

## PREPARING FOR AN OGE PROGRAM REVIEW

### I. REFERENCES

- A. Ethics Program Review Guidelines, October 2004.  
(Click on:  
[http://www.usoge.gov/pages/forms\\_pubs\\_otherdocs/fpo\\_files/prd\\_mats/prdrevguide.pdf](http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/prd_mats/prdrevguide.pdf) . Alternative: go to <http://www.usoge.gov/home.html> . Select Forms, Publications, and Other Documents. Scroll down to Other Documents. Select Guidelines for Conducting Reviews of Ethics Programs at Executive Branch Agencies. Then select either the PDF or HTML version.)
- B. Tips on Preparing for an Ethics Program Review, November 2002.  
(Click on:  
[http://www.usoge.gov/pages/forms\\_pubs\\_otherdocs/fpo\\_files/prd\\_mats/prdreviewtips.pdf](http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/prd_mats/prdreviewtips.pdf) . Alternative: go to <http://www.usoge.gov/home.html> . Select Forms, Publications, and Other Documents. You will find this guide listed under Other Documents.)
- C. Checklist of Ethics Materials, 2002.  
(Click on:  
[http://www.usoge.gov/pages/forms\\_pubs\\_otherdocs/fpo\\_files/prd\\_mats/prdchecklist.pdf](http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/prd_mats/prdchecklist.pdf) . Alternative: go to <http://www.usoge.gov/home.html> . Select Forms, Publications, and Other Documents. You will see this document listed under Other Documents.) This is a list of all of the documents the inspection team will ask to review. Use the checklist as the basis for a table of contents for a notebook you compile for the inspectors. File copies of all the requested documents in the notebook.
- D. DAEOgram DO-08-001, Program Plan of Agency Ethics Program Reviews for the First Six Months of Calendar Year 2008. New ones will be issued every few months to identify upcoming program reviews.

## II. WARNING

- A. 3 to 6 Month Warning. Each year OGE publishes on its website one or more schedules of program reviews for the upcoming months. DoD SOCO and the Services try to notify affected DoD Components as soon as it comes out. An agency may have as little as 3 to 6 months to prepare for the review.
- B. If needed, request a delay as soon as you are aware that one is necessary.
- C. **PREPARE NOW!** Do not wait until you are on the OGE review schedule to review your ethics program. You should run your ethics program as if you were scheduled for an inspection every year. Why?
  - 1. You may not have time to correct deficiencies in your SF 278 and OGE Form 450 programs. Because you will be audited NLT 1 year from the date the schedule is released, chances are that OGE will be looking at the forms you have already collected and reviewed. In fact, they may look at 2 years' worth of forms. If there are problems with your financial disclosure program, such as not identifying new entrants in a timely manner or not reviewing the forms within 60 days of receipt, OGE might issue a finding of a material lack of compliance. You will not have time to correct the problem and complete another filing cycle so that you can show OGE a set of forms that are in compliance.
  - 2. You also may not have copies of all of the documents that OGE will ask to see if you do not start preparing now. A review of the checklist referenced in I.C above shows the range of documents OGE will ask to see. For example, they want to know the dates, locations, length, content, type of audience, and number of attendees for your initial and annual ethics training. If you have not kept sign-in sheets for the training, you will not be able to provide this information. Compare this checklist to your office file plan to make sure that you are retaining the records that you will need for an inspection.

## III. PRE-REVIEW ACTIVITIES

- A. Employee Survey. OGE began using the survey for reviews of smaller agencies in the second half of 2003. OGE may decide not to conduct a survey on your installation, but here is what to expect if they do. The survey will probably

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The Judge Advocate General's Legal Center and School

require time for the employees to complete, so it will start fairly early in the process. OGE will use the results of the survey to help identify areas that need review and to measure the success of your program - is it really helping the employees? Start now to prepare by conducting your own survey. Do your employees know who their DAEO is? Who to call? Do they understand the purpose of disclosure and training? Do they think they benefit from training? What do they want to help them avoid ethical problems?

B. What OGE Expects from You During the Pre-Inspection Preparation

1. If OGE conducts a survey, they will review the survey results and share them with you before the review.
2. Your inspector will review the following documents that your agency has on file with OGE. This part of the pre-review pertains primarily to HQ-level offices. You should have copies of the records for the prior 2 years.
  - a. Annual agency ethics program questionnaire, if you are the HQ office. (If you are at an installation, review your office's input for the questionnaire.)
  - b. 31 U.S.C. § 1353 semi-annual travel reimbursement reports. (Be familiar with the details of the travel reimbursements that your office approved in order to answer the inspectors' questions. NOTE: If you had no travel reimbursements for a particular 6-month period (a negative report), you still should have kept a copy of this report to show the inspector.)
  - c. Prior OGE program reviews of your agency/installation. You should review them. Has recommended corrective action been taken? Has it solved the problem? Have you resolved any revealed weakness? If not, do it now.
  - d. Any other files, *e.g.*, approval of alternative procedures, approval of supplemental standards, correspondence, and referrals to the Department of Justice (DoJ).

3. Your inspector will talk to your agency desk officer at OGE. This applies only if you are the HQ office.
4. Your inspector may talk to the following personnel within your organization during the pre-review (and during the visit to your office):
  - a. Inspector General. OGE added review steps to examine the agency's program to enforce conflict of interest statutes. OGE will want the number of conflict of interest referrals during the previous calendar year, and whether there were ethics-related reviews, audits, or investigations, and copies of any reports.
  - b. Local criminal investigative units (Air Force Office of Special Investigations (AFOSI), Army Criminal Investigation Command (CID), Naval Criminal Investigative Service (NCIS)). OGE may ask them about ethics-related investigations they have completed during the period covered by the inspection.
  - c. Executive officers/supervisors. OGE will review how disqualifications/recusals are actually executed in the office of an affected employee, so they want to talk to "screening officials," people who handle an office's disqualification process. OGE is concentrating on screening mechanisms to enforce ethics agreements. They want to know the individual's experience with handling screening and how often the process has been used. You should double check how the process is actually executed. For more on screening arrangements and a handout for the screening official, see the June 1, 2004 OGE DAEOgram, 04-012 and its attachment 04-012A at:  
[http://www.usoge.gov/pages/daeograms/dgr\\_files/2004/do04012.pdf](http://www.usoge.gov/pages/daeograms/dgr_files/2004/do04012.pdf) and  
[http://www.usoge.gov/pages/daeograms/dgr\\_files/2004/do04012a.pdf](http://www.usoge.gov/pages/daeograms/dgr_files/2004/do04012a.pdf). NOTE: Primarily affects HQ and major command offices. Installations may not have any personnel who have disqualifications or recusals.

OGE will also review systems for taking administrative action if a criminal referral is declined, and for violations of the standards. When something happens, and you refer the matter to a supervisor, do you know what action is taken, if any? Are you bringing to a supervisor's attention

when a filer is very late, or there has been some violation of the standards?  
NOTE: These questions are more applicable to Federal civilian agencies. They reflect how those agencies handle potential ethics violations. The agency IG investigates the potential ethics violation and, if a criminal violation is substantiated, the agency refers the matter to DoJ. DoJ makes a decision whether to prosecute. If DoJ declines to prosecute, then the matter goes back to the agency for the supervisor to make a determination about pursuing other disciplinary action against the employee. In other words, the most severe action -- prosecution -- is considered first. Only if prosecution is not pursued are lesser forms of disciplinary action considered. OGE has detected a trend among supervisors in non-DoD agencies of not taking any action because DoJ declined to pursue a criminal prosecution.

At least for military members, this is not how things work in DoD. Keep in mind that your inspectors are not lawyers, they will probably have no military experience, and therefore they are not familiar with the military justice system and the role that an installation legal office plays in that system. You know that DoD handles potential violations by military members within its military justice system rather than referring them to DoJ, but your OGE inspector may not know this. You know that it may be appropriate for a commander to choose to pursue a form of disciplinary action, such as nonjudicial punishment, which is less severe than a court-martial, but your OGE inspector may not know that a commander has this choice. The bottom line is that if you had military members who were disciplined for ethics infractions such as violations of the JER, you may have to explain concepts like nonjudicial punishment and how such tools fit into the military justice system.

- d. Your inspector may talk to your personnel officers. OGE will review the interaction to ensure that accurate lists of personnel for financial disclosure and training are produced.
  - e. Your inspector may talk to directors or executive officers of Federal Advisory Committees, if any.
5. Your inspector may ask to see copies of the documents listed in the OGE checklist prior to the visit to your installation. (See item I.C of this outline for the link to the checklist.) The checklist uses terms that new ethics counselors in DoD may not recognize. Additionally, the checklist is written for the HQ-level office. For the benefit of new ethics counselors

at installation offices, the following is an explanation of some of the terms used.

- a. Agency mission statement and organization chart. If you are in an installation ethics office, provide your unit's mission statement and chart. For example, an Air Force wing legal office would provide the wing's mission statement and the wing's organizational chart.
  
- b. Enforcement actions. At the installation level, you may not have any referrals of ethics violations to DoJ, but you may have taken other actions for ethics violations. In addition to any disciplinary actions taken against civilian employees, include results of courts-martial and other disciplinary action taken under the UCMJ against military members.
  
- c. Ethics agreements. At the installation level, you may not have any financial disclosure filers who need to execute ethics agreements.
  - (1) An ethics agreement is defined in 5 C.F.R. § 2634.802(a) as “any oral or written promise by a reporting individual [a financial disclosure filer] to undertake specific actions in order to alleviate an actual or apparent conflict of interest” such as divestiture of stock, resignation from a board of directors of a corporation, or recusal from participating in particular matters of official actions.
  
  - (2) If you do have a filer who must execute an ethics agreement in order to comply with the conflict of interest laws, you must maintain in your files a copy of that agreement. OGE provides on its web site a model ethics agreement for Presidential nominees that you could adapt for your filers. It contains the proper language to use for various situations (for example, divestiture of stock, resignation of a position with a non-Federal entity, recusal from taking official actions on matters involving the spouse's employer). See Attachment to DAEOgram 01-013, March 28, 2001 at [http://www.usoge.gov/pages/daeograms/dgr\\_files/2001/do01013a.pdf](http://www.usoge.gov/pages/daeograms/dgr_files/2001/do01013a.pdf)

- (3) If you have a filer who executed an ethics agreement, he or she must also provide you with written evidence of compliance with the terms of that ethics agreement. For example, if a filer agreed to resign from a position with a non-federal entity, he or she must provide you with a letter stating that the resignation has occurred and the effective date of the resignation. You must keep a copy of all such written evidence of the actions taken to comply with the ethics agreement.
- d. Presidentially-appointed, Senate-confirmed (PAS) employees. These are high-level executive branch employees. For example, the heads of the executive branch agencies are PAS employees. At the installation level, you probably do not have any PAS employees. If you do have these employees, OGE will ask to review certain documents pertaining to them. Refer to the Ethics Program Review Guidelines on OGE's website.
- e. Special Government Employee (SGE): an officer or employee who is retained, designated, appointed, or employed by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. SGEs serve as part-time advisors to the Government. You may not have any of these at the installation level. If you do have these employees, OGE will ask for a list of their names and of the advisory committees on which they serve.
- f. 18 U.S.C. § 208(b)(1) and (b)(3) waivers: Under 18 U.S.C. § 208(a), an employee is prohibited from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any other person specified in the statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest. But, pursuant to 18 U.S.C. § 208(b)(1), an agency may determine in an individual case that a disqualifying financial interest in a particular matter or matters is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. In this circumstance, the agency may waive the employee's disqualification. 18 U.S.C. § 208(b)(3) applies to waivers for SGEs serving on Federal advisory committees. Waivers must be in writing. See 5 C.F.R. § 2640.301 - 304.

6. Compile numbers: records of disciplinary actions, 18 U.S.C. § 208(b)(1) waivers, 18 U.S.C. § 208(b)(3) waivers, SF 278 reports, OGE Form 450 reports, written ethics advice, employees who received initial ethics training, employees who received annual training, etc. Refer to the Ethics Program Review Guide for complete information. OGE may ask for these numbers when they call with the exact date of the inspection.
7. 1 Month Warning. OGE will confirm by telephone and letter the specific date of the review. Plan as if it were a full review.

C. OGE Decisions Regarding Your Program Review

1. Type of Review. The Deputy Director for Agency Programs makes the decision as to the type of review after meeting with the Program Review team, directors, and your desk officer. Factors that he considers include: problems from the survey and pre-review preparation, problems that have developed since the time of the previous review, turnover of key personnel, experience and number of staff, and assessment of desk officer and general counsel's office. Options:
  - a. No review. If no weakness revealed, OGE may not review.
  - b. Level 1. Limited review that addresses specific issues revealed in pre-review.
  - c. Level 2. In-depth review of 1 or more selected elements - advice, conflict of interest referrals to DoJ with corresponding notification to OGE, follow-up administration enforcement action, advisory committee waivers.
  - d. Level 3. In-depth review of all program elements.
2. Number of each type of item that OGE will review and the time period covered. With regard to the time period, review in the past focused on the previous calendar year. Now OGE may decide to review 2 years, at least in parts of the program, or the current year. Includes OGE notifications of DoJ referrals, disciplinary actions, 18 U.S.C. § 208(b)(1) waivers for non-PAS employees, advice for non-PAS employees, initial ethics



orientation for non-PAS employees, annual training for non-PAS employees, SF 278 reports, OGE Form 450 reports, 31 U.S.C. § 1353 travel payments, SGEs, and committees.

- D. 2-Week Notice. OGE will inform you of its decision as to the type of review it will conduct, the number of each type of item it will review, and the time period covered.
  
- E. Two Keys to Your Preparation
  - 1. Talk to legal offices at military installations that have recently undergone OGE program reviews. These offices should be able to provide you with additional advice on making your inspection go smoothly. (You can find out which installations have recently undergone reviews from OGE's webpage. The announcements are issued as DAEOgrams. OGE's announcements of agencies and military installations which it intends to review are not deleted from its web page after the reviews are completed. Although the announcements are not separately indexed, you can scroll through each year's DAEOgrams to locate the ones pertaining to program reviews.)
  
  - 2. Ask your HQ or another local ethics counselor to conduct a mock review. It uncovers problems you may not realize you had in time for you to take corrective action.

#### **IV. CHECKLIST OF MATERIALS REQUIRED FOR REVIEW**

This checklist contains information that must be provided, regardless of the type of review selected. The order of the checklist is also the order of importance to OGE. As a preliminary matter, you need to provide copies of delegation letters pertaining to ethics matters and your unit's mission statement and organization chart.

- A. Enforcement.
  - 1. OGE will examine your system to determine the consequences to employees who violate the standards, and whether OGE can effectively monitor the system.

2. OGE will review conflict of interest referrals to DoJ, and whether it is receiving the proper notifications. They will also review what disciplinary action an agency takes if DoJ declines. They are looking for a pattern of failure to consider disciplinary action after a declination by DoJ. See III.B.4.c of this outline for more information.
  3. OGE will review information on agency disciplinary actions for any violation or appearances of violation of any standard, failures to file financial disclosure reports, conflicts or appearances disclosed on such reports, and any violations of other laws concerning financial holdings. DoD does not have any regulations prohibiting its employees from holding certain financial interests. [NOTE: The Senate Armed Services Committee (SASC) prohibits military officers who have been nominated for 3- and 4-star general officer positions from owning stock in the top 10 DoD contractors. SASC prohibits PAS employees from holding any DoD contractor stock. ] DoD also does not have a written policy defining “prompt and effective” action to remedy violations, which is under the DAEO’s program responsibilities in 5 C.F.R. Part 2638. If one is established in the new JER, you would have to show that disciplinary action conforms to the policy.
  4. OGE will talk to the IG’s office to determine if conflict of interest situations exist that require corrective action, and if ethics officials refer matters to the IG. There are 2 tables attached to the Guidance that the OGE inspector must complete. The tables are 2 1/2 pages of specific questions related to notifications, investigations, audits, and disciplinary actions. Review these questions with the IG prior to the inspection.
- B. Ethics Agreements. [NOTE: As previously stated, HQ ethics offices will probably have personnel who were required to sign ethics agreements, but the ethics offices in the field may not. The information below is provided primarily for the ethics offices at the HQ level.]
1. OGE is concentrating on whether you have a system, and if so, if it is effective to provide written evidence of actions to comply - in time - with the agreement - waivers, disqualifications, divestitures, resignations, and blind trusts. They will also review whether documentation was forwarded to OGE, as required.

2. Waivers. The reviewer will compare your copies of waivers with the copies at OGE to ensure that they are being forwarded and that OGE is being consulted. They will review for substantive compliance with 5 C.F.R. Part 2640: that the waivers were issued under the statutory standard, and that the employee was disqualified, if necessary, prior to the waiver. They will also determine if the system can show that the appointing official considered the factors, and whether the waivers are available for public inspection. DoD SOCO uses a 2-step process. The GC's office always sends a memo to the appointing official. The memo has everything the official needs to consider. The official signs a simple letter making the determination - this is what is released.
  
3. Written notices of divestiture, resignation and disqualification (for Ethics Agreements and all others). OGE will review all ethics agreements signed by PAS employees. They want to determine if the employee violated the agreement by acting in matters before divesting, and if so, if it was a substantive violation.
  - a. **Best Practice** - DoD's recommended practice of sending Letters of Warning to filers if disclosure reports reveal a financial interest in a DoD prohibited source, even though there is no conflict at the time.
  
  - b. OGE may want to talk to employees who actually screen work to ensure the disqualification is still being implemented. They want to know how the screening is set up and if it is part of the information flow, if anyone has had to act for the employee, and if any problems developed. They want to know if the screening official understands what needs to be done: terms like "particular matter" and "specific parties," the need to update if there are changes, and to be alert at all times.

C. Written Advice.

1. OGE will review the employee survey results to determine if there is a breakdown of support for the ethics program by any group of employees. They will also determine if the advice is effective in preventing violations, and if it helps persuade your agency head/installation commander/major command commander and PAS employees to support the ethics program.

2. OGE will ask to review advice provided to employees: gifts, widely attended gathering (WAG) determinations, prior approvals of outside employment/activity, and post-employment. The JER requires written prior approvals of certain outside employment by financial disclosure filers. The JER also discusses prior approvals by commanders where the activity detracts from readiness or may pose a security risk (2-303). If you have a command-specific or installation-specific regulation or instruction on outside employment, include it in the notebook you prepare for the inspectors.
3. OGE wants to see if a counseling program, including post-employment, is in place, if records are kept, and if the advice is accurate and complete. Your advice will be reviewed by your OGE desk officer, with help from the OGE attorneys, for accuracy and completeness. The desk officer's assessment of the post-employment advice will be part of the exit briefing.
4. OGE will determine if your employees are aware that their disclosures are not protected by the attorney-client privilege.
5. **Best Practices**
  - a. Written policy to determine when to keep records.
  - b. Give out information about the office, who to contact, and that you are available to help.
  - c. Prepare your written legal reviews according to standard format including such elements as Facts, Issue, Law, Analysis, Conclusion, Recommendation.
  - d. Inform employees of current issues.
  - e. Make post-employment counseling available to all departing employees.
  - f. Process to share records of advice among all the ethics officials.
  - g. Survey employees about ethics issues and the quality and timeliness of your advice.

D. Training.

1. OGE will determine if the training was persuasive in getting your agency head and PAS employees to support the ethics program, and if the training exceeded the minimum and is creative.
  
2. Initial orientation.
  - a. OGE wants agencies to exceed the minimum requirement, as it may be the only time many employees will get any training. You can download the Employee's Guide to the Standards of Conduct on the SOCO website. Click on Ethics Resource Library, then click on SOCO Publications and Handouts, then download the Guide. Change the reference page to your information, your name, telephone number, DAEO, etc. This Guide meets the minimum requirements. OGE will also review that all new employees, especially PAS employees, received the training.
  
  - b. **Best Practices**
    - (1) Train PAS employees in person, 1 on 1, with DAEO or Alternate DAEO.
    - (2) Employees acknowledge/certify - in writing/electronically - that training completed, and paper/electronic certifications retained for 2 years.
  
    - (3) Exceed the minimum: OGE may mean that you should train in person and spend more time training.
  
3. Annual training.
  - a. OGE wants agencies to exceed the minimum, as this is the only continuing exposure that the filing employees may have. For your PAS employees, keep records of their attendance at annual ethics training for the previous 3 calendar years. OGE will determine whether current PAS employees received annual ethics training in each of the past 3 calendar years.

- b. DoD SOCO usually prepares 3 different versions of an ethics topic and puts them on its website: interactive computer training for the verbal requirement (which provides for an e-mail message to be sent to the Ethics office on completion); a written version for 450 filers in those years in which it is allowed; and slides and speaker notes for those who want to do actual in-person training. You are welcome to use any of these materials, but first make necessary changes to identify your individual offices, especially the return email address. You may also create your own training.
  
- c. OGE wants to know dates, locations, number of attendees, etc. It will review your system to ensure that the financial filers are being trained, and to verify what type of training they received - written or verbal.
  
- d. **Best Practices**
  - (1) Train PAS employees in person, 1 on 1, with DAEO or Alternate.
  - (2) Ethics officials invited to senior staff meetings and have an opportunity to talk.
  - (3) Employees evaluate the training and ethics officials review the evaluations.
  - (4) Employees acknowledge/certify - in writing/electronically - that training completed, and proof retained for 2 years.
  - (5) Exceeding the minimum - Extra training, such as newsletters, bulletins, broadcast e-mail, or discussing ethics topics at staff meetings.
  - (6) Periodic e-mail “ethics pointers” signed by the senior leadership (for example, general officer) and sent to all employees, not just filers.
  - (7) Train non-filers, train longer than 1 hour, more frequent training.
  - (8) Give verbal training to confidential filers more than once in 3 years (while you may do this, DoD must adhere to the specific 3-year schedule to be able to ensure that everyone does get the minimum training).
  - (9) Use interactive computer training, which is on the DoD SOCO website.

- (10) Use current advice, IG investigations, or court cases to train.
  - (11) Train employees on financial disclosure.
  - (12) Make ethics materials available by handbooks or on-line.
4. Annual training plan. OGE will examine substance and that it was prepared by December 31<sup>st</sup> of the previous year. In other words, by 12/31/07, you should have had your plan for CY 2008 done. OGE wants to see a description of your initial orientation and annual training.

E. Public Financial Disclosure.

1. OGE will try to determine if ethics issues are raised on the report, and if so, if they are integrated into advice to prevent violations.
2. OGE will review your procedures for collection, review and public availability of the reports. OGE will want a list, broken down by PAS employees, general or flag officers, career Senior Executive Service (SES), non-career SES, and Schedule C employees, and may want independent verification from the Personnel Office. (Only HQ is likely to have these categories of employees. Installations are likely to have only non-PAS employees.) Regardless of the category of employee who files, OGE will also want a list organized by new entrant, incumbent, and termination filers. Depending on your numbers, you may need a good database or spreadsheet system. The SOCO website has an Excel tracking system - click on Ethics Resource Library, then click on Forms. The tracking system is at the top of the page.
3. OGE will determine if the reports are reviewed within 60 days of receipt so that you have an opportunity to detect issues in time and incorporate them into advice. They will review your mechanism to identify new and termination filers. OGE will also want the current list of conflicting financial interests (government contractors) that you use to review the forms. The DoD 25K list is on the DoD SOCO website. However, you are encouraged to use a list that is more localized to your command or agency. They will also determine if the reviewer is sufficiently trained. They will review all or a sample of the reports. If someone filed late, they will check to see if a late fee was collected or if a proper waiver was granted.

4. The inspector will probably spend most of his or her time reviewing the forms. An important part of that review is a technical analysis -- determining whether the forms are filled out correctly and completely and whether appropriate notes or memos for record explaining information on the form are attached.
  - a. The forms must be reviewed in accordance with OGE's SF 278 review guide, which is found at:  
[http://www.usoge.gov/pages/forms\\_pubs\\_otherdocs/fpo\\_files/reference/rf278guide\\_04.pdf](http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/reference/rf278guide_04.pdf) .
  - b. Ideally, each form should have been reviewed and all questions answered when the form was filed. But that may not have happened.
  - c. Review the forms again in preparation for the inspection. Looking at the forms just once will not be enough to catch all of the errors that filers make. A technique that has led to successful audits at some installations is to have 2 or 3 attorneys/paralegals look at each form. A form mistake that one person misses another person will see. This process should be repeated several times and notes/memos for records added as needed. It is particularly important if you are taking over the financial disclosure program from others and do not know how they ran the program. Although this process is time-consuming, it will be time well-spent.

F. Confidential Financial Disclosure.

1. OGE will determine if ethics issues are raised on the report, and if so, if they are integrated into advice to prevent violations. They will also review your procedures for collecting and reviewing the reports and determine whether there is an effective designation of positions. DoD recommends incorporating designation into your annual process by asking supervisors to review the positions annually.



2. OGE will want a list broken down by regular employees and SGEs, and then by new entrants and incumbents. Ensure that you have a reliable process through your Personnel System for identifying new entrants within 30 days of their entering filing positions. OGE will want to review this system. Failure to have a system may result in a finding of a material lack of compliance.
3. In addition, review how effectively your system gets new entrants to file within 30 days. If a filer submits a late report after they have been told to file, OGE will look at how the agency considers administrative remedies - this is an excellent place to recommend that supervisors take action to show enforcement of violations.
4. The comment in E.3 above applies to OGE's review of the confidential reports except for the references to termination filers and late fees.
5. The comment in E.4 above also applies to the confidential financial disclosure forms. These forms must be reviewed in accordance with OGE's Form 450 review guide, which is found at: [http://www.usoge.gov/pages/forms\\_pubs\\_otherdocs/fpo\\_files/reference/rf450guide\\_96.pdf](http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/reference/rf450guide_96.pdf) . In addition, the financial disclosure chapter of this deskbook includes a listing of some common mistakes that filers make.

G. DoD Specific Restrictions or Requirements.

1. DoD does not have any additional restrictions on financial interests for confidential filers.
2. DoD requires written prior approval if a financial disclosure filer wants outside employment with a DoD prohibited source. The JER also allows gifts at launches; imposes a \$300 limit on gifts between employees and a \$10 limit on soliciting for gifts to superiors on special, infrequent occasions; requires written notices of disqualification and disclaimers for speeches and written materials if a DoD position is identified. OGE will review whether these things are incorporated into your ethics program. Review your advice to ensure that all of these things are included.

H. Travel Payments from Non-Federal Sources Under 31 U.S.C. § 1353.

1. OGE will review your procedures for accepting and approving travel payments. OGE is looking at the amounts approved and the reason for the approval to ensure proper authorization. They will check for timely reports (SF 326s) to OGE. They especially want to see if WAG determinations are used in error to accept travel payments.

2. **Best Practices**

- a. The travel approval authority is trained in how to approve the requests.
- b. The ethics official monitors the approval. (In DoD, if you use DoD SOCO's recommended guidance [on the website, click on Ethics Resource Library, click on SOCO Publications and Handouts, then download Accepting Travel in Accordance With 31 U.S.C. 1353], you will coordinate on each request and conduct a conflict of interest review.)

I. **Special Government Employees.**

1. OGE will review that you have a program for these employees - financial disclosure, training, and advice. OGE will want a list of your experts and consultants, if any.
2. OGE will devote the bulk of the review in this category to Federal Advisory Committees. They will review whether the committee members are properly designated as SGEs. OGE can get a list of DoD committees from a web site ( <http://www.fido.gov/facadatabase/default.asp> ), but you will have to let OGE know which committees are yours. They will want the committee charters, which are also on the website. OGE will also get a list of members from that website, so you need to be sure your list and the website list matches, or you can explain any discrepancies. [When you go to the link, click on Public Access, select the Fiscal Year that is applicable, and click on Explore Data. Scroll down the list of agencies and select Department of Defense to see their advisory committees.]

3. The JER requires filing “before assuming duties.” The date of appointment is a convenient date to use, but the form may be received after that date. Use the date of the first meeting, or at least the date of the first meeting that the SGE attends, but you have to determine that date. At DoD SOCO, Personnel sends the 450, with a memo instructing the SGE to fill it out and return it, with the other paperwork. Personnel will not appoint anyone until the form is received. That seems to be working fairly well. The risk is that if the appointment process takes longer than 6 months, OGE will regard the report as stale and want you to update it.
4. If SGEs are re-appointed, they must file another new entrant report at the date of re-appointment - they are NOT collected during the annual cycle. OGE will also scrutinize the 18 U.S.C. § 208(b)(3) waivers. Refer to III.B.5.f and IV.B.2, above, regarding 18 U.S.C. § 208(b)(1) waivers, for reference information. DoD SOCO requires all SGEs to sign a disqualification statement and file it with their report. If there is a problem, it will come to light, and they will be disqualified until a waiver is granted.

## **V. PHYSICAL PREPARATION FOR A PROGRAM REVIEW**

- A. Prepare a notebook, tabbed by the order of the checklist. Include everything that OGE requires.
- B. If you discover any weaknesses or problems in preparing for the review, take corrective action as soon as possible. OGE can’t give you a deficiency notice if you discover something and fix it before the reviewers arrive and discover it.
- C. Make an opening presentation - 30-60 minutes. Orient the reviewers to who and what you are and where you fit in the overall scheme. Give them a general overview of your program and take this opportunity to point out your good side and where you have exceeded the minimum, checks and balances, and quality control.
- D. Do not give the reviewers carte blanche access to your files - give them what they request. If examples are provided, screen them before giving them to the inspectors.

- E. Answer what is asked, no more, no less.
  
- F. Make sure OGE personnel have access to the base, transportation, and lodging. Also, ensure they have an adequate place to work. Be a considerate host while they work at your base.

## **VI. REPORTABLE FINDINGS**

OGE reports only a material lack of compliance. Generally, this is a routine (on-going) lack of compliance or a single instance of such magnitude as to question the effectiveness of an entire program or sub-program element.

## **VII. AMENDMENT TO AWARDS PROCESS**

OGE has changed the criteria for its awards. Formerly, a program that received “no recommendations” after an audit would receive an award. Now, that is not necessarily the case. “No recommendations” means that a program has minimally met the standards. A program will need to demonstrate more in order to win an award.

In addition, agencies that are not reviewed during the year will now be eligible for OGE awards. OGE will soon provide the details on this change.