



U.S. AIR FORCE

Ethics Counselors Deskbook

Rev. November 2013

Office of Government Ethics Program Reviews



Ethics & Fiscal Law
Administrative Law Directorate
Office of the Judge Advocate General
Headquarters Air Force

Integrity - Service - Excellence



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Office of Government Ethics Program Review Authority

- **Title IV of the Ethics in Government Act of 1978**
- **5 CFR part 2638**
- **Monitor compliance with the public and confidential financial disclosure requirements; and**
- **Evaluate the effectiveness of programs designed to prevent conflicts of interest**



Materiality of Findings

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- Findings of lack of compliance with ethics requirements are reportable if they are material
- In general, a finding is material if there is:
 - routine lack of compliance with a statutory/regulatory provision or related provisions; or
 - a single instance of lack of compliance with a statutory/regulatory provision of substantial magnitude



Model Practices

- **Helps the agency foster a strong ethical culture**
 - **Example - An agency head includes a welcome letter underscoring the importance of ethical culture in initial ethics orientation materials for new employees.**
- **Creates efficiencies in the administration of the ethics program**
 - **Example – The agency employs a database that sends automatic notifications reminding ethics officials that a report must be reviewed and certified to meet the 60-day deadline.**
- **Facilitates enduring ethics program effectiveness**
 - **Example – The agency has a comprehensive succession plan for the ethics program that prepares the agency for turnover in staff.**



Model Practices continued

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- **Is an innovative solution to a challenge that may be useful to the executive branch ethics community**
 - **Example – The agency is having trouble identifying new employees in order to provide them with initial ethics orientation. The human resources office is unable or unwilling to help the ethics office. The ethics office knows that every new employee fills out a form to gain access to a computer. The ethics office then convinces IT to include a signature line for the ethics office on the computer access form. Now, the ethics office can identify every incoming employee because new employees require the signature of an ethics official before they can access their computer.**



Program Review Timeline

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- **Data Collection Phase**
 - **Notification of Selection**
 - **Informal Meeting**
 - **Records handoff**
- **Onsite Phase**
 - **Entrance/Exit Conference**
 - **Records Analysis with Ethics Office**
 - **Interviews**
- **Reporting Phase**
 - **2 week comment period on draft**
- **Follow-up Phase**
 - **60 days response period on recommendations**
 - **Follow-up report**



Program Review Elements

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- **Ethics Program Administration**
- **Public Financial Disclosure**
- **Confidential Financial Disclosure**
- **Education & Training**
- **Advice & Counsel**
- **Agency Specific Ethics Rules**
- **Conflict of Interest Remedies**
- **Enforcement**
- **Special Government Employees**
- **31 U.S.C. §1353 Travel Payments**



Ethics Program Administration

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- **Close liaison with OGE**
- **Written delegation to DAEO/ADAEAO**
- **Agency leadership involved in Ethics program**
- **Agency's supplemental regulations, financial disclosure system and PGE enforcement system periodically reviewed**
- **Ethics service assigned to employees detailed outside of agency**



Public Financial Disclosure

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- **Written policies and procedures**
- **Master list of filers**
- **New entrants file w/in 30 days of new position**
- **Termination reports filed within 30 days of leaving position**
- **Annual filers NLT May 15th**
- **Late fees assessed or waived by DAEO**
- **OGE 278 reports reviewed and certified within 60 days**
- **System records retained for 6 years**
- **OGE 278-Ts on monthly basis**



Confidential Financial Disclosure

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- **Written policies and procedures**
- **Master list of filers**
- **New entrants file w/in 30 days of new position**
- **Meet filer criteria: personal and substantial participation in procurement, auditing or regulation that would have direct and substantial economic effect on NFE**
- **Annual filers NLT February 15th**
- **OGE 450 reports reviewed and certified within 60 days**
- **System records retained for 6 years**



Education and Training

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- **Initial Ethics training for all new employees within 90 days of entry**
- **Annual training requirements (topics, format, qualified instructor)**
- **Verbal training for 278 filers**
- **Verbal training at least once every three years for other filers**



Advice and Counsel

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- **Counseling for agency employees on standards of conduct and PGE**
- **5 key factors**
 - **Accuracy**
 - **Timeliness**
 - **Transparency**
 - **Accountability**
 - **consistency**
- **Based on samples of formal legal opinions**
- **Assignment of Ethics Counselors**



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Agency Specific Ethics Rules

- **Supplementation of OGE regulations must be promulgated jointly with OGE and published in Title 5 of CFR**
- **278s and 450s must comply with supplemental regulations**



Conflicts of Interest Remedies

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- **Agency must consult with OGE on 18 USC 208 waivers when practicable and forward copy to OGE**
- **Requests for 208(b)(1) waivers**
 - **Disqualifying financial investment not so substantial that it calls employee's integrity into question**
- **Requests for 208(b)(3) waivers for FACA advisors**
- **Waivers available to public upon request**



- **OGE notified of referrals to DOJ**
- **Agency's IG utilized as appropriate**
- **Prompt and effective corrective action taken on actual and potential conflicts of interest**



Special Government Employees

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- **If meet OGE 278 criteria & service > 60 days, must file OGE 278**
- **Others must file OGE 450**
- **SGEs receive minimum ethics training**
 - **278 filers receive verbal training**
 - **450 filers > 60days/year receive written training with verbal training at least once every three years**
 - **450 filers < 60 days/year receive written training**



31 U.S.C. 1353 Travel Payments

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- **Agency has process for analyzing 1353 travel requests for conflict of interest**
- **Semi-annual reports filed 31 May and 30 November**



Materials Required to be Provided to OGE

- **Org Charts, Delegation letters, policy and procedure regulations**
- **Training plan, training materials and evidence of attendance**
- **All formal ethics opinion and email samples**
- **All 18 USC 208(b)(1) waivers**
- **Contact info for HR & IG POCs**
- **Use OGE checklist**



Preparing for the Program Review

- **Have a competent program in place**
- **Ensure all records are easily audited**
- **Pre-Interview HR & IG personnel**
- **Consider having MAJCOM/JA do a pre-audit**
- **Review prior Program Reviews for your agency and other DoD agencies**
- **Ensure website is up to date**
- **Use OGE checklist**



Tips for Success in a Program Review

- **Be familiar with OGE resources and Desk Officer program**
- **Be familiar with your agency's history especially compliance and enforcement**
- **Make their Program Review Report easy to write — especially agency overview**
- **Make FDM records audit-friendly**
- **Identify deficiencies and corrective actions**
- **Identify Model Practices**
- **Be timely and thorough on responses**



Recent DoD Deficiencies on Program Reviews

- **December 2012: Headquarters. U.S. Army**
 - **Difficulty ID new employees, hence routinely > 30 days to file**
 - **Review and certification of annual and termination (278) reports often late**
 - **No control over supervisors**
 - **Document Initial Technical Review!**
 - **Retain (paper) records for (NMT) 6 years**
 - **FDM must compete with other OGC initiatives for funding**
 - **All 5 recommendations and 4 suggestions closed out by follow-on report**



Recent DoD Deficiencies on Program Reviews cont.

- **November 2011: Headquarters, U.S. Navy**
 - **Good system of conflict of interest review (using checklist)**
 - **39% of OGE 278s certified late but good documentation of Initial Technical Review**
 - **New entrant OGE 450 filers hard to identify and often filed late**
 - **No training deficiencies**
 - **Overall, very good report (2 minor suggestions)**



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Recent DoD Deficiencies on Program Reviews cont.

- **November 2011: Headquarters, U.S. Air Force**
 - **Routine delays in certification of OGE 278s**
 - **Difficulty in timely ID of new OGE 278 entrant and termination filers**
 - **Field Ethics Counselors lack experience in financial disclosure and FDM system**
 - **System of dissemination of boilerplate opinions (e.g., WAG) deemed Advice and Counsel Model Practice**



Recent DoD Deficiencies on Program Reviews cont.

- **October 2011: Defense Logistics Agency**
 - **OGE “impressed” with 98% of annual OGE 278s timely filed**
 - **One suggestion: new entrant OGE 450s filed late**
 - **12 Model Practices!**
 - **Agency self-awareness audit for employee knowledge of ethics program**
 - **Conflict of Interest review checklist for filers and reviewers**
 - **Education and training: 1) DAEO involved in senior leader training; 2) useful website; 3) creative training formats for ECs**
 - **Advice and Counsel: 1) All EC database; 2) customized PGE letters; 3) Comms between HQ and field; 4) Annual EC seminar; and 5) phone kiosks with EC for isolate employees**
- **Fantastic Program Review report**



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OGE Program Reviews

Questions?

