

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



February 9, 2016

The Honorable Mark Meadows  
Chairman  
Subcommittee on Government Operations  
Committee on Oversight and Government Reform  
United States House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter dated January 19, 2016, requesting a response to questions for the record. The letter initially set a response deadline of February 2, 2016, but the Committee extended the deadline to February 9, 2016. Please find the enclosed responses to the questions.

If your staff has any questions regarding the responses, please have them contact Ms. Shelley K. Finlayson, Chief of Staff and Program Counsel, at (202) 483-9314.

Sincerely,

Walter M. Shaub, Jr.  
Director

Enclosure

cc: The Honorable Gerald E. Connolly  
Ranking Member  
Subcommittee on Government Operations  
Committee on Oversight and Government Reform  
United States House of Representatives  
2471 Rayburn House Office Building  
Washington, DC 20515

**Questions for The Honorable Walter M. Shaub, Jr.**  
Director  
U.S. Office of Government Ethics

**Questions from Chairman Mark Meadows**  
Subcommittee on Government Operations

Hearing: “Merit System Protection Board, Office of Government  
Ethics, and Office of Special Counsel Reauthorization”

**RESPONSE TO QUESTION 1**

1. When it passed the Ethics in Government Act of 1978, Congress gave the Director of the Office of Government Ethics responsibility for “monitoring and investigating compliance with the public financial disclosure requirements of title II of this Act by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available financial statements filed pursuant to such title” (5 U.S.C. app. § 402(b)(3)). The Director is also tasked with “monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch” (5 U.S.C. app. § 402(b)(5)). What does OGE do to investigate such compliance?

As the supervising ethics office for the executive branch, the U.S. Office of Government Ethics (OGE) works with the Designated Agency Ethics Official (DAEO) of each of the more than 130 agencies to ensure that public financial disclosure requirements of the Ethics in Government Act (Act) are uniformly implemented across the executive branch, as required by 5 U.S.C. app. § 402(b)(3). OGE also works with the DAEO of each agency to ensure that the requirements of the supplemental confidential financial disclosure reporting system, established pursuant to 5 U.S.C. app. § 107, are uniformly implemented in accordance with 5 U.S.C. app. § 402(b)(5). With regard to the highest level of filers, the process involves direct review of all reports by OGE. With regard to other filers, the process involves direct review by agency ethics officials of the more than 400,000 public and confidential reports filed in the executive branch each year and programmatic monitoring through OGE’s program reviews of agency ethics programs. As discussed in more detail below, OGE’s program reviews include examination of a sampling of financial disclosure reports for compliance with the requirements, and OGE posts the program review reports on its website.

For the highest level of filers, whose official duties implicate the greatest potential risk for the ethics program, OGE requires that agencies submit, at the beginning of the filing cycle each year, updated lists identifying every Presidentially-appointed, Senate-confirmed public

financial disclosure filer and DAEO whose report is subject to certification by OGE.<sup>1</sup> Given the challenges of tracking personnel in over 130 agencies across the executive branch, these lists support OGE's efforts to ensure that agencies collect annual financial disclosure reports from all of these filers and transmit them in a timely manner to OGE. OGE uses the updated lists to track the agencies' collection and processing of the financial disclosure reports of these filers.<sup>2</sup> If a delay is the result of a filer's failure to file a financial disclosure report, disciplinary or civil penalties can be imposed. The Act expressly indicates that authority to take disciplinary action rests with the head of each agency or, in the case of Presidential appointees, the President.<sup>3</sup> Authority to seek civil and criminal penalties for willful failure to file rests with the Department of Justice.<sup>4</sup>

OGE's review of an individual financial disclosure report is a two-stage process. Each report is reviewed first by a staff-level reviewer and then by a supervisor. In analyzing these financial disclosure reports, both agency and OGE reviewers are required to use the procedures and review standard set forth in § 106 of the Act.<sup>5</sup> Under that section, a reviewer is required make all determinations "on the basis of information contained in such report."<sup>6</sup> Congress specifically considered and rejected alternate provisions that would have authorized OGE and the Comptroller General to audit a limited number of reports.<sup>7</sup> Therefore, the 24-year old regulation implementing the Act incorporates this standard, providing that, "The reviewing official need not audit the report to ascertain whether the disclosures are correct. Disclosures shall be taken at 'face value' as correct, unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report."<sup>8</sup> Accordingly, OGE and agency ethics officials do not audit the reports under this longstanding standard. Nonetheless, the reviews of these financial disclosure reports often involve multiple exchanges between filers and reviewers.

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<sup>1</sup> See U.S. OFFICE OF GOV'T ETHICS, PA-15-03: DEADLINES AND PROCEDURES FOR ANNUAL PUBLIC FINANCIAL DISCLOSURE REPORTS REQUIRED TO BE FILED WITH THE U.S. OFFICE OF GOVERNMENT ETHICS (2015).

<sup>2</sup> See *id.*

<sup>3</sup> 5 U.S.C. app. § 104(c).

<sup>4</sup> 5 U.S.C. app. § 104(a).

<sup>5</sup> 5 U.S.C. app. § 106; see also 5 U.S.C. app. § 402(f)(2)(B)(iv) (reiterating that OGE is to use the procedures contained in 5 U.S.C. app. § 106, as opposed other procedures, for investigating financial disclosure reports and ordering corrective action on the basis of information submitted in such reports); 5 C.F.R. §§ 2638.504(a), 2638.505(a). OGE and agency ethics officials apply these review procedures in connection with both public and confidential reports. See 5 C.F.R. §§ 2634.605, 2634.909.

<sup>6</sup> 5 U.S.C. app. § 106(b)(2).

<sup>7</sup> The Act's review standard establishes that determinations as to compliance with the law are to be based on the information submitted by the filer in the financial disclosure report. 5 U.S.C. app. § 106. Earlier proposals that would have required auditing of the data and documentation supporting the financial information presented in the financial disclosure reports were rejected. See, e.g., Financial Disclosure Act, H.R. 9, 95th Cong. § 7(f) (1977) (rejected provision requiring the Comptroller General to randomly audit 5% of public financial disclosure reports each year, to audit at least one report of the President and Vice President per term, and to audit at least one report of each Member of the House and the Senate every six years); Ethics in Government Act of 1977, H.R. 6954, 95th Cong. § 201(a) (as reported by the H. Comm. on Post Office and Civil Service, September 28, 1977) (rejected provision that would have required OGE to randomly audit public financial disclosure reports); Watergate Reorganization and Reform Act of 1976, S. 495, 94th Cong. § 306(f) (as reported by the S. Comm. on the Judiciary, June 15, 1976).

<sup>8</sup> 5 C.F.R. § 2634.605(b)(2).

When OGE needs additional information or has a question about the conflicts of interest analysis, OGE contacts the ethics office for the employing agency. OGE has advised agencies that, “Agency ethics officials are required to respond to requests from OGE for additional information regarding these reports as soon as practicable but not later than 30 days after the request.”<sup>9</sup> After reviewing the requested information, the OGE reviewer may direct the agency reviewer to work with the filer to make appropriate corrections to the financial disclosure report. In most cases, the correction of the report resolves the issue and no further action is required.<sup>10</sup>

If, however, the OGE reviewer is of the opinion, on the basis of the information in the financial disclosure report, that further action is needed in order to comply with applicable laws and regulations, the OGE reviewer will notify the filer, through the agency. In that event, the OGE reviewer will identify the corrective actions that the filer can take to comply.<sup>11</sup> These include such actions as recusal, reassignment, and divestiture.<sup>12</sup> If the filer fails to take such actions, the filer’s failure is to be referred to the appropriate authority for action. In the case of Presidentially-appointed, Senate-confirmed appointees, that authority is the President; for other employees, that authority is the head of the employee’s agency.<sup>13</sup> If a filer, including a Senate-confirmed appointee, misses a filing deadline the agency is authorized to impose a \$200 late fee,<sup>14</sup> and if the filer willfully fails to file a financial disclosure report the Department of Justice can seek civil or criminal penalties.<sup>15</sup>

In addition, if information contained in a financial disclosure report indicates a possible violation of conflicts of interest laws or that a filer has falsified a financial disclosure report, the filer may face criminal prosecution, civil penalties, or disciplinary action.<sup>16</sup> Investigations of such issues are generally conducted by the 14,000-member Inspector General community, and OGE can request that Inspectors General conduct investigations when necessary.<sup>17</sup> OGE is statutorily prohibited from making any finding that any criminal law has been violated.<sup>18</sup> If OGE or an agency has “reasonable cause to believe” that a filer has “willfully falsified or willfully failed to file information required to be reported” on a public financial disclosure report, OGE or the agency is required to refer the matter to the Attorney General.<sup>19</sup> The same requirement

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<sup>9</sup> U.S. OFFICE OF GOV’T ETHICS, PA-15-03: DEADLINES AND PROCEDURES FOR ANNUAL PUBLIC FINANCIAL DISCLOSURE REPORTS REQUIRED TO BE FILED WITH THE U.S. OFFICE OF GOVERNMENT ETHICS (2015).

<sup>10</sup> This practice is consistent with the practice of the House of Representatives Committee on Ethics, which is subject to the same review standard at 5 U.S.C. app. § 106, with regard to Members of Congress. HOUSE COMM. ON ETHICS, IN THE MATTER OF ALLEGATIONS RELATING TO REPRESENTATIVE VERNON G. BUCHANAN, H.R. REP. NO. 112-588, at 5 (2012) (“[E]rrors and omissions in Financial Disclosure Statements are an ordinary part of the process for many filers, and in the normal course of review and amendment of Financial Disclosure Statements, the fact of errors and omissions are typically not the subject of an investigation or Report by the Committee, but rather are disclosed publicly by the filing of the amendment itself.”).

<sup>11</sup> 5 U.S.C. app. § 106(b)(3).

<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. app. § 106(b)(4)-(5).

<sup>14</sup> 5 U.S.C. app. § 104(d).

<sup>15</sup> 5 U.S.C. app. § 104(a).

<sup>16</sup> *See, e.g.*, 18 U.S.C. § 216; 5 U.S.C. app. §§ 104, 504; 5 U.S.C. § 7513.

<sup>17</sup> *See* 5 U.S.C. app. §§ 4(a)(1), 403(a).

<sup>18</sup> 5 U.S.C. app. § 402(f)(5).

<sup>19</sup> 5 U.S.C. app. § 104(b).

applies in the case of apparent violations of criminal conflict of interest laws.<sup>20</sup> The Department of Justice has authority to seek criminal<sup>21</sup> or civil penalties<sup>22</sup> for willfully submitting false information in a financial disclosure report. OGE's recent prosecution surveys highlight some of the Department of Justice's work in this area.<sup>23</sup>

Following the close of the calendar year, OGE issues a letter directly to the head of each agency, with a copy to the agency's DAEO, regarding OGE's review of the annual financial disclosure reports of the highest level of financial disclosure filers. In the letter, OGE identifies by name any filer whose report has not received certification by OGE and indicates whether certification has been denied because the report has not been received, whether additional information needed for certification has not been received, and whether the filer's report was not compliant with applicable requirements.<sup>24</sup>

With regard to employees at other levels in the executive branch, the public and confidential financial disclosure reports are reviewed by the ethics office for the employing agency. Counting both public and confidential financial disclosure reports, the executive branch collects over 400,000 reports each year. OGE has instituted a programmatic approach to monitoring and investigating compliance with regard to this massive annual undertaking. Accordingly, OGE focuses on agencies' programs for collecting and reviewing these 400,000 financial disclosure reports. OGE has directed each DAEO in the executive branch to establish "[a]n effective system and procedure for the collection, filing, review, and, when applicable, public inspection of the financial disclosure reports."<sup>25</sup> To this end, OGE has required that DAEOs ensure that "[a]ll financial disclosure reports submitted by employees ... are properly maintained and effectively and consistently reviewed for conformance with all applicable laws and statutes."<sup>26</sup> The review of these financial disclosure reports by agency ethics officials are subject to the same review requirements described above with regard to the reports of the highest level of filers whose reports are transmitted to OGE for certification. In addition, the same potential exists in individual cases for involvement of Inspectors General and for disciplinary,

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<sup>20</sup> 28 U.S.C. § 535.

<sup>21</sup> See, e.g., 5 U.S.C. app. § 104(a)(2), 18 U.S.C. §§ 1001, 1018.

<sup>22</sup> 5 U.S.C. app. § 104(a)(1).

<sup>23</sup> For example, the Department of Justice reported 10 criminal prosecutions involving false statements or omissions in financial disclosure reports in five of OGE's recent prosecution surveys. See U.S. OFFICE OF GOV'T ETHICS, LA-15-10: 2014 CONFLICT OF INTEREST PROSECUTION SURVEY (*United States v. Kenneth H. Nix and Velma Salinas-Nix*); U.S. OFFICE OF GOV'T ETHICS, LA-13-12: 2012 CONFLICT OF INTEREST PROSECUTION SURVEY (2013) (*United States v. Shih Chi Liu; United States v. Cheng Yi Liang*); U.S. OFFICE OF GOV'T ETHICS, LA-12-06: 2011 CONFLICT OF INTEREST PROSECUTION SURVEY (2012) (*United States v. Jeffrey Williams; United States v. Robert Barry Adcock*); U.S. OFFICE OF GOV'T ETHICS, LA-11-08: 2010 CONFLICT OF INTEREST PROSECUTION SURVEY (2011) (*United States v. Martin Lieb; United States v. Joseph McCloskey; United States v. Frank Davis*); U.S. OFFICE OF GOV'T ETHICS, DO-09-029: 2008 CONFLICT OF INTEREST PROSECUTION SURVEY (2009) (*United States v. Hardrick Crawford, Jr.; United States v. Jack W. Snyder*).

<sup>24</sup> For the calendar year 2015 filing cycle, all agencies have successfully completed the review process as to filers requiring OGE certification.

<sup>25</sup> 5 C.F.R. § 2638.203(b)(2).

<sup>26</sup> 5 C.F.R. § 2638.203(b)(4).

civil, and criminal penalties in connection with false filings or with conflicts of interest identified through the review of financial disclosure reports.<sup>27</sup>

OGE monitors agencies' compliance with these requirements through program reviews conducted by OGE's Compliance Division.<sup>28</sup> These reviews involve the collection and analysis of agency documentation, onsite fieldwork, interviews with ethics officials and agency staff, and examination of agency training, advice and counsel, and tracking systems. During these program reviews, OGE also examines a sampling of financial disclosure reports for compliance with the requirements. At the close of a program review, OGE's Compliance Division issues a report detailing its findings and, when appropriate, making specific recommendations for improvement. When the report includes recommendations, OGE conducts a follow-up program review, usually six months after the initial program review, to assess the agency's progress. OGE posts its program review reports, including its follow-up program review reports, on its website.

In addition, OGE issues its Annual Agency Ethics Program Questionnaire each year to collect a comprehensive report from each agency regarding its ethics program. The questionnaire gathers information about a range of program activities, including the agency's financial disclosure operations. OGE analyzes this information for trends, and seeks follow-up information from agencies when there are significant year-to-year statistical discrepancies in information provided by the agency. OGE's Compliance Division also reviews this information in connection with its program review activities, using the data either to select agencies for program reviews or to develop the program review strategy for individual agencies already selected for review. OGE's current policy is to post the agencies' responses to the questionnaire on its website.

## **RESPONSE TO QUESTIONS 2 & 10, QUESTIONS 3 & 11, QUESTIONS 4 & 12, AND QUESTION 5<sup>29</sup>**

2. How does OGE confirm that commitments are made to resolve any potential conflicts of interest?

(corresponding question) 10. What is OGE's role with developing and monitoring ethics agreements for current and former executive branch leaders who have been appointed by the President and confirmed by the Senate?

3. What does OGE do to follow up to ensure that such commitments are timely met and appropriately resolved?

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<sup>27</sup> See, e.g., 5 U.S.C. § 7513; 5 U.S.C. app. §§ 4(a)(1), 104, 402(f)(5), 403(a), 504; 18 U.S.C. §§ 208, 216, 1001, 1018; 28 U.S.C. § 535.

<sup>28</sup> A list of criteria used by OGE to determine whether an agency has complied with the requirements of having an effective system for public and confidential financial disclosure can be found on OGE's website. *Ethics Program Review Guidelines*, U.S. OFF. GOV'T ETHICS, <http://www.oge.gov/Program-Management/Program-Review/Ethics-Program-Review-Guidelines> (last visited Jan. 25, 2016).

<sup>29</sup> Because Questions 2, 3, and 4 overlap with Questions 10, 11, and 12, respectively, the responses to all of these questions, as well as the response to related Question 5, are combined here.

(corresponding question) 11. How does OGE ensure continued compliance with ethics agreements?

4. What, if any, enforcement authority does OGE have to ensure compliance in this area?

(corresponding question) 12. What oversight and enforcement authority does OGE have over ethics agreements?

5. If OGE does not have enforcement authority to ensure compliance, who has that responsibility?

As part of the financial disclosure review process for all Presidentially-appointed, Senate-confirmed (PAS) nominees whose reports are subject to certification by OGE, OGE and the agency perform a comprehensive conflicts analysis of the PAS nominee's financial interests. The analysis focuses on 18 U.S.C. § 208 and other applicable legal authorities, such as 18 U.S.C. §§ 203, 205 & 209; 5 C.F.R. §§ 2635.502, 2635.503, 2635.807, 2636.305 & 2636.306; Executive Order 12674, § 102 (1989), as amended by Executive Order 12731 (1990); and Executive Order 13490 (2009).

Based on that analysis, an ethics agreement, which prescribes the steps that will be taken by the PAS nominee to resolve any conflicts of interest, is developed as a joint product of the agency and OGE. OGE provides expert guidance and model language, and determines whether the commitments outlined in the ethics agreement are sufficient to ensure compliance with applicable laws and regulations. The PAS nominee must agree to comply with all terms specified in the ethics agreement for the duration of the appointment to the position to which he or she is nominated. OGE's approval of the actions specified in the ethics agreement is a precondition for certification of the PAS nominee's financial disclosure report, which has to occur before OGE forwards the certified report and ethics agreement to the Senate.

OGE conducts follow-up to ensure that PAS appointees timely comply with the ethics agreements they signed as PAS nominees. To facilitate this follow-up, OGE tracks the Senate confirmation dates of PAS nominees. Unless a date for compliance is indicated in the ethics agreement, the individual must comply within three months of confirmation with commitments specified in the ethics agreement.<sup>30</sup> Extensions for compliance with any element of an ethics agreement can be granted in cases of unusual hardship.<sup>31</sup>

Upon confirmation, OGE sends a notice to ethics officials at the employing agency reminding them of the importance of working with the individual to ensure compliance with the ethics agreement by applicable deadlines. OGE sends additional notices to the ethics officials throughout the 90-day compliance period until OGE has been notified that the PAS appointee has provided agency ethics officials with evidence of compliance with commitments in the ethics

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<sup>30</sup> 5 C.F.R. § 2634.802(b).

<sup>31</sup> *Id.*

agreement. Agency ethics officials notify OGE of any issues that may delay full compliance, in which case OGE staff and agency ethics officials coordinate either to ensure timely compliance by the PAS appointee or, if appropriate, grant an extension. After a PAS appointee has complied with the ethics agreement, OGE continues to monitor the appointee's subsequent public financial disclosure reports to ensure that the appointee continues to comply with the ethics agreement.

OGE's monitoring of ethics agreement commitments is grounded in the understanding that the ethics agreement is a prophylactic measure designed to avoid potential conflicts of interest and to ensure compliance with specific legal authorities. Because the primary risk presented by noncompliance with an ethics agreement is that an employee could violate conflicts of interest laws, OGE insists that agencies require PAS appointees to comply with ethics agreements. If a PAS appointee fails to comply with an ethics agreement and the noncompliance were to result in a violation of the conflicts of interest laws, OGE would refer the matter to an appropriate Inspector General for possible investigation or to the Department of Justice for possible criminal or civil prosecution based on the violation. Irrespective of whether or not the noncompliance were to result in violation of the conflicts of interest laws, OGE would require the agency to ensure compliance with the ethics agreement. Agency ethics officials are not authorized to modify these ethics agreements without OGE's approval. If a PAS appointee were to decline to comply with an ethics agreement, OGE would escalate the matter to the agency head and, if necessary, the White House.<sup>32</sup> If a regulation were violated as a result of the noncompliance, OGE would also request information regarding any follow-up action, such as an order from the agency head compelling compliance or removal of the PAS appointee from government service. Note, however, that the United States Constitution limits authority to remove a Senate-confirmed Presidential appointee to the President under Article II, Section 2, clause 2.

The ethics agreement covers the entire period of appointment to the particular position. When a PAS appointee leaves government service and becomes a private citizen, the PAS appointee is subject to post-employment restrictions, pursuant to 18 U.S.C. § 207. Agency ethics officials provide guidance to former PAS appointees concerning their post-employment activities. However, enforcement of 18 U.S.C. § 207, which is a criminal statute, is within the purview of the U.S. Department of Justice, which has the authority to prosecute private citizens.

With regard to the millions of non-PAS employees, the decentralized executive branch ethics program assigns each agency's DAEO responsibility for reviewing financial disclosure reports, identifying potential conflicts of interest, and addressing those potential conflicts. As discussed in response to Question 1, OGE monitors the processes put in place by the DAEOs through its reviews of agency ethics programs. As part of the program review process, OGE examines both an agency's financial disclosure program and a sampling of financial disclosure reports. In addition, OGE examines whether agency ethics officials provide employees guidance with regard to conflicts of interest and implement remedies to address them. If OGE identifies issues in the course of a program review, OGE will make recommendations in its program

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<sup>32</sup> OGE has not generally had to take such action to obtain a PAS appointee's compliance. Early in OGE's history, a compliance question involving the ethics agreement of a cabinet official was escalated to an independent counsel when it could not be resolved informally. *See* OGE Informal Advisory Opinion 88 x 13 (1988).



review report and will conduct a follow-up program review to assess the agency's remediation of the issues. OGE posts its program review reports, including its follow-up program review reports, on its website.

## RESPONSE TO QUESTION 6

6. Congress gave OGE the responsibility for "ordering corrective action of the part of agencies and employees which the Director deems necessary" (5 U.S.C. app. § 402(b)(9)), as well as various authorities to execute that responsibility (5 U.S.C. app. § 402(f)). Please provide a list of all instances since OGE's creation in which OGE has:

- a. Ordered corrective action pursuant to 5 U.S.C. app. § 402(b)(9);
- b. Submitted a notification to the President and the Congress, pursuant to 5 U.S.C. app. § 402(f)(1)(B), of agency noncompliance;
- c. Recommended an investigation pursuant to 5 U.S.C. app. § 402(f)(2)(A)(ii)(I);
- d. Recommended disciplinary action pursuant to 5 U.S.C. app. § 402(f)(2)(A)(ii)(I);
- e. Submitted a notification to the President pursuant to 5 U.S.C. app. § 402(f)(2)(A)(ii)(II);
- f. Submitted a notification to an agency head pursuant to 5 U.S.C. app. § 402(f)(2)(A)(iii)(II);
- g. Submitted a notification to the President pursuant to 5 U.S.C. app. § 402(f)(2)(A)(iv)(II); and
- h. Conducted an investigation pursuant to 5 U.S.C. app. § 402(f)(2)(B)(i).

With regard to individual employees, the formal procedures in § 402(f) are inapplicable to any matters involving either conflicts of interest provisions, which are criminal in nature, or financial disclosure provisions, which are addressed solely under § 106 of the Act.<sup>33</sup> As for other types of matters not involving conflicts of interest or financial disclosure, OGE has not needed to invoke formal procedures for corrective action against an individual employee. OGE has found that direct communication with agency officials, including the Designated Agency Ethics Officials and agency Inspectors General, has been effective and a more efficient approach for obtaining action by agencies to remediate issues that arise. The approach of using direct communication with relevant officials produces quicker results than invoking the formal procedures would permit. In addition, invoking those procedures would have unnecessarily increased the transaction costs in obtaining compliance, due to the time and resources that OGE and the agency would have had to devote to the formal steps outlined in the statute and its implementing regulation.

In addition to OGE's direct communication with agency officials, two other processes have proven highly effective. First, with regard to high level officials, the process at § 106 of the

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<sup>33</sup> 5 U.S.C. app. § 402(f)(2)(B)(iv), (f)(5).

Act has been effective in resolving potential conflicts of interest. In the PAS nominee program in particular, OGE has leveraged its authority to certify financial disclosure reports as a means to require individuals to enter into ethics agreements containing commitments to eliminate conflicts of interest. The prospect that OGE would not certify a nominee's report that reveals an unresolved conflict is sufficient to induce ethics officials to obtain the necessary information and commitments from filers to resolve conflicts of interest. OGE then monitors compliance with the ethics agreements and reviews subsequent annual financial disclosure reports for continued compliance. Second, the more than 4,500 professional ethics officials embedded in agencies, who are generally closer to factual information than OGE, are able to work within their agencies to address issues as they arise. Agency ethics officials also communicate directly with Inspectors General, who have a combined staff of approximately 14,000 employees across the executive branch, and with agency managers, who have authority to take disciplinary actions, in connection with matters arising at their agencies. OGE supports these agency ethics officials through training and access to OGE desk officers.

At the agency program level, the practice has been much the same as for individual employees. OGE has invoked formal procedures, rather than using the traditional approach of direct communication with agency officials, on only a few occasions in its 38-year history: (1) OGE issued a notice of deficiency in 1991 after a program review of the U.S. Agency for International Development and escalated the matter to the agency head in 1992 when remedial action remained incomplete, but OGE closed the matter in 1993 when the agency completed remediation; (2) OGE issued a similar notice in 1994 after a program review of the National Credit Union Administration but closed the matter that same year when the agency completed remediation; (3) OGE issued a notice in 1997 after a program review of the Small Business Administration (SBA) but closed the matter four months later when the agency completed remediation; (4) OGE issued another notice to SBA after a program review in 2003 but closed the matter in 2004 when the agency completed remediation; (5) OGE issued a notice in 1996 after a program review of the U.S. Commission on Civil Rights but closed the matter in 1997 when the agency completed remediation; (6) OGE issued a notice in 1997 after a program review of the Advisory Council on Historic Preservation but closed the matter in 1998 because the agency's written response resolved the concern; (7) OGE issued a notice in 1997 after a program review of the Council of Economic Advisers but closed the matter a month later because the agency's written response resolved the concern; (8) OGE issued a notice in 1997 after a program review of the Department of the Interior but closed the matter in 1998 when the agency completed remediation; (9) OGE issued a notice in 1997 after a program review of the Department of Agriculture and closed the matter in 2000 when the agency remediated identified issues but issued another notice in 2002, as a result of another program review, and closed the matter again in 2004 when the agency completed remediation; and (10) OGE issued a notice in 1999 after a program review of the National Transportation Safety Board but closed the matter in 2001 when the agency completed remediation.

In each of those instances, the matter did not proceed beyond the preliminary phases because OGE found that either the agency's written response resolved the concern or the agency completed its remediation of the deficiencies. Each of those matters arose as the result of the findings of OGE's routine program reviews, yet OGE's invocation of formal procedures triggered additional steps that OGE had to take before it could obtain satisfactory outcomes. For

this reason, OGE has generally found that these formal procedures are less efficient than its traditional approach of escalating the matter through direct communication with the agency in order to correct program deficiencies. OGE's program reviews generally achieve the same outcomes, without triggering the additional steps. In fact, OGE has recently refined its processes for conducting program reviews, making recommendations, and conducting follow-up program reviews to evaluate agencies' correction of deficiencies. In contrast to the formal procedures, these refined measures have produced needed changes more quickly and have conserved taxpayer resources.

When OGE identifies program deficiencies through its program reviews, OGE issues recommendations directing the agency to take action to address the deficiencies and bring its ethics program into compliance with applicable laws and regulations. OGE has issued thousands of recommendations and, with few exceptions, has been able to document that agencies have taken appropriate action to address the underlying deficiencies. By way of example, OGE issued 122 recommendations in fiscal year 2015. Within that same fiscal year, better than 89% of those recommendations were successfully closed, and OGE is continuing to coordinate with agencies on the remaining recommendations. In comparison, during recent Congressional testimony the Comptroller General stated that approximately 80% of recommendations issued by the General Accountability Office are closed four years after issuance.<sup>34</sup>

## **RESPONSE TO QUESTION 7**

7. Congress also gave OGE the responsibility for "requiring such reports from executive agencies as the Director deems necessary" (5 U.S.C. app. § 402(b)(10)). Please provide a list of all such reports the Director has required since OGE's creation.

As the supervising office for the executive branch ethics program, OGE obtains information from agencies in a variety of ways. For example, OGE collects information and documents from individual agencies in connection with its reviews of agency ethics programs. Reporting requirements over the years have included other one-time requests for particular types of information directly related to specific program operations, such as data calls regarding government ethics training needs and the information technology used by agency ethics programs.

Based on its years of experience overseeing the executive branch ethics program, OGE has consolidated much of the data it collects each year into a comprehensive Annual Agency Ethics Program Questionnaire. Authority to conduct this consolidated data collection was made expressly available to OGE by the enactment of 5 U.S.C. app. § 402(e), which was added to the Ethics in Government Act as part of OGE's reauthorization in 1988.<sup>35</sup> OGE transmits this

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<sup>34</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-16-272T, GOVERNMENT EFFICIENCY AND EFFECTIVENESS: IMPLEMENTING GAO RECOMMENDATIONS CAN ACHIEVE FINANCIAL BENEFITS AND STRENGTHEN GOVERNMENT PERFORMANCE 2, tbl.1 (2015) (statement of Gene L. Dodaro, Comptroller General of the United States, before the Subcomm. on Regulatory Affairs and Federal Management of the S. Comm. on Homeland Security and Governmental Affairs).

<sup>35</sup> Act of Nov. 3, 1988, Pub. L. No. 100-598, § 6, 102 Stat. 3031, 3032.

questionnaire to agencies in January every year. Agency responses to the questionnaire give OGE an understanding of each agency's individual ethics program, while the compiled data provides OGE with an overview of the entire executive branch ethics program. Typically, the questionnaire requires agencies to submit information about how they administer the elements of their ethics programs, as well as to provide data demonstrating compliance with regulatory training and financial disclosure requirements. In its current form, the questionnaire directs agencies to provide information on the following topics: (1) Organizational Structure; (2) Program Administration; (3) Education and Training; (4) Advice and Counseling; (5) Public Financial Disclosure; (6) Confidential Financial Disclosure; (7) Remedies and Enforcement of Standards of Conduct, Criminal, and Civil Statutes; and (8) Advisory Committees and Special Government Employees. Agency questionnaire responses are due to OGE in February each year, and OGE staff review the data collected. Recognizing the value of this material to a wider audience, in 2014, OGE published on its website a summary of aggregate data from the agencies' responses. In 2015, OGE also began posting all of the raw data from agency responses in order to be even more transparent.

Outside of the questionnaire, OGE conducts certain other annual data collections. These include: a collection from agencies of lists of employees occupying certain categories of positions for financial disclosure purposes; a collection of agency component designations for purposes of applying post-employment restrictions; a survey of all U.S. Attorney offices and other offices in the Department of Justice regarding prosecutions related to conflicts of interest laws; and a survey of ethics officials to collect information from OGE's "customers" about the services OGE provides.

OGE has also made information requests pursuant to specific legal authorities, such as a request for information pursuant to the Presidential Transition Act of 2000, which required OGE to conduct a study and submit a report on improvements to the financial disclosure process for Presidential nominees. Examples of other categories of information or reports that OGE requires on an ongoing basis under other legal authorities include: the Annual Ethics Pledge Survey, which provides information about agency compliance with the President's Executive Order on Ethics (Executive Order 13490); the OGE Form 202, which, pursuant to 5 U.S.C. app. § 402(e)(2), collects information regarding referrals to the Department of Justice related to violations of conflicts of interest laws; and the OGE Form 1353 which, pursuant to 31 U.S.C. § 1353(d)(1), collects information from agencies twice per year regarding payments for travel, subsistence, and related expenses received from non-Federal sources in connection with the attendance of employees at certain meetings or similar functions.

## **RESPONSE TO QUESTIONS 8 AND 9**

8. If OGE does not believe factual assertions made in a Presidential candidate's financial disclosure paperwork, who in the federal government would have responsibility for making a factual determination?

9. Who in the federal government has enforcement authority to ensure that Presidential candidates comply with financial disclosure requirements?

Under the Ethics in Government Act, Presidential candidates file their financial disclosure reports with the Federal Election Commission (FEC).<sup>36</sup> The FEC has responsibility for collecting late filing fees in the event that candidates miss the applicable deadlines for filing their financial disclosure reports.<sup>37</sup> If a candidate willfully fails to file a financial disclosure report, the FEC is required to refer the candidate to the Attorney General, who has authority to seek civil penalties for failure to file.<sup>38</sup>

After reviewing and certifying a financial disclosure report, the FEC forwards the report to OGE for additional review.<sup>39</sup> The Ethics in Government Act requires OGE to make a certification determination on the basis of information contained in the report.<sup>40</sup> In reviewing the report, OGE communicates with the candidate's representative to answer any questions that may arise in the course of the review of the report.<sup>41</sup> As part of this process, the candidate's representative ensures that the candidate amends the report as needed to reflect the correct information.

Willfully making a false factual assertion in the financial disclosure report would implicate criminal law,<sup>42</sup> and OGE is statutorily precluded from making a finding that a criminal law has been violated.<sup>43</sup> Therefore, OGE may not make a factual determination that a filer has willfully made false factual assertions in a financial disclosure report. If reasonable cause exists to believe that a candidate has willfully made false factual assertions, however, the Ethics in Government Act provides for referral of the candidate to the Attorney General.<sup>44</sup> In cases of inadvertent errors, OGE will usually work with a candidate to ensure that the report is amended to reflect the correct information.<sup>45</sup>

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<sup>36</sup> 5 U.S.C. app. § 103(e).

<sup>37</sup> 5 C.F.R. § 2634.704(c).

<sup>38</sup> 5 U.S.C. app. § 104(b).

<sup>39</sup> 5 U.S.C. app. § 103(c).

<sup>40</sup> 5 U.S.C. app. § 106(b)(1).

<sup>41</sup> See 5 U.S.C. app. § 106(b)(2).

<sup>42</sup> See, e.g., 5 U.S.C. app. § 104; 18 U.S.C. §§ 1001, 1018.

<sup>43</sup> 5 U.S.C. app. § 402(f)(5).

<sup>44</sup> 5 U.S.C. app. § 104(b).

<sup>45</sup> In this regard, it is notable that the House of Representatives Committee on Ethics, which is subject to the same review standard at 5 U.S.C. app. § 106 and the same requirement of referral to the Attorney General at 5 U.S.C. app. § 104(b), has explained that, in the vast majority of cases, appropriate action is limited to requiring a filer to correct an incorrect financial disclosure report:

[L]ess substantial errors and omissions on Financial Disclosure Statements are not uncommon. In fact, between 30% and 50% of all Financial Disclosure Statements reviewed by the Committee each year contain errors or require a corrected statement. For over 95% of these inaccurate Financial Disclosure Statements, the filer appears to be unaware of the errors until they are notified by the Committee. Some filers also appear to become aware of errors after being notified by members of the media or outside groups who review the statements and other public records. Generally, unless there is some evidence that errors or omissions are knowing or willful, or appear to be significantly related to other potential violations, the Committee notifies the filer of the error

## RESPONSE TO QUESTIONS 10, 11, AND 12

This response has been combined with the response to Questions 2, 3, 4, and 5, as discussed above.<sup>46</sup>

## RESPONSE TO QUESTION 13

13. In the context of honoraria disclosure, you stated in your testimony that the Ethics in Government Act is “not the statute that I would have written, as evidenced by the fact that OGE has a confidential financial disclosure system where Congress left us the ability to write our own rules.” What changes would you recommend to the statute?

If Congress were to focus on revising the disclosure requirements for honoraria, I would consider recommending expansion of the reporting requirements of 5 U.S.C. app. § 102(a)(6)(B). That section currently requires disclosure of the source of any payments during the reporting period that exceed \$5,000 in a calendar year for a filer’s services. This reporting requirement, which applies to honoraria and other types of payments, applies without regard to whether the payment is made to the filer or another, and it applies whether or not the filer is acting in a personal capacity. Under the Ethics in Government Act, however, this requirement applies only to filers who are new entrants (*i.e.*, new hires) or nominees—it does not apply to filers who are current employees filing annual reports, former employees filing termination reports, elected officials (*i.e.*, the President, the Vice President, and Members of Congress), or candidates. I would consider recommending the extension of this requirement to all of the excluded filers in the executive and legislative branches with regard to both honoraria and other types of payments.

It also bears noting that two independent organizations have recently issued recommendations for changes to the financial disclosure system for executive branch employees. In March 2013, the National Academy of Public Administration (NAPA) conducted a congressionally mandated and funded study of financial disclosure issues related to the STOCK Act, and the report of that study makes several general recommendations related to tailoring public financial disclosure requirements in the executive branch to correspond with information

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and requires that he or she submit an amendment, which is then publicly filed. Once the amendment is properly submitted, the Committee takes no further action. Accordingly, errors and omissions in Financial Disclosure Statements are an ordinary part of the process for many filers, and in the normal course of review and amendment of Financial Disclosure Statements, the fact of errors and omissions are typically not the subject of an investigation or Report by the Committee, but rather are disclosed publicly by the filing of the amendment itself.

HOUSE COMM. ON ETHICS, IN THE MATTER OF ALLEGATIONS RELATING TO REPRESENTATIVE VERNON G. BUCHANAN, H.R. REP. NO. 112-588, at 5 (2012).

<sup>46</sup> Because questions 2, 3, and 4 overlap with questions 10, 11, and 12, respectively, the responses to all of these questions are combined in the earlier section above.

needed to perform conflicts of interest analysis.<sup>47</sup> Without taking a position on them, NAPA's report also includes a list of specific recommendations for improving public financial disclosure requirements in the executive branch.<sup>48</sup> In another congressionally mandated study, the Working Group on Streamlining Paperwork for Executive Nominations, on which I served as a member, made a number of similar recommendations concerning the public financial disclosure system.<sup>49</sup> Should the subcommittee wish to consider these recommendations, OGE would be available to provide technical assistance at the subcommittee's request.

## **RESPONSE TO QUESTIONS 14 AND 15**

14. What do you do to ensure that each federal agency has a Designated Ethics Official?

15. What do you do to ensure that such ethics officers dedicate the proper amount of time to ethics work?

OGE desk officers provide agencies with a dedicated point of contact for overall ethics program support, including issues such as vacancies to key ethics program positions and access to program resources. Agency interaction with OGE desk officers allows OGE to assist agencies in transitional situations when a Designated Agency Ethics Official (DAEO) position becomes vacant. Desk officers also review and follow-up on agencies' responses to the Annual Agency Ethics Program Questionnaire that identify any vacant DAEO positions. In addition, OGE program review staff review formal DAEO designation letters during ethics program reviews to ensure these positions are staffed and the designations are current. To provide additional coverage, OGE also works with agencies to appoint Alternate DAEOs (ADAEOs).

With regard to program resources, OGE desk officers also review and follow-up on agency questionnaire responses that identify the percentage of time the DAEO and ADAEO of an agency dedicate to ethics-related work. In addition, OGE program reviews generate objective ethics program performance results, which can expose situations where sufficient time does not appear to be dedicated to ethics work and result in recommendations for improvement.

## **RESPONSE TO QUESTIONS 16, 17, 18, AND 19**

16. What is OGE's process for conducting plenary reviews and inspections of agency ethics programs?

17. How often does OGE review an agency's program, and how are recommendations resolved?

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<sup>47</sup> NAT'L ACAD. OF PUB. ADMIN., *THE STOCK ACT: AN INDEPENDENT REVIEW OF THE IMPACT OF PROVIDING PERSONALLY IDENTIFIABLE FINANCIAL INFORMATION ONLINE* 63-64 (2013), available at <http://www.napawash.org/wp-content/uploads/2013/03/STOCKactFinal1.pdf>.

<sup>48</sup> *Id.*

<sup>49</sup> WORKING GRP. ON STREAMLINING PAPERWORK FOR EXEC. NOMINATIONS, *STREAMLINING PAPERWORK FOR EXECUTIVE NOMINATIONS* 18-33 (2012), available at <http://whitehousetransitionproject.org/resources/briefing/appointments/Report%20of%20S679%20Working%20Group-Final.pdf>.

18. If a deficiency is discovered in an agency's ethics program, what is the process for correcting?

19. If an agency refuses to correct, does OGE have enforcement authority to seek correction? If not, who is responsible for enforcing correction?

OGE's Compliance Division is currently reviewing agencies on a five-year cycle, which is the same length as the statutory term for an OGE Director. Although OGE generally schedules reviews based on the time elapsed since an agency's last review, OGE also considers other factors including input from OGE desk officers, the involvement of other OGE divisions and branches in issues arising at individual agencies, and prior reviews when selecting agencies for program reviews.

OGE conducts three types of program reviews: inspections, plenary reviews, and follow-up reviews. The first two types of reviews, inspections and plenary reviews, are generally conducted in much the same manner. They consist of several distinct phases, which are discussed below. OGE conducts follow-up reviews only after an inspection or plenary review in order to assess an agency's implementation of recommendations in the program review report. This type of review is discussed below after the discussion of inspections and plenary reviews.

The first phase of an inspection or plenary review is the engagement phase. During this phase, an agency is notified that OGE has selected its ethics program for review and is asked to produce specified information and documents relevant to program operations. In the case of inspections, the information and document requests generally focus on program compliance, meaning the focus is on the results of the efforts of the agency's ethics program with respect to compliance with applicable statutory and regulatory requirements. In the case of plenary reviews, the information and document requests generally focus on program compliance as well as on program operations, meaning the focus is on results but also on the processes and procedures by which the agency obtains those results. Therefore, the requests with regard to plenary reviews are more extensive, and response time is somewhat longer. In the case of both inspections and plenary reviews, OGE is actively engaged in ensuring that the agency produces the requested information and documents, clarifying the scope of the request if needed.

The next phase is the pre-review phase. The pre-review phase is the same for inspections and plenary reviews. During this phase, OGE's assigned program reviewers evaluate relevant information and documents to assess the agency's ethics program. This evaluation includes the information and documentation that the agency produced during the engagement phase in response to OGE's request. It also includes information and documentation that OGE has acquired through other processes, such as the Annual Agency Ethics Program Questionnaire discussed in response to Question 7 above, the ethics agreement tracking process, and the financial disclosure process for high level officials whose reports OGE certifies. OGE's program reviewers assess this compilation of information and documents for compliance with statutory



and regulatory requirements applicable to agency ethics programs,<sup>50</sup> and they seek to preliminarily identify program strengths and vulnerabilities. Next, they develop questions to probe further into aspects of the agency's ethics program, obtain responses to the questions from the agency, evaluate the responses, and inquire further if necessary. They then coordinate with the agency to schedule dates for site visits to conduct fieldwork.

The next phase is the fieldwork phase. During the fieldwork phase, OGE's program reviewers work onsite at the agency's ethics offices. This phase is procedurally the same for inspections and plenary reviews. The work takes longer for plenary reviews, however, because, while both focus on results, the plenary reviews also focus on work processes. In either case, the program reviewers begin with an entrance meeting to introduce themselves to ethics officials and agency leadership. They conduct interviews of ethics officials and, as necessary, other agency personnel involved with the ethics program. They also meet with the agency's Office of Inspector General. They collect additional information, resolve any outstanding questions that remain from the pre-review phase, and identify any additional documents needed for the program review. Among other documents reviewed during this phase, they review a sampling of financial disclosure reports filed by individual agency employees and appointees. During this process, the program reviewers routinely discuss their observations with agency ethics officials. These discussions sometimes lead agency ethics officials to begin remediating issues that reviewers have observed.

If possible, OGE works with the agency during the review process to immediately correct deficiencies as they are identified. This type of correction during the review is most common for administrative and documentation issues, such as updating procedures, destroying expired records, or amending ethics training materials to meet compliance requirements. An agency's correction of an issue during the program review will not cause OGE to refrain from addressing the issue in its final program review report. OGE will, however, acknowledge the agency's remediation of the deficiency in the report. The final program review report will note both the deficiency and the specific corrective actions taken, and it will indicate whether a recommendation is closed as a result of the agency's remediation efforts.

The next phase is the report drafting phase. The report drafting phase is more extensive for plenary reviews than for inspections. The format for inspection reports is highly prescriptive, employing a specific format that facilitates comparison of agencies inspected. In contrast, the format for plenary reviews is largely narrative, with more discussion of individual agency work processes that led to the outcomes identified. In the cases of both inspections and plenary reviews, OGE's program reviewers finalize their analysis of the agency's program and draft the program review report during this phase. The first step is usually to transcribe their notes from the fieldwork they conducted. After reviewing all material related to the program review, they formulate their findings and recommendations. They also carefully index and reference work papers, in order to substantiate their findings. They then prepare a draft report, which they discuss with agency officials in order to afford the agency an opportunity to present any additional information needed to resolve potential factual errors and to begin drafting a response

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<sup>50</sup> See, e.g., 5 C.F.R. pt. 2638.

to OGE's findings and recommendations. The program reviewers will then prepare a final draft for formal agency comment.

If the agency was not able to remediate a deficiency during the program review, the program review report will include a recommendation for the agency to correct the deficiency. For plenary reviews, OGE typically provides an agency six months to complete corrective actions, at which time OGE will conduct a follow-up program review to assess the implementation of those actions. The six-month window may be extended for certain corrective actions that require additional time to either correct or assess, including corrective actions to an agency's financial disclosure program which typically requires the completion of an annual filing cycle prior to reassessment. For inspections, OGE and the agency will jointly establish a date for completion of corrective actions, after which OGE will conduct a follow-up program review.

The next phase is the publication phase. This phase is the same for both inspections and plenary reviews. After OGE has issued a final program review report, OGE provides copies of the report to the agency's leadership, ethics officials, and Inspector General. OGE also posts the report on its website in order to make it available to the public.

The final phase for an inspection or plenary review is the post-review phase. If the program review report generated as a result of the inspection or plenary review includes recommendations, program reviewers conduct a follow-up review to assess the agency's remediation of issues identified. In order to ensure that these issues are resolved quickly and accurately, OGE makes itself available to consult with agencies prior to a follow-up review to ensure any proposed corrective actions meet the established compliance criteria. Alternatively, if an inspection has revealed significant results-based compliance issues program, program reviewers may conduct a plenary review in order to assess the agency's work processes and identify possible causes of the unsatisfactory results. If the program review report does not include recommendations, the agency's ethics program will return to the pool of agencies awaiting the next cycle of program reviews. Whether or not the report makes recommendations, the program reviewers consult with the OGE desk officer assigned to support the agency in order to discuss their findings.

As noted above, the third type of program review is a follow-up review. As the name suggests, OGE conducts this type of program review to assess an agency's progress in implementing recommendations made in the program review report generated as a result of an inspection or plenary review. The timing of a follow-up review after an inspection varies, but the follow-up review typically occurs one to six months after issuance of the program review report for the inspection, unless the Deputy Director schedules an agency for a plenary review instead of a follow-up review after an inspection. A follow-up review after a plenary review typically occurs approximately six months after issuance of the program review report for the plenary review, except when circumstances warrant a different timeframe. After a follow-up review is completed, OGE issues a program review report on the findings of the follow-up review. If significant recommendations remain outstanding, OGE will schedule subsequent follow-up reviews as needed.

Nearly all recommendations are closed as a result of this follow-up review process. The Ethics in Government Act provides certain formal steps that can be used in the event that an agency fails to sufficiently address a deficiency. As discussed in more detail in response to Question 6, however, OGE has found it more efficient to communicate directly with agency officials and escalate as necessary to the agency head. OGE has issued thousands of recommendations and, with few exceptions, has been able to document that agencies have taken appropriate action to address the underlying deficiencies.

## **RESPONSE TO QUESTIONS 20, 21 AND 22**

20. What type of information does OGE collect from the Annual Agency Ethics Program Questionnaire and how does OGE utilize that information?

21. Are the results shared with the ethics community and the public?

22. Based on the data from the questionnaire, has OGE identified any common issue areas? If so, how does OGE plan to address such areas?

OGE collects information from each executive branch agency regarding several categories of topics in its Annual Agency Ethics Program Questionnaire (questionnaire):

- First, the questionnaire collects information about each agency's organizational structure. Questions related to this topic seek information about the resources that each agency devotes to its ethics program. This includes information about the Designated Agency Ethics Official and Alternate Designated Agency Ethics Official, such as the amount of ethics experience each possesses, the amount of time each devotes to managing their agency's ethics program, the grade level of each, and the political or career appointment status of each. Also covered is information about the ethics officials' eligibility for retirement for succession planning purposes. In addition, agencies are asked to provide information about the number of ethics officials who perform ethics program duties, as well as the amount of time that they devote to ethics duties. Agencies are also asked about the distribution of ethics officials inside and outside of the Washington, D.C. area and about the supervisory status of the DAEO over agency officials performing ethics duties.
- Second, the questionnaire collects information about each agency's ethics program administration. Specifically, agencies are asked to rank the amount of time devoted to administering specific program elements, to indicate whether the ethics program has leadership support, to identify which tools they use to ensure the short- and long-term continuity of their ethics programs, and to indicate whether they have required standard operating procedures in place. Agencies are asked about the use of technology and any internal quality controls, as well as about the need for additional resources for the ethics

program. They are also asked about significant accomplishments and challenges during the year.

- Third, the questionnaire collects information about education and training. Questions focus on compliance statistics with regard to the number of employees required to receive initial and annual ethics training and the number who actually received the required training within the calendar year. Questions also focus on the allocation of responsibility for developing the required training content, the offices responsible for conducting training sessions, and the means of delivering the required training.
- Fourth, the questionnaire collects information about an agency's ethics advice and counseling activities. Agencies are asked to indicate what steps they take to ensure that they provide timely and consistent ethics advice to their employees. They are asked to identify and rank the particular ethics subjects that are most frequently at issue in their advice and counseling activities. They are also asked about post-employment counseling to ensure that former employees remain compliant with post-employment restrictions.
- Fifth, the questionnaire collects information about public financial disclosure. Collectively, the more than 130 executive branch agencies collect and review approximately 26,000 public financial disclosure reports each year. Questions in this section focus on compliance statistics with regard to the number of new entrant, annual, and termination public financial disclosure reports that were required to be filed in the calendar year, as well as the number of each type that were actually filed. Additionally, the questionnaire collects information about the number of filing extensions granted, the number of late fees assessed, and the timeliness of report filings and reviews. The questionnaire also asks agencies about the number of periodic transaction reports filed. In addition, it poses a series of questions about the ways each agency implements programmatic requirements for public disclosures, and about whether an agency requires supervisory review as part of the conflicts of interest review.
- Sixth, the questionnaire next seeks information about confidential financial disclosure. Collectively, the more than 130 executive branch agencies collect and review approximately 380,000 confidential financial disclosure reports each year. Questions in this section focus on compliance statistics with regard to the number of new entrant, annual, and termination confidential financial disclosure reports that were required to be filed in the calendar year, as well as the number of each type that were actually filed. Questions focus on filing extensions and timeliness issues. Questions also focus on the programmatic requirements for confidential disclosures.
- Seventh, the questionnaire collects information about remedies and enforcement of the Standards of Conduct and the ethics-related criminal and civil statutes. Agencies are asked to provide information about the number of remedial actions taken each year and the number of disciplinary actions taken based on violation of the Standards of Conduct regulations or the criminal and civil statutes. Agencies are also asked to specify the number of such actions taken on the basis of specific issues listed in the questionnaire. They are asked about waivers of regulatory or statutory ethics provisions issued during

the year. In addition, they are asked in this section about referrals to the Department of Justice for potential prosecution.

- Finally, the questionnaire seeks information about advisory committees and special government employees. Specifically, the questionnaire seeks information about the number of advisory committees each agency maintains, as well as information about other types of committees, boards, and commissions that each agency maintains. Agencies are also asked about the number of special government employees they employ, the procedures for designating employees as special government employees, and the offices that are responsible for determining that an employee is a special government employee. Agencies are also asked about ethics training for, and financial disclosures collected from, special government employees. In addition, agencies are asked to specify how many special government employees are federal advisory committee members and how many are employed in other specified roles.

The Annual Agency Ethics Questionnaire is a critical source of information for OGE in its work overseeing the executive branch ethics program. OGE uses the data collected through the questionnaire to develop knowledge about individual programs, as well as about the state of the executive branch ethics program as a whole. This information is also used to make determinations about resource allocation, such as the amount of resources devoted to OGE's desk officer function, its program review function, its ethics official training function, and its electronic filing system for public financial disclosure. In addition, OGE's program reviewers use the questionnaire data in connection with selecting agencies for program reviews, identifying strengths and weaknesses of specific agency ethics programs in the course of conducting program reviews, and targeting aspects of agency ethics programs for closer examination during the fieldwork phase of program reviews.

With regard to sharing the information with the ethics community and the public, OGE is now posting on its public website each individual agency's response to the questionnaire, in addition to a summary report with aggregate data, and an overview document with key highlights from the data excerpted from the questionnaire. Further, OGE presents highlights of the aggregate results of the questionnaire to the ethics community each year in a learning environment, as part of its Advanced Practitioner Series. OGE takes these steps to increase transparency and share information about the program with interested stakeholders, such as the public, the ethics community, and Congress.

OGE has also used the information from the questionnaire to identify and address common issue areas based on data received in agency responses. For example, issues related to succession planning and continuity of ethics program operations are a consistent area of concern as much of the federal workforce has approached or reached retirement eligibility in recent years. In calendar year 2015, agencies' responses to the annual questionnaire revealed that two-thirds of Designated Agency Ethics Officials possess less than four years of experience in the position.

OGE is taking a number of actions to address this issue. OGE will continue providing training targeted to new ethics officials and to develop targeted training products. OGE will continue conducting its quarterly meetings for agency ethics officials, at which OGE presents

information about ethics program processes and activities, recent developments, and upcoming events. OGE will also dedicate a portion of its Advanced Practitioner Series training sessions and sessions at the 2016 National Government Ethics Summit to the topic of ethics program management in order to bolster agency ethics programs during the period of Presidential transition. In addition, OGE will address making risk assessment and mitigation practices a routine part of an agency's ethics program, creating standard operating procedures to ensure program continuity, developing techniques for briefing new leaders, and instituting self-assessment programs to ensure preparedness for staff turnover.

OGE has also begun developing written materials that agencies can distribute to new employees, along with model training modules that agencies can use and tailor to their own needs. With the assistance of agency ethics officials, OGE is also developing a repository of targeted scenarios for use in conducting annual ethics training for employees whose responsibilities place them at increased or unique risk of facing certain ethical dilemmas. In addition, OGE has provided ethics officials with a high-quality template for their agency's annual ethics training plans. The template prompts ethics officials to think strategically about how they will deliver ethics training throughout the year.

Through OGE's Institute for Ethics in Government (IEG) virtual online store, OGE makes these and other materials, such as practical job aids and reference guides, available to ethics officials at no cost. The IEG store is also where members of the ethics community can share similar products that they themselves have created, including materials to assist with annual employee ethics training. This is an efficient way for agency ethics officials to obtain the educational materials that are most pertinent to their agencies' particular needs. In addition to the products available in the IEG Store, OGE makes available to ethics officials the video and audio recordings of the distance learning events that OGE sponsors, along with the informational slide decks, job aids, and reference materials used in those training events. OGE has made all of these materials permanently available to agency ethics officials, who are routinely encouraged to use these on-demand courses and materials to train their own staffs.

## **RESPONSE TO QUESTIONS 23 AND 24**

23. How will the upcoming Presidential election impact your workload and how does OGE prepare for the transition?

24. Explain how OGE is working with GSA, OPM and NARA to prepare for the upcoming Presidential transition.

OGE expects that its workload in support of the Senate confirmation process for Presidential nominees (PAS nominees) will triple during the Presidential transition. Given the critical importance of the Presidential transition to national security and the continuity of our nation's representative form of government, it is imperative that the process be carried out effectively and in a wholly non-partisan manner to support the Presidential transition team of whichever candidate is successful in the general election in November 2016. OGE is fully committed to its ongoing preparations for the Presidential transition, and we and our fellow

transition support providers aspire to make the upcoming Presidential transition the most efficient one in the modern era.

For its part, OGE anticipates that it will be called upon to complete ethics reviews for up to 700 or more PAS nominees between November 2016 and the end of 2017, which will require that a substantial portion of OGE's staff be assigned to review the financial disclosure reports of PAS nominees for compliance with disclosure requirements, evaluate their financial interests for potential conflicts of interest, and work with agency ethics officials to develop ethics agreements to resolve those potential conflicts of interest. The financial disclosure reports of PAS nominees and the conflicts of interest issues they present are typically more complex at the beginning of an administration than at other times, due to the level of positions being filled, the breadth of the financial interests held, and the degree of uncertainty on the part of agency ethics officials as to the incoming administration's plans for the activities of the nominees and their agencies.

This massive transfer of power from one Presidential administration to the next requires intensive preparation. With an election coming in November 2016, OGE's transition preparations are already well under way. OGE has streamlined its processes, and the nominee program is currently operating at an unprecedented level of efficiency. One innovation since the time of OGE's last reauthorization is a comprehensive 75-page ethics agreement guide that has sped up the process of resolving potential conflicts of interest and increased the uniformity of nominee ethics agreements across the executive branch. In 2014, OGE issued an updated version of that guide based on its real-world experiences using the original guide for nominee ethics agreements. This innovation, coupled with OGE's ethics agreement tracking efforts, increases accountability for Presidential nominees coming into the government. OGE has sought and obtained input on best practices and suggestions for ways to improve transition efforts from individuals who were active in Presidential transitions following the elections of President Bush and President Obama, respectively. OGE has also developed a complex workflow feature in its electronic filing system, *Integrity*, that enables staff to review nominee packages electronically. OGE is now using this feature for nominees in the current administration, and OGE anticipates that this feature will enhance the efficiency of the nominee program during the Presidential transition.

OGE is also conducting extensive training of executive branch officials. Internally, OGE began preparing for the Presidential transition in calendar year 2014, by implementing a comprehensive training plan to build the knowledge and skills of its staff through formal training sessions, informal "brown bag" discussions, and staff mentoring. OGE increased the amount of internal training in 2015, in order to continue adding new reviewers to the nominee program and to increase the expertise of existing reviewers. Throughout the executive branch, OGE is also continuing its efforts to provide significant training for nominee financial disclosure reviewers at the agencies. Training activities include in-person training classes and distance-learning conducted through webinars.

Next month, OGE will convene a National Government Ethics Summit focused specifically on preparing the community of executive branch ethics officials for the Presidential transition. The Summit will consist of three full days of training, running from March 8 through March 10, 2016, with presentations occurring in various combinations of an auditorium and three

large training rooms. The onsite audience at the Summit will comprise 400 participants, mostly ethics officials with 15 slots reserved for Inspector General personnel and a few slots for other stakeholders. OGE will also be live-streaming the sessions in the auditorium and one of the training rooms, so that the public can participate virtually in many of the Summit's sessions online in real time. We will leave the recorded sessions online after the Summit for public viewing on OGE's YouTube channel.<sup>51</sup>

Prior to the Summit, on March 7, 2016, OGE will also present a full-day symposium on financial disclosure training for ethics officials. This event will include two separate tracks, one for beginners and one for advanced reviewers. OGE will be able to accommodate up to 400 beginners and up to 140 advanced reviewers, and OGE will not charge agencies for the event.

OGE will issue additional guidance and resource materials to address the executive branch ethics program's needs with regard to both outgoing and incoming officials. This material will include a comprehensive web-based guide to assist nominees in completing the new OGE Form 278e and periodic transaction reports. This new guide will also be a valuable resource for ethics officials because it updates and expands on the existing guide, which is one of OGE's most popular resources among ethics officials in both the executive and legislative branches. OGE is also preparing a guide book for prospective nominees and a separate guide book for the Presidential transition team. These guide books will be available in both paper and electronic formats. OGE has contributed material for a similar guide being prepared by the Partnership for Public Service to be used by Presidential campaigns and the Presidential transition team. OGE also provided substantive content for the GSA-hosted Presidential Transition Directory website. In addition, OGE is preparing legal guidance to address topics related to seeking employment and post-employment restrictions to support agencies' counseling of outgoing administration officials.

In connection with these efforts, OGE has been actively participating in the Transition Service Providers Council, which is a roundtable led by the non-partisan Partnership for Public Service. Members of this group include representatives of the General Services Administration (GSA), the Office of Personnel Management, the National Archives and Records Administration, the Department of Justice, and the National Academy of Public Administration. One activity of this council has been to develop a detailed process map of transition services, activities, and deadlines. OGE has contributed to this process map, participated in meetings, and provided feedback on important transition-related issues. OGE and GSA have also made arrangements for OGE to have onsite office space adjacent to transition space that GSA is preparing for the campaigns prior to the election and for the Presidential transition team after the election. This will enable OGE staff to provide onsite support to the campaigns and transition teams in connection with technical aspects of electronic financial disclosure and with the ethics review of prospective PAS nominees.

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<sup>51</sup> OGE Inst. for Ethics in Gov't, YOUTUBE, <https://www.youtube.com/user/OGEInstitute> (last visited Feb. 8, 2016).



OGE is also coordinating with representatives of Presidential campaigns. OGE plans to send representatives to an event that the Partnership for Public Service will present this spring to encourage Presidential campaigns to prepare for the Presidential transition. Separately, OGE will contact representatives of Presidential campaigns prior to the election and offer briefings on the nominee process, electronic filing, and establishing effective ethics programs.

## **RESPONSE TO QUESTION 25**

25. In working with the Partnership for Public Service, what recommendations were provided to assist with the transition?

As described above, OGE is currently in the process of working closely with the Partnership for Public Service, transition service provider agencies, and other interested stakeholders to develop recommendations to ensure a smooth transfer of power from one Presidential administration to the next. A Presidential transition is a critical time when the nation is vulnerable, with the potential for manmade, natural, or economic disasters to strike while the government's top leadership positions are vacant. OGE has invested significant effort in documenting its processes through the Partnership's service provider timeline project as well as serving on the Transition Service Provider Council. Through these efforts, OGE continues to actively participate in the ongoing development of consensus recommendations that are being developed and published through the Partnership's newly launched Center for Presidential Transition.<sup>52</sup> In particular, OGE has contributed its expertise with regard to the nominee financial disclosure requirements and processes within the executive branch. This includes ideas about how campaigns and transition teams might better prepare themselves and their prospective nominees to more accurately and efficiently complete these important required disclosures so that OGE may assist them in identifying and resolving any potential conflicts of interest.

The subcommittee may also be interested in reviewing the related recommendations of two congressionally mandated studies on this topic. The Presidential Appointment Efficiency and Streamlining Act of 2011 directed the Presidentially-appointed Working Group on Streamlining Paperwork for Executive Nominations to submit to Congress two reports on streamlining the executive nomination and confirmation process. These reports make a number of recommendations for improving the nominee process, which is a critical component of any Presidential transition.<sup>53</sup> In 2013, Congress also directed the National Academy of Public Administration (NAPA) to conduct an independent study of financial disclosure issues in connection with amendments to the STOCK Act of 2012. Without taking a position on the recommendations, NAPA shares in Appendix B of the report of that study a list of recommendations for improving public financial disclosure requirements in the executive

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<sup>52</sup> CENTER FOR PRESIDENTIAL TRANSITION, <http://presidentialtransition.org> (last visited Feb. 8, 2016).

<sup>53</sup> These reports were submitted to Congress in November 2012 and May 2013. A copy of the first report is available online. *See* WORKING GRP. ON STREAMLINING PAPERWORK FOR EXEC. NOMINATIONS, STREAMLINING PAPERWORK FOR EXECUTIVE NOMINATIONS 18-33 (2012), *available at* <http://whitehousetransitionproject.org/resources/briefing/appointments/Report%20of%20S679%20Working%20Group-Final.pdf>. The second report does not appear to be available online, but OGE would be able to provide a copy to the Chairman.

branch.<sup>54</sup> Should the subcommittee wish to consider these recommendations, OGE would be available to provide technical assistance at the subcommittee's request.

## RESPONSE TO QUESTION 26

26. Please discuss any lessons learned or best practices from the last transition that will be incorporated into this upcoming transition.

OGE continually evaluates and refines the nominee process. OGE began preparations in 2014 for the upcoming transition, incorporating a number of lessons learned and best practices from the previous transitions.

One area in which OGE has experience is with understanding the staffing required, particularly with regard to the nominee financial disclosure review process, for a Presidential transition. OGE's experience over several transitions is that the process runs most effectively when adequate attention is paid to developing a sufficient number of experienced nominee reviewers. This consideration applies equally to the staff of the Presidential transition team, OGE's own staff, and the staffs of agency ethics offices.

With regard to Presidential transitions, I observed first-hand noteworthy planning on two separate occasions: one after the 2008 election and one prior to the 2012 election. First, in November 2008, I was asked to participate in the first meeting between the outgoing administration of President Bush and the incoming Obama-Biden Presidential transition team in my role as OGE's career-level Deputy General Counsel. At that meeting, held at GSA's headquarters the morning after the election, the transition team asked for a seasoned ethics official to be detailed from the Department of Treasury to the transition team for the purpose of assisting with the financial disclosure and conflicts of interest reviews of prospective nominees. This detailee quickly became OGE's primary contact at the transition team in connection with the ethics review of nominees, and her expertise contributed greatly to OGE's success in processing an extraordinary volume of PAS nominees in record-breaking time. The next occasion was in 2012, when the Presidential campaign of Governor Romney contacted OGE even before the election and asked whether OGE would be able to detail to the transition team a highly experienced ethics official who had overseen the White House's ethics reviews of nominees in the administration of President Bush. OGE was more than willing to detail this individual to the possible transition team of this candidate in order to provide the expertise necessary to support the nominee financial disclosure process in the event of a Presidential transition. OGE plans to encourage Presidential campaigns to continue this tradition of seeking to acquire the services of a current or former senior ethics official to assist the transition team. Likewise, OGE plans to advise the campaigns that the transition is most effective when the White House ethics official in the early days of the new administration has a working knowledge

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<sup>54</sup> NAT'L ACAD. OF PUB. ADMIN., *THE STOCK ACT: AN INDEPENDENT REVIEW OF THE IMPACT OF PROVIDING PERSONALLY IDENTIFIABLE FINANCIAL INFORMATION ONLINE* 63-64 (2013), *available at* <http://www.napawash.org/wp-content/uploads/2013/03/STOCKactFinal1.pdf>.

of executive branch ethics laws and regulations and is familiar with executive branch financial disclosure.

OGE also knows the value of preparing its staff for the Presidential transition. OGE began increasing the capacity of its staff to manage the 2009 transition two years before the 2008 election. Since that time, OGE has been internally evaluating and refining its approach to the nominee financial disclosure program. Specifically, OGE has developed a cross-functional approach to staffing the nominee program, particularly during peak workload periods. In addition to OGE staff dedicated full-time to the nominee program, OGE has trained additional staff in other divisions to support the nominee financial disclosure function during the upcoming Presidential transition following the 2016 election. This approach ensures both short-term capacity for its nominee work in the high-volume post-election period and long-term continuity of OGE's capability to perform mission-critical work.

In previous transitions, not all executive branch agencies have had a sufficient number of experienced ethics staff available to review the increased volume of nominee financial disclosure reports, which resulted in protracted reviews. In preparation for the upcoming transition, leadership at all agencies must ensure that they have a sufficient number of experienced ethics staff and that these ethics officials have ready access to other program officials to assist in identifying potential conflicts. As described in response to Questions 23 and 24, OGE is providing significant training for nominee financial disclosure reviewers at the agencies, including in-person training classes, distance learning through webinars, a National Government Ethics Summit focusing on the Presidential transition, and a full-day symposium dedicated exclusively to financial disclosure.

Another area in which OGE has experience relevant to Presidential transitions is the review of financial disclosure reports. The review of financial disclosure reports in the executive branch is necessarily more complex than in the legislative branch, due to the conflicts of interest requirements applicable to executive branch officials.<sup>55</sup> A complex nominee financial disclosure report with many assets and business relationships can take weeks to review, refine, and analyze for conflicts of interest. For this reason, OGE encourages campaigns, Presidential transition teams, and White House ethics office to impress upon potential nominees the importance of the financial disclosure and conflicts of interest requirements. OGE also encourages them to emphasize the need to respond quickly to OGE and agency questions regarding financial disclosures, explaining the complexities and expectations of the nomination process and the expedited procedure for nominee financial disclosure reports.

Transition team members focusing on personnel recruitment and selection should coordinate with those focusing on the ethics reviews. Their goals should include identifying prospective nominees early, collecting financial disclosure reports and initiating the ethics review as soon as possible, and looking out for potential conflicts of interest issues that may be hard to resolve or that may delay nomination if not addressed early in the process. OGE will

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<sup>55</sup> Compare 18 U.S.C. § 208(a), with H. COMM. ON STANDARDS OF OFFICIAL CONDUCT, 110TH CONG., HOUSE ETHICS MANUAL 248 (2008) (“No federal statute, regulation, or rule of the House absolutely prohibits a Member or House employee from holding assets that might conflict with or influence the performance of official duties.”).

encourage the Presidential transition team to transmit the financial disclosure reports of nominees to OGE as early as possible. To this end, one option OGE will discuss with the Presidential transition team is the possibility of OGE conducting an initial “blind” review of a financial disclosure report if the Presidential transition team is otherwise reluctant to share an individual’s financial disclosure before it has made a final decision to pursue that individual’s nomination. OGE can conduct an initial review of a report for technical legal compliance with disclosure requirements without knowing the identity of the filer or the position for which the filer is being considered. Additional review will be necessary later after the identity of the filer and the position are known in order to fully evaluate certain disclosure and conflicts of interest issues. While not an ideal arrangement because a blind review is merely preliminary, a blind review can advance the ethics process considerably by resolving technical issues, which are often the most time-consuming part of the process.

OGE has also found that strong communication and coordination are key elements for a successful transition. OGE is currently working with the Partnership for Public Service on a transition plan to recommend to the campaigns. OGE is also coordinating with GSA transition staff and has arranged for office space in transition facilities that OGE staff can use to support the campaigns and the transition team. In addition, OGE personnel will be available to the Presidential transition team and White House ethics office to discuss financial disclosure and ethics issues at any time.

OGE has also found that written guidance can expand the availability of OGE’s support to transition team members, nominees, and agency ethics officials during a transition when OGE’s resources are stretched thinnest. The response to Questions 23 and 24, above, describes a variety of written materials that OGE has issued or is developing, as well as the new electronic filing system, that will support the transition efforts.

## **RESPONSE TO QUESTION 27**

27. How does OGE support agencies with succession planning in executive branch ethics programs?

OGE has established a strategic objective to support succession planning in the executive branch ethics program in order to minimize the impact of the departure from the federal workforce of employees who possess specialized ethics knowledge. Succession planning can involve the documentation of current processes, transfer of institutional knowledge, and availability of personnel prepared to assume ethics official positions at all levels. OGE addresses each of these aspects of succession planning through its various programs.

OGE supports the documentation of current processes both directly and indirectly. To communicate to agencies the importance of documenting current processes and to track their efforts in this regard, OGE’s Annual Agency Ethics Program Questionnaire asks questions about the use of standard operating procedures. Certain program review processes also focus on agencies’ use of standard operating procedures, and the program review reports for plenary reviews include recommendations for establishment or enhancement of procedures when they are lacking. In addition, OGE conducts training on model program practices that emphasizes the

importance of agency ethics offices documenting current processes. OGE has also encouraged agencies to use a sample of the program report form that OGE uses for inspections as a checklist to conduct self-assessments of the state of their ethics programs and to take any necessary steps to address issues they identify.

OGE supports the transfer of institutional knowledge through a variety of means. OGE issues written guidance that is available on OGE's website. OGE convenes quarterly meetings for the leadership of agency ethics offices to disseminate information uniformly throughout the executive branch. OGE prepares job aids and training material for use by agency ethics officials, which OGE makes available through a forum on OGE's MAX.gov site. OGE also hosts an electronic site on MAX.gov where agency ethics officials share their own written products with one another. OGE also conducts program management training sessions that emphasize the importance of transferring institutional knowledge internal to an agency's ethics office. In addition, OGE's Instructor Development Program is a certificate program for agency ethics instructors through which they can become qualified to deliver OGE-developed ethics training to their own agencies. By expanding the number of instructors available to provide ethics training, OGE better equips agencies to provide quality internal professional development to their own ethics professionals. OGE has also actively encouraged agencies to develop knowledge libraries through intranet sites, videos, and shared network drives.

To ensure the availability of personnel prepared to assume ethics official positions at all levels, OGE provides extensive training to agency ethics officials. OGE teaches ethics officials how to review financial disclosure forms for conflicts of interest, provide advice and counseling on the ethics rules, train their agencies' employees on applicable ethics obligations, and promote an ethical culture within their organizations. As discussed in my written testimony, this work is of vital importance and has been a focus of mine as Director. Starting in 2013 when I was appointed, OGE has pursued an aggressive reinvention of its approach to delivering training in order to address the challenge of reaching a large and geographically dispersed audience of ethics officials with limited resources. We have leveraged technology to steadily increase the reach of our education program in the past three years from an average of about 1,400 registrations per fiscal year in the first five years after OGE's last authorization, 2008 to 2013, to now more than 7,500 registrations in fiscal year 2015.

With regard to the professional development of ethics officials, OGE has developed several specialized programs to address specific needs. For example, the Intensive Curriculum for New Ethics Officials program, which targets new ethics officials with a critical need for intensive and rapid professional development because they have been, or will soon be, assigned new ethics responsibilities as Designated Agency Ethics Officials or ethics program managers. By focusing on those officials with the greatest responsibilities, OGE provides targeted, timely support to ensure continuity of operations in agency ethics programs. OGE also offers regular, monthly distance learning events aimed at developing the skills and knowledge base of ethics officials at all levels. OGE's Ethics Fundamental Series provides monthly training on topics geared to new or less experienced ethics officials. OGE's Advanced Practitioner Series deals with more complex topics and ethics policy issues more suitable for experienced ethics officials. OGE also regularly offers financial disclosure training for ethics officials of all skills levels, with a particular focus more recently on preparing for a Presidential transition. This training is offered

via the “Google+” platform, which allows OGE to broadcast to hundreds of attendees in a single session, and to record and post trainings on OGE’s YouTube channel for on-demand access. Finally, through its detailee program, OGE invites ethics practitioners from other agencies to serve as desk officers and financial disclosure reviewers at OGE. This program supports succession planning by providing detailees valuable hands-on experience with support from OGE’s knowledgeable staff, and they bring that experience back to their home agencies.

Through all of these programs, OGE ensures agencies are focusing on succession planning. One of the means by which OGE measures the success of its efforts is through agency responses to the Annual Agency Ethics Program Questionnaire. Responses to the 2015 questionnaire indicated that 95% of agencies are actively engaged in succession planning to ensure long-term continuity of ethics programs. The top two tools agencies reported using to address this critical need were structured training and the establishment of knowledge libraries (intranet, videos, and shared drives).

## **RESPONSE TO QUESTION 28**

28. Please describe your agency’s restructuring involving the Program Counsel and the General Counsel, including all former and current responsibilities for each.

As a longtime career employee of OGE prior to my appointment as Director, I was familiar with the agency’s operations at the time of my appointment and initiated the restructuring in January 2013 in order to increase its efficiency and effectiveness, reduce duplication and fragmentation, and strengthen the agency’s overall performance. With regard to the General Counsel and Program Counsel Divisions, OGE was restructured partly to separate the legal policy office from the agency legal compliance office, as is the case in most agencies. Some of the Program Counsel Division’s responsibilities were also drawn in part from the former Office of Agency Programs.<sup>56</sup>

Among other changes, the reorganization consolidated agency legal compliance functions traditionally performed by an agency general counsel’s office into a newly-created Program Counsel Division, while focusing the General Counsel and Legal Policy Division on the agency’s ethics policy mission. The head of the Program Counsel Division serves both as the agency’s Program Counsel and as its Chief of Staff, with programmatic responsibility that reaches beyond legal compliance issues as described in more detail below. These changes resulted in rapid and measurable successes, as noted in the response to Question 29. The current work of these two Divisions is described more fully below.

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<sup>56</sup> Other responsibilities of the former Office of Agency Programs were absorbed by the Compliance Division. While the Program Counsel absorbed the desk officer and functions, which are agency support programs, the Compliance Division absorbed the program review function and the financial disclosure function, which are agency oversight programs.

## *GENERAL COUNSEL AND LEGAL POLICY DIVISION*

The head of the General Counsel and Legal Policy Division (GCLPD) serves as the General Counsel. The General Counsel has executive branch-wide responsibility for the substantive legal requirements and policy of the government ethics program. GCLPD is responsible for: (1) establishing and maintaining a legal framework for the executive branch ethics program; and (2) providing assistance to the President and Senate in connection with the process for Presidential nomination and Senate confirmation. This Division consists of two branches: the Ethics Law and Policy Branch and the Presidential Nominations Branch.

### *Ethics Law and Policy Branch*

The Ethics Law and Policy Branch (ELPB) is responsible for the substantive legal and policy work of the executive branch government ethics program. ELPB develops, drafts, and issues all executive branch ethics regulations. ELPB also reviews agency-specific regulations supplementing the standards of conduct for employees of the executive branch. When appropriate, ELPB drafts recommendations for changes in the conflicts of interest statutes and other ethics statutes. ELPB sets forth executive branch-wide policy and interpretive guidance of the ethics laws and regulations applicable to the executive branch. To promote consistent interpretation and application of the ethics laws, regulations, and policy guidance across the entire executive branch, ELPB publishes written guidance in the form of Legal Advisories.

### *Presidential Nominations Branch*

The Presidential Nominations Branch (PNB) supports the President and the Senate in connection with Presidential nominees requiring Senate confirmation. PNB works closely with the White House and agency ethics officials to help prospective Presidential nominees to Senate-confirmed positions comply with the extensive financial disclosure requirements of the Ethics in Government Act. PNB carefully evaluates the nominee's financial disclosure report and works with the agency ethics official to prepare an individualized ethics agreement to avoid and resolve potential conflicts of interest before the nominee enters government service. PNB coordinates with the relevant Senate committees to transmit nominee packages for consideration through the Senate's confirmation process. PNB also reviews the financial disclosure reports of the most senior White House staff members.

## *PROGRAM COUNSEL DIVISION*

The head of Program Counsel Division (PCD) serves as both the Chief of Staff and the Program Counsel. The Chief of Staff has agency-wide responsibility for all OGE staff, strategic planning, performance management, and budget. PCD is responsible for: (1) coordinating and conducting outreach between OGE and its many stakeholders, including Congress, the Office of Management and Budget, good government groups, and the public; (2) developing and providing training to agency ethics officials across the executive branch; (3) carrying out initiatives that reach across executive branch agencies, such as the operation of OGE's electronic filing system for public financial disclosure, *Integrity*; (4) providing agency-specific legal support to OGE; (5) managing OGE's budget, performance, and legislative affairs programs; and (6) through its

desk officer program, supporting agency ethics officials in carrying out the executive branch ethics program. PCD consists of two branches: the Legal, External Affairs and Performance Branch and the Agency Assistance Branch.

#### *Legal, External Affairs and Performance Branch*

The Legal, External Affairs, and Performance Branch (LEAP) supports OGE through a range of cross-cutting programmatic responsibilities. LEAP provides agency-specific legal support to OGE. LEAP manages OGE's strategic initiatives, including the Annual Agency Ethics Program Questionnaire, the development and operation of OGE's electronic filing system for public financial disclosure, performance management, budget, communications, and legislative affairs programs. LEAP serves as OGE's liaison to the Federal Register and the Office of Information and Regulatory Affairs within the Office of Management and Budget, and oversees OGE's Freedom of Information Act, Privacy Act, and records management programs. LEAP develops and provides substantive training to agency ethics officials throughout the executive branch and to OGE staff in order to help them attain the knowledge and skills necessary to carry out the duties of their positions.

#### *Agency Assistance Branch*

The Agency Assistance Branch (AAB) provides vital services and support to agency ethics officials throughout the executive branch. Through its desk officer program, AAB provides timely and accurate advice to ethics officials in response to questions regarding unique or emerging ethics-related issues. In addition to responding to requests for advice, AAB's desk officers actively reach out the ethics community to address issues and challenges that are of common interest in order to arrive at and share collaborative solutions.

### **RESPONSE TO QUESTION 29**

29. Please describe all problematic issues which arose in the course of restructuring.

Rather than producing problems, OGE's restructuring has proven to be highly successful both in terms of OGE's performance and in terms of employee engagement. Within GCLPD and PCD, the restructuring was largely carried out through the reassignment of existing staff, the majority of whom continued to perform much of the same types of functions they had performed prior to the restructuring. The positive results of the reorganization on OGE's programs are measurably demonstrated through a wide variety of outcomes.

Consolidating agency administrative law and compliance functions into PCD has allowed for necessary focus on such issues by employees specializing in these fields rather than by ethics attorneys carrying them out on a part-time basis. This focus has created a culture of performance and innovation that has enabled OGE to excel in many areas, including: improved external and internal communications; improved budget process and fiscal law analysis; more efficient records management, including a rapid transition to becoming a paperless agency; and improved accountability, which is ultimately reflected in agency performance. OGE's education program,



in particular, has become more agile and effective since the restructuring. Operating with a small core staff and leveraging technology, OGE has steadily increased its reach from an average of about 1,400 registrations per year in the first five years after OGE's last authorization to more than 7,500 registrations in fiscal year 2015.

Since the restructuring, OGE has been recognized by external stakeholders for its leadership role and success in areas under the purview of PCD's Legal, External Affairs and Performance Branch (LEAP) branch. For example, OGE's FOIA program has been recognized by the Department of Justice Office of Information Policy for model practices in a small agency program. OGE has been recognized by the Office of Management and Budget and in news articles for innovations in cost-effective "conference" planning, with respect to OGE's 2014 National Government Ethics Summit. The Performance Improvement Council (PIC) has recognized OGE for its performance management efforts. In addition, PCD has enhanced OGE's transparency by increasing public access to agency-generated information, for example, through publication on OGE's website of the results of the Annual Agency Ethics Program Questionnaire and the summary of OGE's annual performance highlights.

PCD's LEAP also led the highly successful development and deployment of OGE's executive branch-wide electronic filing system, *Integrity*, which was a remarkable achievement for a component of an agency as small as OGE. As indicated in my written testimony, on January 1, 2015, we successfully launched *Integrity*, a secure, web-based electronic filing system for the executive branch, which is used by thousands of public filers in the executive branch. OGE contributed its own extensive financial disclosure expertise to develop a system that significantly enhances the filing, review, and program management aspects of the executive branch public financial disclosure program. A combination of smart data-entry tables and context-dependent questions helps filers disclose all of their reportable financial interests with increased accuracy. *Integrity* enables agency ethics officials to assign, review, track, and manage reports electronically. OGE also focused on ensuring the security of user access and maintaining data. Notably, *Integrity* is hosted in a secure government cloud and has successfully undergone a full, independent security assessment. Both *Integrity's* authentication provider and host are authorized under GSA's Federal Risk and Authorization Management Program (FedRAMP). Using a shared-services model with operational funding in OGE's budget, OGE is continuing to make *Integrity* available to executive branch agencies without charge, thereby reducing duplication and fragmentation within the executive branch. Since the date when I submitted my written testimony, the number of agencies and registered in *Integrity* has continued to grow. As of today, 13 months after *Integrity's* launch, we have registered 120 agencies and over 11,000 filers in the system. *Integrity* also received a 90% favorable rating from agency administrators who responded to a satisfaction survey in its first year of operation.

PCD's Agency Assistance Branch has continued the success of OGE's desk officer program. The desk officers assist agency ethics officials in evaluating complex issues, provide information about how other agencies are implementing ethics requirements, and give guidance on OGE's policies regarding program activities. The desk officers are also able to assist agencies in implementing the recommendations that OGE makes through its program reviews. To enhance OGE's staff expertise to perform this complex work, I launched an aggressive Employee Development Program after I was appointed to the Director position. As a result, feedback about

desk officer responses to the nearly 2,000 requests for assistance received this year was very favorable: 91% of respondents to OGE's executive branch-wide customer satisfaction survey indicated that the assistance provided by OGE's desk officers has been effective in helping them do their jobs.

We have enjoyed equally positive results in GCLPD. The ability of GCLPD to focus exclusively on government ethics law and policy has resulted in the Division reviewing and drafting significant revisions to four of OGE's substantive ethics regulations, while continuing to issue helpful legal advisories and other guidance to the ethics community. The streamlining of functions within GCLPD has enabled its Ethics Law and Policy Branch (ELPB) staff to develop highly specialized knowledge and skills with regard to the substantive legal and policy requirements of the executive branch ethics program and has strengthened OGE's nominee program. In response to a survey conducted this year, over 98% of DAEOs and Alternate DAEOs, as well as over 95% of agency ethics officials who responded, indicated that OGE's legal advisories help them perform their jobs.

GCLPD's Presidential Nominations Branch (PNB) has successfully led OGE's well-regarded nominee program and has contributed to OGE's preparations for the upcoming Presidential transition. PNB has been particularly effective in streamlining OGE's nominee processes and is currently operating at an unprecedented level of efficiency. In 2014, PNB issued an updated version of OGE's ethics agreement guide based on its real-world experiences using the original guide for nominee ethics agreements. PNB actively participated in the design of the highly complex workflow feature in our electronic filing system, *Integrity*, which enables us to review nominee packages electronically. We are now using that feature for nominees in the current administration, and we anticipate that it will help us greatly during the Presidential transition. PNB is currently finalizing a comprehensive web-based guide to assist nominees in completing the new OGE Form 278e and periodic transaction reports. This new guide will also be a valuable resource for ethics officials because it updates and expands on the existing guide, which is one of OGE's most popular resources among ethics officials in both the executive and legislative branches. PNB is also preparing a guide book for prospective nominees and a separate guide book for the Presidential transition team. In addition, PNB is training executive branch officials on the review of nominee reports. This training effort has included a comprehensive internal training plan to build the knowledge and skills of OGE staff through formal training sessions, informal "brown bag" discussions, and staff mentoring. PNB is also preparing a full-day symposium on advanced nominee financial disclosure for up to 140 advanced nominee financial disclosure reviewers, which PNB will present on March 7, 2016, the day before the National Government Ethics Summit begins.

Although the subcommittee's questions focus only on PCD and GCLPD, it also bears noting that the establishment of OGE's Compliance Division (CD) has also produced positive results. CD's Financial Disclosure Branch (FDB) has significantly enhanced OGE's financial disclosure program for annual financial disclosure reports, which is one of OGE's oversight mechanisms for agency ethics programs. When I became Director, I focused on improving this important mechanism because timely review is necessary to detect and resolve conflicts of interest. Since my appointment, OGE has improved its efficiency by going paperless and reducing its average review time for annual and termination reports from over 180 days to less

than 30 days. Notably, these improvements were achieved at a time when, due to new STOCK Act reporting requirements, OGE also received approximately 900 periodic transaction reports per year. OGE's second-level review of these reports is a quality control mechanism to ensure that agencies are timely reviewing these reports for conflicts of interest and to ensure the filers' compliance with their ethics agreements. In January 2015, we also began to issue year-end status reports to agency heads regarding the status of their agency's efforts to review the financial disclosure reports of Senate-confirmed appointees. These "report cards" generally resulted in agencies getting annual filings to OGE earlier in 2015 than in prior years.

Likewise, CD's Program Review Branch (PRB) has had success in carrying out OGE's oversight mechanisms through program reviews. As part of OGE's process of conducting program reviews, we routinely make specific recommendations for improving individual agency ethics programs, and we monitor their efforts to implement our recommendations. I took a new approach to this work by establishing a methodology that allows us to more regularly and timely conduct these important reviews. We have also refined our review processes in order to provide increased support to agencies in making program improvements. This past year, OGE issued 59 reports on its reviews of agency programs and is on pace to review all executive branch agencies during my five-year term. We make every one of these program review reports available to the public on OGE's website.

Another notable indicator of the agency-wide success of the restructuring is the measurable increases in the engagement of OGE employees as reflected in OGE's scores on the "employee engagement index" compiled through the annual Federal Employee Viewpoint Survey. Overall, OGE's scores on this important index, which includes employees' perceptions of agency leadership, supervisory relationships, and feelings of motivation and competency related to their work, rose 14% after the restructuring (from 2013 to 2015). OGE currently ranks 5<sup>th</sup> among the small and independent agencies with regard to the employee engagement index score. In fact, with an employee engagement index score of 80%, OGE was one of 11 executive branch agencies to score above 75% and one of only five to score 80% or better in 2015.

## **RESPONSE TO QUESTIONS 30, 31, AND 32**

30. The statute on special government employees specifically states that they are "not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days" (18 U.S.C. § 202(a)). What gives OGE the authority to interpret this provision in a different manner than that indicated by the plain language passed by Congress?

31. What steps does OGE take to ensure that this time limit for special government employees is followed?

32. What are the consequences for failing to follow the law with regard to the length of time an individual may be considered a special government employee?

The executive branch’s longstanding interpretation, established in a Presidential memorandum and opinions of the Department of Justice’s Office of Legal Counsel (OLC), that section 202 requires a prospective determination at the time of appointment is consistent with the plain language of the statute. Paragraph (a) of section 202 provides the following definition of the term “special government employee”:

[T]he term “special Government employee” shall mean an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis....<sup>57</sup>

OLC has held, in opinions that are binding on OGE and executive branch agencies,<sup>58</sup> that application of this definition requires the employing agency to make a prospective determination at the time the employee is appointed:

The designation of an officer or employee of the United States as a special Government employee, as that term is defined in 18 U.S.C. § 202, depends on a good faith estimate by the employing agency, made at the time of appointment, that the individual concerned will not actually perform services on all or part of more than 130 of the succeeding 365 days. The designation of a special Government employee remains in effect for the entire 365 days, even if it should turn out that the individual in fact serves for more than 130 days.<sup>59</sup>

The interpretation that section 202 requires a prospective determination actually predates both OLC’s opinions and the creation of OGE. More than a half century ago, shortly after enactment of 18 U.S.C. §§ 202-209, President John F. Kennedy issued a memorandum describing the provisions of the new conflict of interest provisions and their effect on special government employees.<sup>60</sup> That 1963 memorandum provided instructions as to the application of 18 U.S.C. § 202, including the following: “Even if it becomes apparent, prior to the end of a period of 365 days for which an agency has made an estimate with regard to an appointee, that

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<sup>57</sup> 18 U.S.C. § 202(a).

<sup>58</sup> *See, e.g.*, Memorandum from Stephen G. Bradbury, Principal Deputy Assistant Attorney Gen., to Attorneys of the Office of Legal Counsel 1 (May 16, 2005) (“[S]ubject to the President’s authority under the Constitution, OLC opinions are controlling on questions of law within the Executive Branch.”).

<sup>59</sup> Federal Advisory Committee Act (5 U.S.C. App. I)—United States-Japan Consultative Group on Economic Relations, 3 Op. O.L.C. 321, 323 (1979); *see also* Merit Systems Protection Board—Special Counsel—Employment of Temporary or Intermittent Attorneys and Investigators (31 U.S.C. § 686), 3 Op. O.L.C. 451, 454 (1979).

<sup>60</sup> Memorandum on Preventing Conflicts of Interest on the Part of Special Government Employees, 28 Fed. Reg. 4539 (May 2, 1963). Note also that the Civil Service Commission incorporated this instruction in the Federal Personnel Manual more than a decade before OGE was created. U.S. CIVIL SERV. COMM’N, FEDERAL PERSONNEL MANUAL, ch.735, app. C (1965).

he has not been accurately classified, he should nevertheless continue to be considered a special Government employee or not, as the case may be, for the remainder of the 365-day period.”<sup>61</sup>

The prospective nature of the determination as to special government employee status is established by the language of the statutory definition, which applies to any employee who is “retained, designated, appointed, or employed *to perform . . . for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties.*”<sup>62</sup> This language indicating that the employee is appointed *to perform for 130 days or less* signals that the definition applies when an employee is appointed for the purpose of serving for that number of days.<sup>63</sup> That purpose is necessarily established at the time of appointment. This interpretation is further reinforced by the differences in the language of section 202(a), which is based on a prospective determination, and sections 203(c)(2) and 205(c), which are based on the number of days actually served.<sup>64</sup> In addition, because section 202 is a definitional provision, it does not restrict the number of days an employee can serve. In other words, an employee who meets this definition is a special government employee, and an employee who does not meet this definition is a regular employee.

This prospective determination is done so that employees are on notice with respect to the ethics laws and rules that will apply to them.<sup>65</sup> Accordingly, as provided in the OLC opinions and the 1963 Presidential memorandum, the fact that an individual actually works 131 days in a 365-day period would not change that individual’s status as a special government employee if a good faith estimate was made at the time of appointment that the individual would work 130 days or less in that period. It should be noted, however, that special government employees are covered by many of the government’s ethics laws and regulations. Most notably, they are covered by the primary criminal conflict of interest law, 18 U.S.C. § 208. The potential consequences to a special government employee who violates this criminal law include criminal prosecution.<sup>66</sup> This sweeping criminal law prohibits each executive branch employee, including a special government employee, from participating in any “particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial

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<sup>61</sup> Memorandum on Preventing Conflicts of Interest on the Part of Special Government Employees, 28 Fed. Reg. at 4541. In connection with this Presidential interpretation of 18 U.S.C. § 202, it should be noted that the language in that section was originally proposed by the President. *See* Special Message to the Congress on Conflict-of-Interest Legislation and on Problems of Ethics in Government, 1961 Pub. Papers 326 (Apr. 27, 1961); *see also* Executive Employees’ Standards Act, H.R. 7139, 87th Cong. § 2 (1961) (“[T]he term ‘special Government employee’ shall mean a Government employee . . . who is retained, designated, appointed, or employed (i) to perform, for a term not to exceed one hundred and thirty days during any consecutive period of three hundred and sixty-five days, temporary duties. . .”).

<sup>62</sup> 18 U.S.C. § 202(a) (emphasis added).

<sup>63</sup> *Id.*

<sup>64</sup> *Compare* 18 U.S.C. § 202(a) (applying the definition of special government employee to any employee who was retained, designated, appointed, or employed “to perform . . . for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days”), *with* 18 U.S.C. § 203(c)(2) (limiting an exception based on the number days a special government employee actually “has served”), *and* 18 U.S.C. § 205(c) (same).

<sup>65</sup> OGE Informal Advisory Opinion 00 x 1 (2000).

<sup>66</sup> 18 U.S.C. §§ 208, 216.

interest.” 18 U.S.C. § 208(a). Thus, for example, section 208 would bar a special government employee from participating in any particular matter affecting the interests of an outside employer.

As a further clarification, it bears reiterating that 18 U.S.C. § 202 is not a hiring or appointment authority. That section provides a definition used exclusively for the purpose of determining the coverage of certain ethics requirements but has nothing to do with the authority to appoint an employee.<sup>67</sup> Inasmuch as a special government employee is in every case an “employee,” the employing agency must have authority—independent of 18 U.S.C. § 202(a)—to appoint that individual.<sup>68</sup> Therefore, the broader questions as to whether an individual should be appointed as an employee, how long an appointment that individual should be given, and what types of duties that individual should be assigned to perform, are questions that relate to the specific authorities used to appoint the individual. OGE has no authority over an agency’s exercise of appointment authorities, which are wholly separate from the agency’s application of 18 U.S.C. § 202(a).

OGE has taken a variety of steps to assist agency ethics officials in applying ethics laws and regulations applicable to regular and special government employees. OGE has issued guidance on ethics matters involving special government employees, including the applicability of criminal conflicts of interest laws and the proper method of day-counting.<sup>69</sup> OGE’s desk officers also regularly respond to questions from agency ethics officials. In addition, OGE offers training to agency ethics officials on topics related to special government employees.

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<sup>67</sup> 18 U.S.C. § 202(a).

<sup>68</sup> See U.S. OFFICE OF GOV’T ETHICS, ATTACHMENT TO DO-00-003: SUMMARY OF ETHICAL REQUIREMENTS APPLICABLE TO SPECIAL GOVERNMENT EMPLOYEES (2000) (“The first and perhaps most important point to emphasize is that SGEs *are* Government employees, for purposes of the conflict of interest laws.”).

<sup>69</sup> See, e.g., U.S. OFFICE OF GOV’T ETHICS, LA-12-01: POST-EMPLOYMENT NEGOTIATION AND RECUSAL REQUIREMENTS UNDER THE STOCK ACT (2012) (including discussion of applicability to special government employees); U.S. OFFICE OF GOV’T ETHICS, 08 x 3a: BOOK DEALS INVOLVING REGULAR EMPLOYEES AND SPECIAL GOVERNMENT EMPLOYEES (2008); U.S. OFFICE OF GOV’T ETHICS, 07 x 3: OPINION OF OFFICE OF LEGAL COUNSEL ON SGE DAY-COUNTING (2007); U.S. OFFICE OF GOV’T ETHICS, 07 x 1: COUNTING DAYS OF SERVICE FOR SPECIAL GOVERNMENT EMPLOYEES (2007); U.S. OFFICE OF GOV’T ETHICS, 05 x 4: FEDERAL ADVISORY COMMITTEE APPOINTMENTS (2005); U.S. OFFICE OF GOV’T ETHICS, 04 x 9: SGEs AND REPRESENTATIVES ON FEDERAL ADVISORY COMMITTEES (2004); U.S. OFFICE OF GOV’T ETHICS, 03 x 7: 60-Day Thresholds for SGEs (2003); U.S. OFFICE OF GOV’T ETHICS, DO-03-021: FINANCIAL DISCLOSURE REPORTING REQUIREMENTS FOR SPECIAL GOVERNMENT EMPLOYEES (SGEs) (2003); U.S. OFFICE OF GOV’T ETHICS, 03 x 5: Appointment to Advisory Committee as “Representative” versus SGE (2003); U.S. OFFICE OF GOV’T ETHICS, 01 x 2: ETHICAL REQUIREMENTS APPLICABLE TO POTENTIAL PAS APPOINTEES EMPLOYED AS “ADVISORS” OR “COUNSELORS” (2001); U.S. OFFICE OF GOV’T ETHICS, DO-00-003: SUMMARY OF ETHICAL REQUIREMENTS APPLICABLE TO SPECIAL GOVERNMENT EMPLOYEES (2000); U.S. OFFICE OF GOV’T ETHICS, DO-95-019: CONFIDENTIAL FINANCIAL DISCLOSURE AND SPECIAL GOVERNMENT EMPLOYEES SERVING IN A POSITION FOR MORE THAN ONE YEAR (1995); U.S. OFFICE OF GOV’T ETHICS, 94x17: IMPACT OF 60-DAY THRESHOLD ON SPECIAL GOVERNMENT EMPLOYEES FILING SF 278S AND SF 450S (1994); U.S. OFFICE OF GOV’T ETHICS, 93 x 14: STATUS OF INDIVIDUALS APPOINTED TO A FEDERAL ADVISORY COMMITTEE (1992); U.S. OFFICE OF GOV’T ETHICS, DA-10-20-92: ADDITIONAL GUIDANCE ON CONFIDENTIAL FINANCIAL DISCLOSURE (1992); U.S. OFFICE OF GOV’T ETHICS, 91 x 17: ETHICS RESTRICTIONS APPLICABLE TO SPECIAL GOVERNMENT EMPLOYEES (1991); U.S. OFFICE OF GOV’T ETHICS, 82 x 22: Members of Federal Advisory Committees and the Conflict-of-Interest Statutes (1982); U.S. OFFICE OF GOV’T ETHICS, 81 x 24: SPECIAL GOVERNMENT EMPLOYEES AND 18 U.S.C. §§ 202, 203, AND 205 (1981); U.S. OFFICE OF GOV’T ETHICS, 81 x 8: DETERMINING WHO IS CONSIDERED A SPECIAL GOVERNMENT EMPLOYEE (1981).

## RESPONSE TO QUESTIONS 33 AND 34

33. What are some of the trends and emerging issues you have identified through your Agency Information Management System (AIMS)?

34. How have you worked with agencies on understanding and addressing those issues?

The Agency Information Management System (AIMS) has enabled OGE to track its external interactions based on the topic, complexity, source, and volume of questions OGE receives from agencies and other stakeholders, such as the public, the media, and Congress. Based on this information, OGE has identified the following trends and emerging issues in government ethics.

With regard to the topics raised, the most frequently asked questions from agency ethics officials related to financial disclosure, the criminal conflicts of interest prohibition at 18 U.S.C. § 208, administration of the ethics program, and gifts from outside sources. With regard to the complexity, OGE determined that a high percentage of the complex questions it received related to a criminal conflict of interest statute barring government employees from certain representational activities involving the United States. With regard to the volume and sources of contacts, OGE has identified two trends. First, within the ethics community, OGE receives the most calls from the cabinet agencies. Second, outside of the ethics community OGE receives the most calls from private citizens, federal employees, and the media.

OGE has used the data gathered in AIMS to work with agencies in a variety of ways to increase their understanding of government ethics requirements and to address the trends identified through the system. Specifically, OGE has developed new job aids, made agencies aware of relevant training courses, developed new training courses, and drafted regulatory changes.

For example, in response to the high volume of financial disclosure questions OGE receives from agencies, OGE has been developing a comprehensive web-based guide that will provide ethics officials with instructions on financial disclosure requirements and processes. In addition, OGE has been offering training to agency ethics officials regarding financial disclosure on a regular basis. As discussed earlier, OGE is also holding a free, full-day, in-person training event next month for beginner and advanced financial disclosure reviewers. This training will enable agency ethics officials to successfully manage the surge in financial disclosure filings related to the anticipated high volume of departing employees in 2016 and incoming nominees and other new hires in 2017 and 2018. The beginner financial disclosure track will prepare ethics officials to review the new OGE Form 278e generally with regard to most of the executive branch's public financial disclosure filers. The advanced financial disclosure track will prepare ethics officials to review the complex issues specifically presented by nominee financial disclosure reports.

With the knowledge that questions about gifts from outside sources generate more questions than any other area of the Standards of Conduct, OGE has focused on the gift rules when targeting which subparts of the Standards of Conduct to revise. As these proposed regulatory revisions continue through the regulatory process and afterward, OGE will continue to assist agency ethics officials in providing consistent and accurate counseling to their employees in order to prevent or remedy conflicts of interest related to gifts.

OGE desk officers regularly use the data in AIMS to gain insight into the agencies to which they are assigned so that they may provide those agencies with tailored support. For example, OGE desk officers use the data about the topics of the inquiries they receive from their agencies' ethics officials in order to recommend upcoming OGE training offerings tailored to the issues that are generating the ethics officials' questions. This data increases the ability of OGE desk officers to provide useful, direct support to their agencies.

As noted above, a significant percentage of the interactions recorded in AIMS relate to agency administration of the ethics program. One of the primary roles of OGE's program review function is to ensure the proper administration of the ethics program at the agency under review through evaluating the agency's processes and procedures for carrying out its program. If procedural deficiencies are identified, the OGE program review team will recommend the agency take corrective action and will work with the agency to implement the recommendations, often drawing upon model practices identified during prior reviews of other agencies.

Finally, the trends identified in AIMS have resulted in the development of new training courses. For example, after an analysis of the data revealed that a high volume of complex calls related to a criminal conflict of interest statute barring government employees from certain representational activities involving the United States, OGE developed an in-depth course on the topic to address the identified need for training. The course was delivered during OGE's 2014 National Government Ethics Summit. Based on feedback from the session, 94% of surveyed ethics officials responded that the training improved their understanding of this criminal law and that they were better able to provide their agency's employees with quality advice on its requirements. The course was also subsequently recorded and made permanently available online as a training tool for future use.

## **RESPONSE TO QUESTION 35**

35. Please describe your new electronic filing system, *Integrity*. How does the system work, how many agencies are currently using the system, approximately how many filers are registered?

*Integrity* is OGE's secure, web-based system for the collection and review of public financial disclosure reports (OGE Form 278e and OGE Form 278-T) in the executive branch. OGE developed the system pursuant to requirements in the STOCK Act of 2012.<sup>70</sup> Launched on

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<sup>70</sup> Stop Trading on Congressional Knowledge Act of 2012, Pub. L. No. 112-105, § 11(b), 126 Stat. 291, 299, amended by Act of Apr. 16, 2013, Pub. L. No. 113-7, § 1(b)(2), 127 Stat. 438, 439.



January 1, 2015, the system currently has 120 executive branch agencies and over 11,000 filers registered. As of January 1, 2016, OGE is using *Integrity* to collect reports from Designated Agency Ethics Officials and Senate-confirmed Presidential appointees whose reports come to OGE for final review and certification. In November 2015, OGE completed and launched the nominee functionality of the system, and in December 2015 the White House began directing nominees to submit nominee financial disclosure reports through *Integrity*. OGE briefed more than a dozen Senate committees regarding the new look of the rendering, the OGE Form 278e, in order to prepare them for nominees' submissions of the new form. Some of the key features of *Integrity* include:

- **Filer Wizards and Intelligent Tables:** *Integrity* increases filing accuracy through use of wizards that prompt filers to provide information through variable sets of context-dependent questions relevant to an individual filer. OGE limited this targeted assistance feature to areas involving financial interests related to outside employment of filers and their spouses, where mistakes and omissions most often occur in initial submissions of reports. For other types of financial interests, OGE developed intelligent data entry tables that guide filers to provide the correct information the first time. A benefit of increasing the accuracy of initial submissions is the efficiency that can be achieved by reducing the level of effort required during the review process to amend and finalize filer submissions.
- **Asset Name Assistance:** An asset name auto-complete feature suggests possible matches for over 13,000 assets as the filer types either the asset name or ticker symbol. This can increase accuracy and uniformity of entries.
- **Comment and Endnote Features:** The comment and endnote features allow filers to submit comments and questions to reviewers about their reports and to add endnotes that provide explanatory information about their assets. Through the comment feature, agency reviewers can also instruct filers to make corrections, or add information, to their reports.
- **Compare feature:** *Integrity* enables agency ethics officials to compare current filings with past filings, in order to focus on changes in filers' financial interests from year to year. This feature enhances the conflicts of interest analysis by highlighting new financial interests.
- **Import feature:** *Integrity* enables filers to select and import transactions from periodic transaction reports into annual and termination reports. *Integrity* also enables filers to import data from previous new entrant and annual reports into subsequent annual and termination reports in order to prepopulate their forms with data that can be updated during the filing process.
- **Variable Workflows:** *Integrity* provides a variety of workflow options so that agencies can tailor the report review processing sequence from initial report assignment to final report certification in the manner that best accommodates the agency's processes.

- Direct Submission to OGE: For those public financial disclosure reports that require a second-level review by OGE,<sup>71</sup> *Integrity* routes the reports directly to OGE immediately upon certification of the report by the agency.
- Notices and Reminders: *Integrity* can send notices and reminders through agencies' email systems to assist ethics officials in managing their agencies' financial disclosure programs by sending out notices and reminders to both filers and reviewers.
- Easy Access: Users can access *Integrity* anywhere over the internet by going to [www.integrity.gov](http://www.integrity.gov) and signing on through the authentication services of MAX.gov by entering their MAX user name and password or by swiping their PIV or CAC cards.

## RESPONSE TO QUESTION 36

36. In light of the recent data breaches at federal agencies, what has OGE done to ensure the new filing system complies with all government security and privacy requirements?

*Integrity* meets rigorous standards for information security and privacy. OGE leadership continuously monitors *Integrity* operations and regularly evaluates security best practices for application to *Integrity*. *Integrity* is a web-based application housed at the U.S. Department of Agriculture's National Information Technology Center (NITC) in a secure government cloud. *Integrity* was authorized to operate after the system successfully underwent a full, independent security assessment. *Integrity* uses the authentication services of an existing government system, Max.gov, operated by the Budget Formulation and Execution Line of Business (BFELoB) of the Office of Management and Budget. This existing platform currently provides secure authentication for about 170,000 users. Both *Integrity*'s authentication provider, MAX.gov, and host, NITC, are authorized under GSA's Federal Risk and Authorization Management Program (FedRAMP). To ensure that NITC complies with the Federal Information Security Management Act (FISMA), NITC follows the National Institute of Standards and Technology (NIST) Risk Management Framework for categorization, selection, development, implementation, assessment, authorization, and monitoring of security controls.

The public financial disclosure reports collected through *Integrity* are publicly available without redaction to any requestor who completes and submits an OGE Form 201 to request a copy of a report. Nevertheless, OGE treats these reports as private until requested. OGE's launch of *Integrity* involved a thorough assessment to ensure that privacy requirements are observed, and that appropriate processes are put in place to protect personally identifiable information and sensitive information maintained in the system. For example, prior to launching the application, OGE prepared a Privacy Impact Assessment specific to *Integrity*. OGE also updated its Breach Policy and prepared a separate Incident Response Plan for *Integrity*. In addition, OGE requires that all agencies registered in the system sign a Memorandum of Acknowledgement (MOA)

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<sup>71</sup> See 5 U.S.C. app. § 103(c).

delineating each agency's responsibility to coordinate with OGE, as well as to comply with the user agency's own breach policies, in the event of a security incident involving *Integrity*. The MOA also reminds user agencies of their responsibilities to provide Privacy Act training to agency employees; to enforce user behaviors designed to protect the security of the system and the information contained in it; to limit administrator access to the system only to those with a "need to know"; and to comply with all laws, policies, and procedures regarding public access to information maintained in the system.

**Questions for The Honorable Walter M. Shaub, Jr.**  
Director  
U.S. Office of Government Ethics

**Questions from Ranking Member Gerald E. Connolly**  
Subcommittee on Government Operations

Hearing: “Merit System Protection Board, Office of Government Ethics, and Office of Special Counsel Reauthorization”

**RESPONSE TO QUESTION 1**

1. As the head of an employing agency, do you believe Office of Government Ethics (OGE) has sufficient tools and authorities to discipline employees for misconduct or performance issues when necessary?

Yes. As the head of an employing agency, I believe the Office of Government Ethics (OGE) has sufficient tools and authorities to discipline its employees for misconduct or performance issues when necessary.

**RESPONSE TO QUESTION 2**

2. Based on your agency’s experience, do you think statutory change is needed to streamline the federal employee disciplinary process?

No. My general concern as the head of an executive branch agency is that stripping oversight through merit systems principles could risk eventually increasing the sort of whistleblower retaliation and politically-motivated personnel actions against career employees that the merit systems principles were implemented to prevent. Instead, I would be interested in congressional proposals to streamline the federal hiring process.