



NATIONAL GOVERNMENT ETHICS
SUMMIT
MARCH 8-10 2016

**The Program Review Branch- so much more than ethics
program reviews.**

Doug Chapman and Michelle Walker

- 🌐 Schedule C Exclusion Requests
- 🌐 Alternative Confidential Financial Disclosure Procedures
- 🌐 Conflict of Interest Referrals

Schedule C employees

- 🌐 Government employees
- 🌐 Exempt from competitive service
- 🌐 Fill a variety of positions, sometimes with a policy making role, sometimes not
- 🌐 File public financial disclosure reports (5 C.F.R. § 2634.202(e))

Exclusion Requirements

-  Position must be classified at a GS-15 or below
-  Position does not have policymaking-role
-  OGE determines exclusion from public filing would not adversely affect the Government's integrity

Schedule C Exclusion Request Procedures

-  Requests must be by letter
 - Specify position Title
 - Provide PD **with** ID number
 - Employee's name
-  Position can be filled or vacant
-  Send to OGE
 - Email to: contactoge@oge.gov
 - Desk Officer
 - Attn: Doug Chapman (Preferred)

How Determinations are Made

 OGE reviews the PD

Conducting analysis used by policy makers

Preparing/making recommendations for policy-makers

Represents the agency in substantive meetings

Serves as Program Officer

Serves in an advisory capacity

Prepares reports that may influence policy makers

Making programmatic decisions

How Determinations are Made

- 🌐 OGE considers the overall context of the PD language

Prepares reports

Conducts analysis

Administering programs

Determination Approved or Denied

Program Review Branch makes a determination

Letter is drafted

Denial letters

- Include basis for denial

- Set filing date

Approval letters

- Confidential filer designation determination

Appeals

Appeal authority:

Deputy Director for Compliance

Appeal should be by letter

State basis for appeal

General Statistics

Total CY2013: 58
Approved: 29
Denied: 29

Total CY2014: 23
Approved: 11
Denied: 12

Total CY2015: 6
Approved: 4
Denied: 2

Questions?

Alternative Financial Disclosure

Alternative Financial Disclosure

The four types of alternative financial disclosure



Certificates of No Conflict

(5 C.F.R. §2634.905(a))



Substitute Disclosure Forms in lieu of the OGE 450

(5 C.F.R. § 2634.905(a))



Supplemental Forms

(5 C.F.R. §§ 2634.601(b) and 2634.901(b))



Supplemental Instructions

(5 C.F.R. §§ 2634.601(b) and 2634.901(b))

Alternative Financial Disclosure

Certificates of No Conflict

(5 C.F.R. §2634.905(a))

-  Particularly effective for
 - COTRs
 - SGE committee members
 - Others who work on particular matters

Alternative Financial Disclosure

Certificates of No Conflict

(5 C.F.R. §2634.905(a))

-  Explain the basic concepts of a COI
-  Identify what financial interests would create a COI
-  Identify the particular matter(s)
-  Identify the interested parties
-  Make clear that the filer is responsible
-  Provide contact information

Alternative Financial Disclosure

Substitute Disclosure Forms in lieu of the OGE 450

(5 C.F.R. § 2634.905(a))

-  Designed to meet specific needs
-  Useful when the 450 collects unnecessary information
-  Can ask specific questions...

Alternative Financial Disclosure

Substitute Disclosure Forms in lieu of the OGE 450

(5 C.F.R. § 2634.905(a))

-  Do you (your spouse or minor children) have any financial interests in...
-  Do you participate in the conduct of a business dealing with...
-  Are you a general partner in a partnership, or an officer, director, or employee of a business which owns or is otherwise involved in...

Alternative Financial Disclosure

Supplemental Forms

(5 C.F.R. §§ 2634.601(b) and 2634.901(b))

 When you still need the 450

 But also need a little more

Alternative Financial Disclosure

Supplemental Instructions

(5 C.F.R. §§ 2634.601(b) and 2634.901(b))



Helpful for implementing supplemental regulations

Alternative Financial Disclosure

How to Request Approval

-  Request by letter
-  Identify who will be affected
-  Justification for request
-  Explain process
-  Provide forms/instructions

Alternative Financial Disclosure

Keep in Mind

-  Any requested information must be within OGE's purview
-  Must be approved by OGE in advance
-  Forms must include a Privacy Act statement
-  Retention period
-  Filers must receive annual ethics training

Alternative Financial Disclosure

Keep in Mind

- 🇺🇸 Evaluated during ethics program reviews
- 🇺🇸 Alternative financial disclosure is a tool
- 🇺🇸 Must be approved by OGE in advance
- 🇺🇸 Any changes must be approved by OGE

Questions?

Conflict of Interest Referrals

Conflict of Interest Referrals

Every department and agency is required to report to the Attorney General any information, allegation or complaint relating to violations of title 10 of the United States Code involving government employees, including possible violations of 18 U.S.C. § 207 by former government employees. *(28 U.S.C. § 535)*

Conflict of Interest Referrals

Every department and agency is required to concurrently notify OGE when any matter involving a violation of 18 U.S.C. §§ 203, 205, 207, 208 or 209 is referred to the Department of Justice (Attorney General) pursuant to 28 U.S.C. § 535. (*5 U.S.C. App. § 402(e)(2) and 5 C.F.R. § 2638.603*)

Conflict of Interest Referrals

Case #

OGE Use Only

Notification of Conflict of Interest Referral

For use in cases involving possible violations of 18 U.S.C. §§ 203, 205, 207-209 by current or former executive branch employees only; see reverse for summary of statutory/regulatory background. Please submit directly to the U.S. Office of Government Ethics via email: referrals@oge.gov. Questions may be addressed to the Referral Program Manager, Clara Gutzman, at 202-452-9241.

Agency Referring the Case	Agency Case or Referral Number	Case Referred to: <input type="checkbox"/> DOJ, Public Integrity Section, Criminal Division <input type="checkbox"/> U.S. Attorney for (district) <input type="checkbox"/> OIG, other
Date of Referral to DOJ	Name of Employee Involved in Case (optional), Agency, and Agency Component Where he/she was Employed.	

PART I ETHICS TRAINING

Is there any evidence the individual received ethics training? YES NO UNCLEAR

PART II STATUTE(S) INVOLVED IN THIS CASE

Please check the appropriate box for the statute(s) involved in this case, then complete the rest of the information for the statute(s).

18 U.S.C. § 203 (Compensation for Representation Affecting the Government)
Federal entity before which representation occurred: _____
Compensated representation on behalf of: _____
Were representational services rendered or to be rendered: by the employee by another?

18 U.S.C. § 205 (Representation Affecting the Government)
Federal entity before which representation occurred: _____
Representation on behalf of: _____

18 U.S.C. § 207 (Post-Employment)
Federal entity before which representation occurred: _____
Representation on behalf of: _____
Was the communication/representation: oral? and/or written?
 Former employee termination service before January 1, 1991. Check subsections involved:
 207(a) 207(b)(1) 207(b)(2) 207(c)
 Former employee termination service on or after January 1, 1991. Check subsections involved:
 207(b)(1) 207(b)(2) 207(b) 207(c) 207(d)
If 207(b) or 207(f) is checked, was behind-the-scenes aid or advice involved? Yes No

18 U.S.C. § 208 (Acts Affecting a Personal Financial Interest)
Does the case involve the financial interest: of the employee? of the employee's spouse?
 Minor child? A firm with which the employee was negotiating for employment?
 Other? (specify) _____
Was a waiver sought? Yes No Was it granted? Yes No
Was the employee required to file a financial disclosure form? Yes No If yes, check form involved:
 SF 278 OGE Form 450 Other (specify) _____
If so, was the basis for the interest disclosed on the financial disclosure form? Yes No

18 U.S.C. § 209 (Supplementation of Salary)
Type of supplementation (meals, travel, cash, etc.): _____
Value of supplementation: \$ _____ Number of supplements: _____

Additional Statutes Involved in Conflict of Interest Referrals
Was 18 U.S.C. § 201 (bribery/gratuity) involved? Yes No
Was 5 U.S.C. App. (Ethics in Government Act) § 501 (outside earned income) involved? Yes No
Was 5 U.S.C. App. (Ethics in Government Act) § 502 (outside employment) involved? Yes No
Was 18 U.S.C. § 1001 (false statements) involved? Yes No
Was 5 U.S.C. App. (Ethics in Government Act) § 101 et seq. (financial disclosure) involved? Yes No
Other (list) _____

Agency Contact/Telephone Number _____ Date _____

OGE Form 202 (02/16)

OGE Form 202
-Available online
-Fillable

Conflict of Interest Referrals

Statutory/Regulatory Background

28 U.S.C. § 535 requires every department or agency to report to the Attorney General any information, allegations, or complaints relating to violations of title 18 of the United States Code involving Government employees, including possible violations of 18 U.S.C. § 207 by former Government employees. The Director of the Office of Government Ethics (OGE), in accordance with 5 U.S.C. App. § 402(e)(2), has promulgated regulations at 5 C.F.R. § 2638.603 requiring agencies to concurrently notify the Director when any matter involving a violation of 18 U.S.C. §§ 203, 205, 207, 208, and/or 209 is referred to the Department of Justice pursuant to 28 U.S.C. § 535. Such notification may be accomplished by providing a copy of the referral document or by submitting this optional form, unless such notification would otherwise be prohibited by law. OGE regulations also require that the department or agency subsequently notify the Director of the referral's disposition, including any disciplinary or corrective action taken by the department or agency. 5 C.F.R. § 2638.603(e). Information relating to the disposition of a referral may be communicated to the Director in writing.

PART III ADDITIONAL AGENCY COMMENTS (if any):

PART IV DISPOSITION OF REFERRAL (OGE use only):

DOJ declined prosecution.

DOJ initiated prosecution.

Resolution:

Agency disciplinary or corrective action, if any:

Conflict of Interest Referrals

Important Points

- 🎯 Notification should be concurrent
- 🎯 Notification should be via OGE Form 202
- 🎯 Notification should be sent to referrals@oge.gov
- 🎯 Notification should include final disposition report
- 🎯 Notification is an agency requirement
- 🎯 Notification requires coordination

Conflict of Interest Referrals

Important Points

- 🌐 Ethics program reviews reconcile
 - Annual Questionnaire
 - OGE Form 202 database
 - Number reported by OIG
- 🌐 Don't assume the OIG is submitting reports
 - Common issue found during reviews
 - Should be part of your MOU

Questions?
