



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

September 8, 1998  
DO-98-027

MEMORANDUM

TO: Designated Agency Ethics Officials, General Counsels and Inspectors General

FROM: Stephen D. Potts  
Director

SUBJECT: Reports of Referral for Possible Prosecution and Minor Revisions to "Notification of Conflict of Interest Referral" Form (OGE Form 202)

Section 535 of Title 28 of the United States Code requires each executive branch department and agency to report to the Attorney General any information, allegation or complaint relating to violations of title 18 of the U.S. Code involving Government officers and employees, including possible violations of 18 U.S.C. § 207 by former Government employees.

When any matter involving an alleged violation of Federal conflict of interest law is referred to the Attorney General, agencies are to concurrently notify the Director of the Office of Government Ethics (OGE) of the referral (5 U.S.C. App. (Ethics in Government Act of 1978), § 402(b)(10) & (e)(2); 5 C.F.R. §2638.603(b)). Each agency shall also provide the Director follow-up reports of any indictment, information, or declination of prosecution as well as any disciplinary or corrective action initiated, taken, or to be taken by the agency.

OGE received notification for only 56 referrals in 1996 and 50 referrals in 1997. These figures make it appear that agencies may not be complying with their statutory requirement for notifying OGE of conflicts of interest referrals to the Attorney General. As a result, agencies are again encouraged to use the "Notification of Conflict of Interest Referral" form (OGE Form 202) to meet the statutory requirement to notify OGE. (See DAEOgram (DO-94-032) dated September 20, 1994.) Use of the form also helps to focus a referral and speeds the notification process to OGE. Moreover, it assists OGE in developing programs to address recurring ethics problems.

For your convenience, we are attaching a copy of the revised form. However, the previous form can be used. This revised version of the OGE Form 202 contains minor changes to the one previously distributed by OGE. The OGE Form 202 will now contain a supplemental question regarding the type of financial disclosure form filed by the employee in the case of referrals involving 18 U.S.C. § 208. We have also revised the introductory paragraph of the form to reflect OGE organizational changes and new telephone numbers. Agencies may photocopy this form as necessary.

We previously requested that the Designated Agency Ethics Official (DAEO) in each agency inform us as to the name and telephone number of the individual who would be providing referral and follow-up information to us. (See DAEOgram (DO-94-034) dated October 4, 1994.) In order to ensure the ongoing facilitation of the regulatory and statutory reporting requirements, we again request that each DAEO provide us, in writing, with an updated point of contact. This point of contact is needed by September 30, 1998. Your cooperation will ensure compliance with the regulatory and statutory reporting requirements and enable us to track the types of violations. Please direct any questions to Michael Shifrin at 202-208-8000, extension 1155, regarding the use of OGE Form 202.

# 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 return directly to: U.S. Office of Government Ethics, 1201 New York Ave. NW, Suite 500, Washington, DC 20005-3917. Phone: Chief, Financial Disclosure Division (202)208-8000, Extension 1123. FAX: (202)208-8038.

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"/> DOJ (other) _____
Date of Referral to DOJ	Name of Employee Involved in Case (optional), Agency, and Agency Component Where he/she was Employed.	

Please check each statute involved in the case, and answer all questions concerning those statute(s).

Is there any evidence the individual received ethics training? Yes  No  Unclear

**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?  or 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 terminated service before January 1, 1991. Check subsections involved:

207(a)  207(b)(i)  207(b)(ii)  207(c)

Former employee terminated service on or after January 1, 1991. Check subsections involved:

207(a)(1)  207(a)(2)  207(b)  207(c)  207(d)  207(f)

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?  that of the employee's spouse?  minor child?

a firm with which the employee was negotiating for employment?  other?

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
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## Statutory/Regulatory Background

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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(c). Information relating to the disposition of a referral may be communicated to the Director in writing.

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**Additional agency comments (if any):**

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**Disposition of Referral (OGE use only):**

\_\_\_ DOJ declined prosecution.

\_\_\_ DOJ initiated prosecution.  
Resolution:

Agency disciplinary or corrective action, if any: