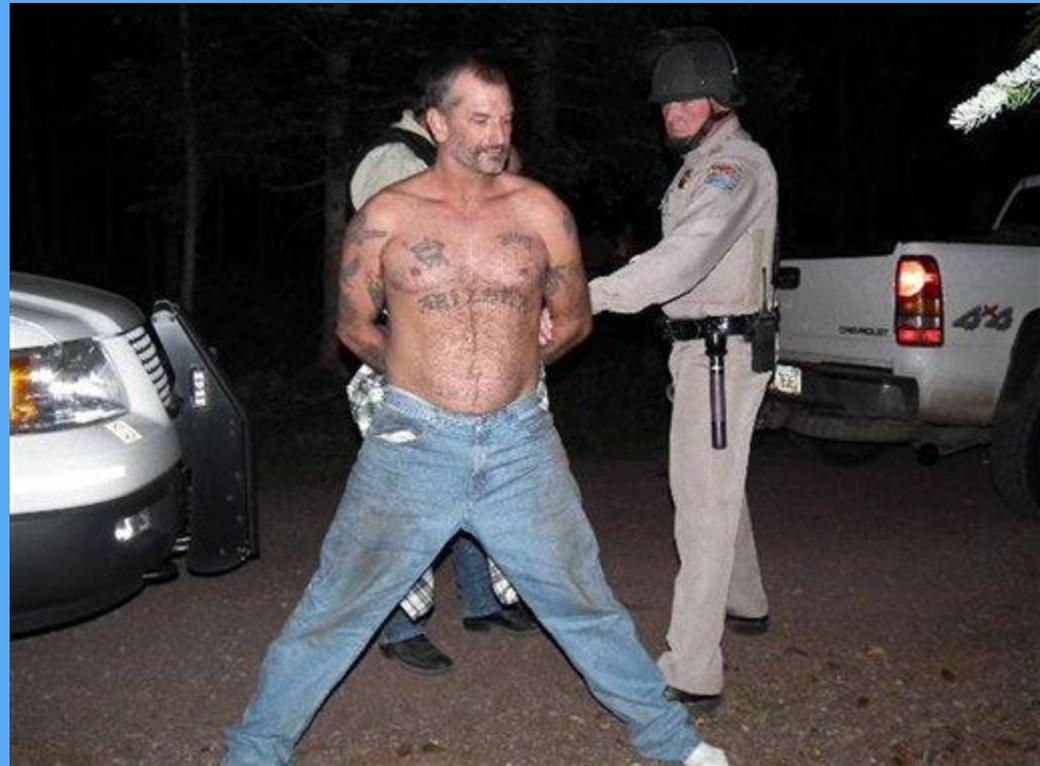
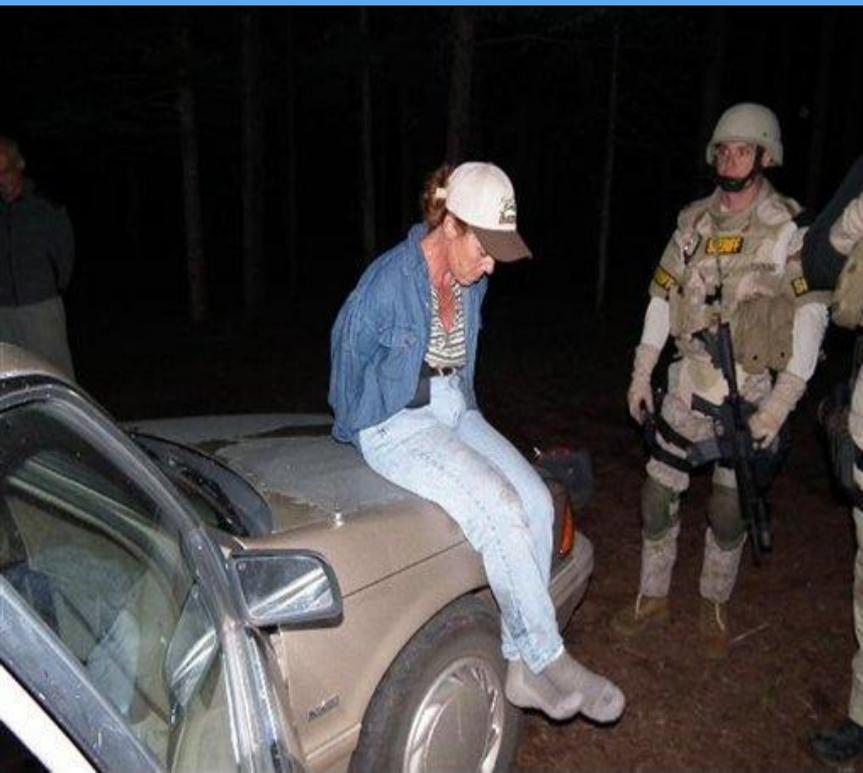
# The Hero



# The Campsite



# The Capture





# Can the Ranger Accept the Reward Money ?



# 18 U.S.C. § 209(a)



- Bans Outside Supplementation of Government Salary
- Bans receiving any supplementation of salary, as compensation for services as an Executive Branch employee from any source other than the U.S. Government.
- Also bans outside entities from providing a supplementation in violation of § 209

# Four Elements of § 209



1. Receipt of supplementation of salary;
2. As compensation;
3. For services as an employee of the United States;
4. From any source other than the United States.

# Just the Facts.....

*Just the facts, mam.  
Just the facts.*



- “Detailed” as a recreation technician
- Permanent job was a desk job
- Detail job required him to inspect campsites
- Advise users proper use of campgrounds
- If people are dangerous, report and do not engage
- No law enforcement duties

# Element Four - From any source other than the United States (USMS V. MTC)

- At least half of the money came from U.S. Government – United States Marshal Service
- DOJ Regulations says so long as you are not an employee of DOJ or a U.S. Government Law Officer you can partake of reward money
- FS Employee has green light for USMS reward money under Section 209

# The Portion of the Reward Offered by the Prison = Outside Source

- Must look at third element – Is the reward offered for service as a Government employee:
  - Review the facts
  - Review the facts
  - Review the facts!!!!

# The Dilemma

- Was the FS employee acting within his “official duties” when he contacted law enforcement?

# What is Official Duty?

- Does your official duty end when you leave at the end of the day?
- Can official duty reactivate if you start calling Fed Gov employees after work?
- Is it official duty when you do research on your own time, at home with your own resources?

# Critical Facts

- The Ranger's first phone call to try to contact a Forest Service law enforcement officer – the same person he would have tried to contact if he was on duty.
- The Ranger explicitly asked local law enforcement to keep him updated in case he needed to notify his Forest Service District Ranger.

# 18 U.S.C. 209

- No applicable statutory safe harbor for this situation.

- No waiver provision in Section 209.

Unlike 18 USC 207 and 18 USC 208 –  
Section 209 does not allow waiver of the  
supplementation ban.

# The Ranger's Scope of Duties

- No law enforcement duties
- Not within his duty to report mere suspicions
- Duty to report actual observed violations of law, but no obligation to report mere suspicions.
- The Ranger's supervisor believed he went above and beyond his duties.

# The 50 Percent Solution

- Ranger allowed to accept the reward money from the U.S. Marshal's Service
- Ranger not allowed to accept the offered reward from the private prison.



# Lessons Learned



- ☑ When you have a "grey zone" case, immediately bring in and discuss the issue with your agency's ethics experts.
- ☑ Be Persistent - You will likely not be given all of the facts you need in the first communication with a reward-seeker.
- ☑ If another Federal agency is involved, discuss with them.

# Lessons Learned



- ✓ At the end, the employee may not appreciate the ethics ruling (if he cannot keep the money), but he will be in compliance with 209, a criminal law.
- ✓ No such thing as too many facts
- ✓ Most Importantly – Once you have the facts, Coordinate with OGE

# Comeuppance



# Questions?

**Stuart Bender**

**Director**

**Office of Ethics**

**Office of Human Resources Management**

**Office of the Assistant Secretary  
for Administration**

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- (703) 605-0858





The Full-Spectrum Risk Knowledgebase is an initiative of the Office of National Capital Region Coordination (NCRC) of the Federal Emergency Management Agency, developed with input from diverse stakeholders

The screenshot shows the website's main page with a navigation sidebar on the left and a main content area. The sidebar includes links for Home, BLRI Home, Methodology Playbook, Reference Library, Glossary, Partners, User's Guide, and a Toolbox. The main content area features a 'MAIN PAGE' with a welcome message, a 'The Knowledgebase Key Features' section listing Baseline Risk Information (BLRI), Methodology Playbook, and Reference Library, and a 'What's New or Updated?' section with a featured entry on flooding. A 'Featured Picture' shows a person in a yellow rain suit near a spill, with a caption: 'An image of pollution caused by an oil spill'. A 'Featured Myth' section discusses the common reaction of panic during disasters. At the bottom, there is a comment form with fields for 'Your Email' and 'Comment', and a 'Submit Comment' button.

### About The Full-Spectrum Risk Knowledgebase

The Full-Spectrum Risk Knowledgebase is designed to support federal, state, local, tribal, and territorial government officials in considering their risks and to enhance risk-informed decision making. The Full-Spectrum Risk Knowledgebase is a secure, online resource for stakeholders and contains reference material, information, and guidance aimed at helping them further develop and refine their own knowledge of all-hazard risks. While it facilitates risk analysis, it does not generate answers on its own; rather, it helps stakeholders formulate and answer key risk questions themselves based on information about how hazards evolve in time, what types of mitigation actions and countermeasures may reduce risk, and how to apply different methods and structured analytic techniques to help reason through problems and develop answers to questions that are mindful about what is known, unknown, and assumed. The Full-Spectrum Risk Knowledgebase serves as a collaborative environment to build risk knowledge, enabling users to access and contribute to the development of site content at will. The information on this dynamic site is continually expanding and represents a growing body of knowledge based on research and analysis and communications with subject-matter experts and various stakeholders. Updated and new content is regularly added by NCRC staff, as developed by the Program Team and with input from users, to include elaboration on cause and consequence in different contexts, examples of mitigation actions and countermeasures that may be implemented to influence the causal relationships between hazards, varied perspectives on historical events, and case studies demonstrating the application of different structured analytic techniques, among other information.

### Baseline Risk Information

**Offers information on:**

- What can happen (threats and hazards)
- What the consequences may be if it does happen (networks illustrate cause and effect)
- Factors that influence the extent of consequences
- What can be done
- What has happened in the past

**Assists in:**

- Planning
- Exercises
- Forecasting cascading effects of an incident
- Informing investment justifications and program plans

### Methodology Playbook

**Offers information and guidance on:**

- Structured analytic techniques
- Analytic packages for key decision tasks

**Provides:**

- Step-by-step instructions on using select analytic techniques
- Frameworks to inform decision making

**Enables:**

- Systematic, analytical approach to decision making
- Documentation on how conclusions were reached

**Assists in:**

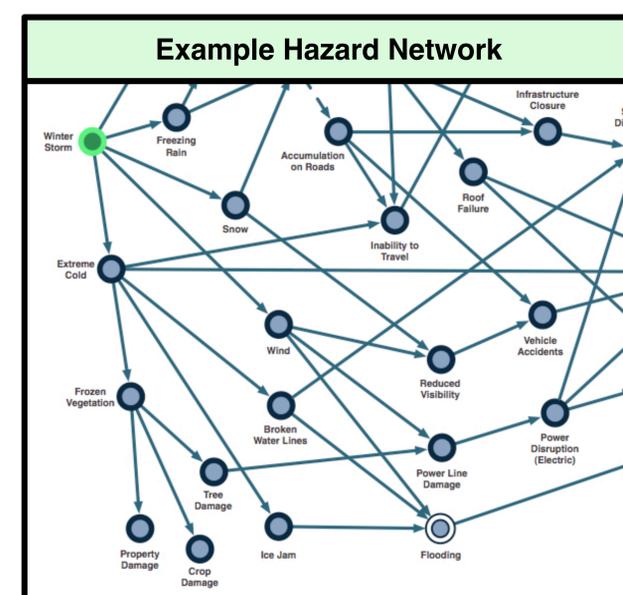
- Articulating decisions and approach or processes used
- Developing investment justifications and program plans

### Collectively, The Knowledgebase . . .

- ... Supports risk-informed decision making
- ... Enables risk analyses
- ... Aids in building a more refined risk picture
- ... Serves as a collaborative environment to build risk knowledge
- ... Captures institutional knowledge and experience of subject-matter experts and practitioners

**Users are encouraged to provide input via a Comments feature**

- Share information
- Impart knowledge and expertise
- Offer suggestions for enhanced or added content



### The Methodology Playbook . . .

- ... Provides information and guidance on methodologies and structured analytic techniques to help stakeholders Identify, Assess, Rank & Order, and Learn about threats, hazards, vulnerabilities, and mitigation actions and countermeasures, and Defend prioritizations and allocations
- ... Provides worksheets where appropriate for use during and after the completion of each method or technique
- ... Offers case studies of real risk problems to supplement guidance on select techniques, as performed or facilitated by The Pennsylvania State University with the help of practitioners
- ... Includes information on the use of complementary techniques and custom "analytic packages" for tackling a variety of decision tasks subject to time and resource constraints

#### Selected Methods and Techniques

- Analysis of Competing Hypotheses
- Cause and Effect Diagrams
- Divergent-Convergent Thinking
- Failure Modes and Effects Analysis
- Hierarchical Holographic Modeling
- Nominal Group Technique
- Timelines and Chronologies
- Weighted Ranking

**And Many More . . .**

#### Analytic Packages

**Example: Identifying Fiscal Year Investment Themes**

The below is an analysis process based around a variety of brainstorming techniques that can be used to produce one or more investment themes based on the input of multiple stakeholders.