

Special Government EMPLOYEES

Not Serving on Federal Boards

U.S. Office of Government Ethics

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MISSION

Provide overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest

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THIS REPORT IS BASED ON
A COMPULSORY SURVEY
CONDUCTED BY OGE REGARDING
SPECIAL GOVERNMENT
EMPLOYEES NOT SERVING ON
FEDERAL BOARDS. THE SURVEY
WAS CONDUCTED IN CONNECTION
WITH A RECOMMENDATION
ISSUED BY THE GENERAL
ACCOUNTABILITY OFFICE.

Background

The General Accountability Office (GAO) was asked to examine agencies' use of special Government employees (SGEs)¹ not serving on federal boards (i.e., experts and consultants expected to serve 130 days or less during any period of 365 days). As part of its study, GAO analyzed data, reviewed agency documentation, and interviewed agency officials from the Office of Government Ethics, the Office of Personnel and Management, the Department of Health and Human Services, the Department of Justice, the Department of State, the Nuclear Regulatory Commission, and the National Science Foundation.

GAO published a report², which included a recommendation for the Director of OGE to determine through a survey of Designated Agency Ethics Officials and/or by analyzing agency data whether executive branch agencies are experiencing challenges related to the reliability of data on SGEs not serving on boards. The recommendation further stated that if they are, the Director should take steps to help the agencies strengthen their data. As a result of the GAO report and the recommendation, in November 2016 OGE conducted a compulsory survey (see Appendix) of executive branch agencies regarding SGEs.

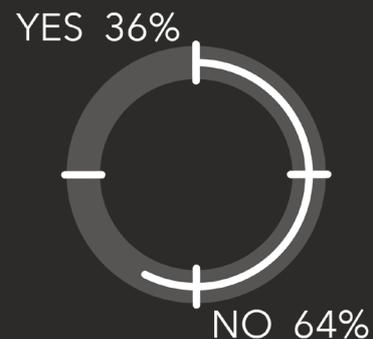
¹ special Government employee or SGE means an employee who meets the definition set forth at 18 U.S.C. § 202(a).

² U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-16-548, FEDERAL WORKFORCE: OPPORTUNITIES EXIST TO IMPROVE DATA ON SELECTED GROUPS OF SPECIAL GOVERNMENT EMPLOYEES (2016)

Survey Results

In accordance with the scope of the GAO report, OGE's survey collected data only on SGEs not serving on federal boards (i.e., experts and consultants expected to serve 130 days or less during any period of 365 days). The survey did not seek information regarding SGEs who served on advisory committees or who served as board members or commissioners.

Of the 135 agencies surveyed, 48 agencies responded that they employed an Expert/Consultant SGE during calendar year 2015.

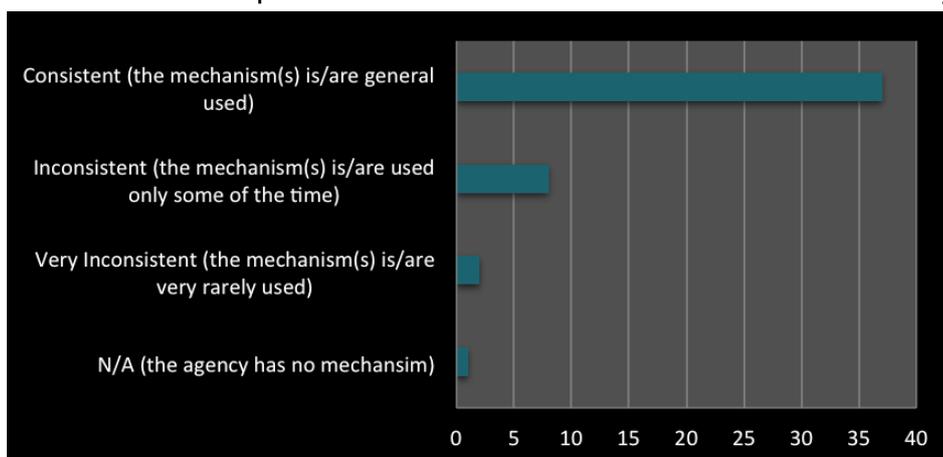


When asked to describe the mechanism used to document the SGE status of an Expert/Consultant SGE and to identify the office(s) or official(s) responsible for documenting the SGE status of an Expert/Consultant SGE each of the 48 agencies described a process unique to their individual agency. However, most agencies (~85%) mentioned that:

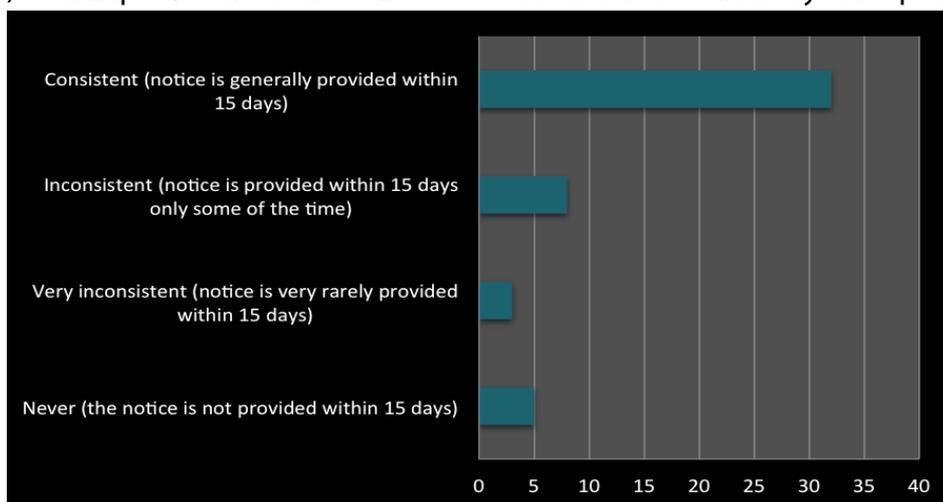
- the human resources office was mainly responsible for the process, including documenting the SGE status of an Expert/Consultant; and
- the requesting office, administrative/human resource offices, and/or the ethics office were involved in the process.

About one-third of agencies indicated using a tracking system or forms, such as the SF-50, to document the status.

Agencies were then asked to describe the consistency with which they use its mechanism(s) to document the SGE status of an Expert/Consultant SGE. See below chart for a summary of responses.



When asked to identify the office(s) or official(s) responsible for notifying the agency ethics office of an Expert/Consultant SGE appointment or reappointment, two-thirds of the agencies identified human resources as the office responsible. Agencies were also asked to describe whether the agency's ethics office consistently receives notice within 15 days of the appointment or reappointment)of an Expert/Consultant SGE. See below chart for a summary of responses.



Lastly, when asked to describe the challenges they experienced in connection with data reliability regarding Expert/Consultant SGEs, approximately half of the agencies reported no challenges. Seventeen agencies reported challenges and described difficulties such as:

- the burden of manual tracking;
- poor coordination with human resources; and
- inconsistent application of existing internal controls.

Three agencies acknowledged data challenges but indicated that they are proactively taking steps to address those challenges.

As OGE previously conveyed to GAO³, OGE concurs with GAO that it is important to strengthen the reliability of agency data on SGEs not serving on federal boards. OGE believes that consistent and reliable data fosters the proper designation of SGEs, which helps ensure that SGEs receive targeted ethics training and counseling. However, based on agency responses, OGE does not believe executive branch agencies are experiencing systemic challenges in connection with data regarding Expert/Consultant SGEs. Further, the survey results show that information regarding the hiring and designation of SGEs is primarily within the control of human resources officials. The next section of the report describes steps taken by OGE to strengthen the relationship between human resources officials and agency ethics officials.

³ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-16-548, FEDERAL WORKFORCE: OPPORTUNITIES EXIST TO IMPROVE DATA ON SELECTED GROUPS OF SPECIAL GOVERNMENT EMPLOYEES (2016)

Actions Taken

In fiscal years 2016 and 2017, OGE took steps to promote coordination between agency ethics officials and human resources officials to fulfill certain ethics program requirements. For example, on November 2, 2016, OGE published a final rule amending its regulations that govern the executive branch ethics program, which are found at 5 C.F.R. part 2638. The recent update to the regulations includes:

- the addition of “lead human resources officials” to the list of officials responsible for government ethics (5 C.F.R. 2638.105); and
- a requirement for human resources officials to identify new employees subject to financial disclosure requirements.

OGE circulated a copy of the updated regulation to Chief Human Capital Officers through their listserv and will continue to encourage and monitor implementation of these new requirements. OGE believes this regulation will help agencies strengthen their data and address some of the concerns raised by agencies with regard to human resources coordination.

Lastly, OGE will continue to ask agencies to submit data regarding SGEs as part of their individual Annual Agency Ethics Program Questionnaire submissions. OGE will continue to review certain targeted responses for anomalies and follow-up as necessary with individual agencies.

Key Resources

The GAO report serves as a good reminder about the importance of the timely designation of SGEs. Timely designation ensures that they timely file financial disclosure forms, as well as receive the targeted ethics training and counseling that help them stay free from conflicts of interest. This section provides a sampling of OGE SGE-related resources, which includes advisories, training, and job aids.

OVERVIEW

[Overview of the SGE status, including a summary of how the laws and rules apply to SGEs.](#)

KEY ADVISORIES

[00x1: Summary of Ethical Requirements Applicable to Special Government Employees](#)

OGE issues a summary of the ethics requirements that are applicable to special Government employees. [Note: Executive Order 12834, referenced in this Informal Advisory Memorandum, has been revoked.]

[DO-03-021: Financial Disclosure Reporting Requirements for Special Government Employees \(SGEs\)](#)

This memorandum explains the financial disclosure filing criteria for SGEs and uses scenarios to further illustrate how the criteria should be implemented.

[07x1: Counting Days of Service for Special Government Employees](#)

OGE clarifies the conditions under which an agency need not count a day of service solely on the basis of certain activities by special Government employees.

[03x7: 60-Day Thresholds for SGEs](#)

An SGE is always prohibited from representing others in connection with particular matters involving specific parties in which the SGE has participated personally and substantially. The 60-day standard is a threshold for the stricter prohibition in relation to matters pending at the SGE's agency.

TRAINING & JOB AIDS

[Ethics Fundamentals Series: Managing Special Government Employee Service - April 14, 2016](#)

This 90-minute panel session reviews how various ethics laws apply to SGEs and also addresses the issues of proper appointment, effective conflict of interest identification and management of financial disclosure requirements.

[To Serve With Honor: A Guide on the Ethics Rules that Apply to Advisory Committee Members Serving as Special Government Employees](#)

This booklet highlights some of the ethics rules that are most likely to affect these committee members, in addition to providing them with a game plan of eight general principles that will help promote peak ethical performance.

APPENDIX

EXPERT/CONSULTANT SGE SURVEY

Each Designated Agency Ethics Official (DAEO), or a designee of the DAEO, is required to complete the following survey regarding data related to special Government employees (SGEs) not serving on federal boards (i.e., experts and consultants expected to serve 130 days or less during any period of 365 days). This survey does not seek information regarding SGEs who serve on advisory committees or who serve as board members or commissioners. Responses are due no later than November 16, 2016.

BACKGROUND

Pursuant to 5 U.S.C. app. § 403(a)(2), OGE is conducting a compulsory survey of executive branch agencies in response to the following recommendations in a report of the Government Accountability Office (GAO):

To help ensure HHS has reliable data on SGEs not serving on federal boards, we recommend that the Secretary of HHS take steps to improve the reliability of data on SGEs not serving on boards. For example, the agency could reconcile human capital data with general counsel and ethics office data, or issue clarifying guidance to human capital staff on appropriately identifying SGEs in human capital databases.

To help ensure agencies report consistent and reliable data, the Director of OGE should determine (e.g., through a survey of Designated Agency Ethics Officials and/or by analyzing agency data) whether other executive branch agencies are experiencing challenges similar to HHS, State, and NRC. If they are, the Director should take steps to help the agencies strengthen their data.

U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-16-548, FEDERAL WORKFORCE: OPPORTUNITIES EXIST TO IMPROVE DATA ON SELECTED GROUPS OF SPECIAL GOVERNMENT EMPLOYEES 27 (2016), available online at <http://www.gao.gov/assets/680/678470.pdf>. OGE will use the information collected by this survey to determine whether executive branch agencies are experiencing challenges in maintaining consistent and reliable data on SGEs not serving on boards. If they are experiencing such challenges, OGE will seek to determine what steps may need to be taken.

DEFINITIONS

For purposes of this survey, the following definitions apply:

(a) *Expert/Consultant SGE* means an officer or employee who: (1) meets the definition at 18 U.S.C. § 202(a) and (2) is not serving as a member of a federal board, commission, or committee.

Exclusions: The term Expert/Consultant SGE does not include SGEs serving on either Federal Advisory Committee Act (FACA) committees or a non-FACA committees. The term does not include SGEs who serve as members of boards. (However, the term includes SGEs hired by boards as experts and consultants who are not board members.) The term does not include SGEs who serve as members of commissions.

(b) *SF-50* means the Standard Form 50 (SF-50), Notice of Personnel Action, that the executive branch uses to document personnel actions for employees, including SGEs.

(c) *Special Government employee or SGE* means an employee who meets the definition set forth at 18 U.S.C. § 202(a).

DEADLINE

Each Designated Agency Ethics Official must submit only one (1) response by **no later than November 16, 2016**. Please direct questions to your OGE Desk Officer.

EXPERT/CONSULTANT SURVEY

Complete each item below, except as otherwise directed. See the definitions for an explanation of the term Expert/Consultant SGE.

1. Select the name of your agency from the dropdown list provided.
2. Did your agency employ any Expert/Consultant SGE at any time during calendar year 2015? (*Please refer to the definitions section for an explanation of the term "Expert/Consultant SGE"*)
 - Yes
 - No [the system will end the survey]
3. In the space provided below, briefly describe the mechanism(s) your agency uses to document the SGE status of an Expert/Consultant SGE. In your description, identify the office(s) or official(s) responsible for documenting the SGE status of an Expert/Consultant SGE.

4. Generally, how would you describe the consistency with which your agency uses its mechanism(s) to document the SGE status of an Expert/Consultant SGE?
- N/A** (the agency has no mechanism)
 - Very inconsistent** (the mechanism(s) is/are very rarely used)
 - Inconsistent** (the mechanism(s) is/are used only some of the time)
 - Consistent** (the mechanism(s) is/are generally used)
5. In the space provided below, briefly identify the office(s) or official(s) responsible for notifying your agency's ethics office when the agency appoints (or reappoints) an Expert/Consultant SGE:

6. Generally, how would you describe the consistency with which your agency's ethics office receives notice within 15 days of the appointment (or reappointment) of an Expert/Consultant SGE?
- Never** (the notice is not provided within 15 days)
 - Very inconsistent** (notice is very rarely provided within 15 days)
 - Inconsistent** (notice is provided within 15 days only some of the time)
 - Consistent** (notice is generally provided within 15 days)

7. In the space provided below, briefly describe any challenges your agency is experiencing in connection with its data regarding Expert/Consultant SGEs.

8. In the spaces provided below, provide a point of contact that OGE may use if it has questions regarding your responses to this survey.

Name

Title

Email

Telephone

UNITED STATES OFFICE OF
GOVERNMENT ETHICS

— ★ —
Preventing Conflicts of Interest
in the Executive Branch