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THE REAUTHORIZATION OF THE OFFICE OF GOVERNMENT ETHICS

HEARING

BEFORE THE

SUBCOMMITTEE ON THE FEDERAL WORKFORCE AND AGENCY ORGANIZATION

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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THE REAUTHORIZATION OF THE OFFICE OF GOVERNMENT ETHICS

TUESDAY, MAY 23, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE AND AGENCY ORGANIZATION,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2247, Rayburn House Office Building, Hon. Jon C. Porter (chairman of the subcommittee) presiding.

Present: Representatives Porter, Schmidt, Davis of Illinois, Norton, and Van Hollen.

Staff present: Ronald Martinson, staff director; Chad Bungard, deputy staff director/chief counsel; Shannon Meade, professional staff member; Patrick Jennings, OPM detailee/senior counsel; Chad Christofferson and Alex Cooper, legislative assistants; Mark Stephenson and Tania Shand, minority professional staff members; and Teresa Coufal, minority assistant clerk.

Mr. PORTER. I would like to bring the meeting to order, I appreciate you all being here today. This is a hearing entitled, "Reauthorization of the Office of Government Ethics." A quorum being present, I would like to begin the meeting.

Ethics in government has been an issue of considerable prominence not only in Washington but across this country and in the media recently. I believe that Congress must take every step possible to protect and sustain public confidence that Federal officials are honest and trustworthy. Today's hearing affords us such an opportunity by allowing this subcommittee to examine the role of the Office of Government Ethics [OGE], and to consider extending its authorization for appropriations which expires at the end of this fiscal year.

Undoubtedly, OGE performs critically essential ethics functions throughout the executive branch, such as reviewing disclosure statements to resolve potential conflicts of interest for nominees and appointees to the Senate confirmed positions, conducting oversight and evaluations of ethics programs throughout the executive branch, issuing ethics regulations and guidance pertaining to the executive branch employees, providing ethics counseling to agency officials, developing ethics training programs, and providing ethics training for Presidential appointees and other employees throughout the executive branch.

The ultimate question to be asked is whether these important functions should be handled by OGE as an independent agency or as a separate office within an existing agency or department.

Within the next couple of weeks, I will be introducing the Ethics in Government Reauthorization Act. This bill will extend the authorization of appropriations for the Office of Government Ethics, through fiscal year 2009, will require the Comptroller General of the United States to study by the end of fiscal year 2008 the functions of OGE and the need for the permanent authorization of OGE as a stand-alone agency or the transfer of the office's functions to another agency or department.

This GAO study will greatly assist the subcommittee in reaching the right determination on OGE's permanent reauthorization. OGE's functions are critical and it is vital that when a permanent decision is made it is made with a complete understanding of the functions and the role of OGE so that the public has the highest confidence that the government's business is conducted with impartiality and integrity.

OGE is a small agency within the executive branch. It was created by the Ethics in Government Act in 1978, originally part of the Office of Personnel Management [OPM]. OGE became a separate agency in 1989 as a part of the Office of Government Ethics Reauthorization Act of 1988. The rationale supporting OGE's independence was to not only promote its visibility and heighten awareness of ethics but to also promote administrative efficiency.

A recent proposal submitted by the Republican Study Committee [RSC], in its fiscal year 2007 budget recommends the elimination of all budget authority for OGE. According to the RSC, the job now performed by OGE can be performed by the Department of Justice and does not need a separate agency.

By eliminating OGE, the estimated savings in 2007 would be $11 million. In terms of cost savings another option is to transfer OGE's functions back to OPM. OGE, however, has indicated to the subcommittee staff that having its functions embedded within a large department or even OPM would be adverse to effective performance of its duties because of the added layer of bureaucracy. Additionally, OGE pointed out to the staff that having it as a stand-alone agency highlights the importance of its functions and gives needed visibility to an ethics program in the executive branch.

The American people expect government to be open, transparent and accountable. As such, it should be the practice of Federal Government to maintain a high standard of ethics in order to build and maintain the public's trust. The Office of Government Ethics has been an important executive branch agency that helps ensure accountability and openness.

With that, I would like to thank Ms. Glynn, the Acting Director for being here, and I look forward to the discussion.

I would like to now recognize my colleague and friend ranking minority member of the subcommittee, Mr. Danny Davis. Mr. Davis.

[The prepared statement of Hon. Jon C. Porter follows:]

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INDEPENDENT

Opening Statement of Chairman Jon Porter

Hearing of the House Government Reform
Subcommittee on Federal Workforce and Agency Organization

"Reauthorization of the Office of Government Ethics"
May 23, 2006

Thank you for attending the hearing this afternoon.

Ethics in government has been an issue of considerable prominence in the media recently, and I believe the Congress must take every step possible to protect and sustain public confidence that Federal officials are honest and trustworthy. Today's hearing affords us such an opportunity by allowing this Subcommittee to examine the role of the Office of Government Ethics ("OGE") and to consider extending its authorization for appropriations which expires at the end of this fiscal year.

Undoubtedly, OGE performs critically essential ethics functions throughout the Executive Branch, such as reviewing disclosure statements to resolve potential conflicts of interest for nominees and appointees to Senate-confirmed positions, conducting oversight and evaluations of ethics programs throughout the Executive Branch, issuing ethics regulations and guidance pertaining to Executive Branch employees, providing ethics counseling to agency officials, developing ethics training programs, and providing ethics training for Presidential appointees and other employees throughout the Executive Branch. The ultimate question to be asked is whether these important functions should be handled by OGE as an independent agency or as a separate office within an existing agency or department.

Within the next couple of weeks, I will be introducing the Ethics in Government Reauthorization Act. This bill will extend the authorization of appropriations for the Office of Government Ethics through fiscal year 2009 and will require the Comptroller General of the United States to study by the end of fiscal year 2008 the functions of OGE and the need for the permanent authorization of OGE as a stand alone agency or the transfer of the Office's functions to another agency or department. This GAO study will greatly assist the Subcommittee in

reaching the right determination on OGE's permanent reauthorization. OGE's functions are critical and it is vital that when a permanent decision is made, it is made with a complete understanding of the functions and role of OGE so that the public has the highest confidence that the government's business is conducted with impartiality and integrity.

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The American people expect government to be open, transparent and accountable. As such, it should be the practice of the federal government to maintain a high standard of ethics in order to build and maintain the public's trust. The Office of Government Ethics has been an important executive branch agency that helps ensure accountability and openness. With that, I thank Ms. Glynn, the Acting Director, for being here, and I look forward to the discussion.

Mr. DAVIS OF ILLINOIS. Thank you, Mr. Chairman, and let me thank you for calling this hearing. And I guess there couldn't be a better time in which to talk about and discuss ethics in all facets of government. It has been 2 years since the subcommittee has held an oversight hearing on the Office of Government Ethics, and it is prudent that we establish a record of how the agency is operating.

OGE's mission is not only to prevent and to resolve conflicts of interest and to foster high ethical standards for Federal employees, it is also to strengthen the public's confidence that the government's business is conducted with impartiality and integrity.

OGE does this in the following ways: By reviewing and certifying the financial disclosure forms filed by Presidential nominees who require Senate confirmation; by serving as the primary source of advice and counseling on conduct and financial disclosure issues; and by providing information on and promoting understanding of ethical standards in executive agencies.

OGE plays a critical role in preventing conflicts of interest on the part of officials and employees of the executive branch. Given the ethical lapse by Federal officials that have been reported in the media, we need OGE now more than ever.

I look forward to hearing from Ms. Glynn regarding OGE's reauthorization, the work that it has been doing, and the work that it needs to continue to do.

So again, Mr. Chairman, I thank you for calling this hearing and I look forward to hearing from our witness, and I yield back.

Mr. PORTER. Thank you, Mr. Davis, and I appreciate your comments and we concur someone now more than ever needs to be in this oversight position and we do appreciate your comments.

Also to my immediate left is my colleague, Jean Schmidt. Do you have opening comments?

Ms. SCHMIDT. Thank you, Mr. Chairman, and thank you for holding this hearing on the reauthorization of the Office of Government Ethics.

It is imperative that we carefully consider the issues related to this reauthorization, and I am looking forward to hearing from Mrs. Glynn, the Acting Director of OGE.

OGE was established in 1978 by the Ethics in Government Act to provide leadership and guidance to the executive branch on ethics matters.

OGE educates executive branch employees on ethics matters, issues regulations and opinions, provides oversight, attempts to prevents ethics conflicts and resolves conflicts that do occur.

Fostering the highest ethical standards is of the utmost importance in our democratic system of government. We must do all that we can to ensure that our citizens have confidence in our government and our leaders. OGE's leadership is an important part of that process.

H.R. 4071, legislation introduced by my colleague from Cincinnati, Representative Steve Chabot, would extend the authorization of the Office of Government Ethics through fiscal year 2011. It appears that this is indeed a prudent use of our taxpayer dollars.

Again, thank you, Mr. Chairman, for holding this hearing and I look forward to Mrs. Glynn's testimony.

Mr. PORTER. Thank you very much. I would like to note for the record I have mentioned looking at the Office of Government Ethics with a study through the fiscal year 2008. I would like to correct that to 2007; 2008 was a mistype.

At this time I would like to do some procedural matters and ask unanimous consent that all Members have 5 legislative days to submit written statements and questions for the hearing record, and any answers to written records provided by the witnesses also be included in the record. Without objection, so ordered.

I ask unanimous consent that all exhibits, documents and materials referred to by Members and the witnesses may be included in the hearing record, that all Members be permitted to revise and extend their remarks. Without objection, so ordered.

It is also the practice of the subcommittee to administer the oath to all witnesses, so today if you would please stand, raise your right hand.

Thank you.

[Witness sworn.]

Mr. PORTER. Let the record reflect that the witness has answered in the affirmative. Please be seated.

Note that as far as testimony today we originally said approximately 5 minutes, but you may take a little longer if you would like. We appreciate you being here today and, again as it was mentioned in our opening comments, it is very critical now more than ever in the ethics of government and government employees. So we appreciate what you have done in the past and we look forward to working with you in the future.

And today we are going to hear from our Director, Marilyn Glynn, the Acting Director of the Office of Government Ethics. Again, thank you for being here.

STATEMENT OF MARILYN GLYNN, ACTING DIRECTOR, OFFICE OF GOVERNMENT ETHICS

Ms. GLYNN. I definitely appreciate the opportunity for speaking today. Chairman Porter, Ranking Member Davis and Representative Schmidt, I appreciate the opportunity of speaking today. I appreciate your statements and honestly, I can't say that I disagree with any of them. There might be a few things here and there, but the sentiments I think are shared by people throughout the executive branch.

I am the Acting Director of OGE, but I am also the General Counsel. I have worked there for quite a large number of years so I have a little bit of a memory, institutional memory of the office.

As you mentioned, our current authorization ends at the end of this fiscal year. We are seeking a 5-year reauthorization along the approach of H.R. 4701 that Representative Schmidt referenced, and in a minute I'll tell you why that timing is important to us.

I have prepared a written statement that sets out in detail the history of the office, and so on, so I would like to try to keep my comments as brief as possible today and try to stay within the 5 minutes.

We are a small agency, but we have a unique and crucial mission. Our organic act states it succinctly that we are created with

the intention of providing the overall direction for the prevention of conflicts of interest in the executive branch.

We were created as part of the Ethics in Government Act of 1978, along with the IG cadre, and you know the reform efforts that took place at that time. And Congress stated at the time that they were looking for a central expert ethics unit in the executive branch to provide consistency, credibility, and oversight for preventing conflicts of interest.

As you noted, we were originally part of OPM. In 1988, however, Congress felt that being buried in a bigger organization of that type was not as efficient as it should have been and they made the decision to make us a separate agency. We have since been reauthorized four times, most recently in 2002.

We continue to perform the important prevention functions for which we were created. Other agencies, like the Department of Justice and components of agencies such as the Inspectors General, focus on enforcement of ethics rules and laws. Only OGE has as its central function the prevention of conflicts of interest and the promotion of high ethical standards.

And our ethics program, as you also eloquently noted, is more than simply just another government activity. It is an essential element in the fabric of our government. Few would argue with the notion that the success of a democracy depends on public confidence in the integrity of government operations, and that is why OGE was created, to set in place policies and programs to enhance our citizens' understanding that government is working for them and not for special interests.

Now, let me just mention a few of our most important functions and a couple of examples of some what I would call recent accomplishments.

First, we play an integral role in the Presidential appointments process. I don't want to underestimate this because we spend a lot of time on this function. We review the financial statements of all Presidential appointees requiring Senate confirmation and at both ends of Pennsylvania Avenue people rely on us quite heavily to determine whether incoming appointees are going to be free from conflicts of interest.

We draft what we call ethics agreements. These are actual written documents that incoming appointees must promise to adhere to during their time in government, and we track their compliance with those promises. So in a Presidential transition year, as you can imagine, this is a major activity. But even in a nontransition year this is a key function and we do spend a lot of time on this activity.

For example in 2005, we reviewed and certified 1,500 forms submitted by Presidential appointees. That includes nominees and folks who are filing forms on an annual basis and termination forms.

Another important aspect of our prevention program involves the oversight of executive agencies. We conduct periodic audits of the ethics programs at agencies to make sure they are working well. For example, a recent audit of NIH resulted in the issuance of new, stricter standards for NIH scientists who were engaged in consulting activities.

A central OGE function is developing ethics policies. This is done primarily through regulations on a wide range of subjects that includes standards of conduct, financial disclosure, financial conflicts of interest, post employment, and ethics training.

Just this month, for example, we issued two rules, a final rule streamlining and improving the confidential financial disclosure system and then another rule, a proposed rule, describing the standards of conduct that would apply to folks who are coming into the government from the private sector under the Intergovernmental Personnel Act as detailees.

In recent years—well, I should go back and say we also provide a large body of written guidance, and we do that through opinions to individuals who have questions. But we also sort of proactively write memos and things of that type to agency ethics officials to help them understand how to interpret the ethics rules.

In recent years we have published a pretty big compendium on post-employment rules, for example, and we also published a book length document called a reviewer's reference. This provides detailed guidance to agencies who are reviewing financial disclosure forms. This kind of high quality written guidance helps ensure consistency across the agencies on how they interpret and enforce ethics rules.

We maintain an active outreach program to agency ethics officials, including a desk officer system that assigns designated OGE employees to provide prompt assistance to specific agencies.

Training is an important part of our prevention efforts. Our regulations require that agencies provide ethics training to their employees. But to promote high quality training, we develop aids ourself, such as Videos and training programs that agencies can use.

We also conduct our own training, both for ethics officials and sometimes for employees. This year, for example, we expect to train approximately 2,300 ethics officials over the course of about 70 sessions on various topics.

In addition to these additional programmatic functions, we are uniquely positioned to focus on emerging ethics issues. For example, we recently issued reports on the effectiveness of the criminal conflict of interest laws and on the financial disclosure law, including recommendations for improvement, and to draw attention to new ethics issues that may emerge from the government's increasing use of contract personal OGE testified before the Services Acquisition Advisory Panel and participated in a working group of the National Academy of Public Administration.

Another emerging issue involves the ethics issues that arise during a response to emergencies. So earlier this year we organized a conference of ethics officials to develop best practices and how they address the ethics issues that come up during an event such as a Hurricane Katrina.

Finally, I want to note that OGE works hard to maintain an effective relationship with the enforcement community, including agency Inspectors General and the Department of Justice.

As an example, we advise IGs on the ethics laws and rules and how they might apply in specific investigations. We maintain a close liaison with the Public Integrity Section of the Criminal Divi-

sion at DOJ and the Office of Legal Counsel. This helps ensure consistent guidance on the application of the conflict of interest laws.

Now I think what I have just described gives you a good idea of who we are at OGE and what we do. I urge you to consider the importance of our mission, which I think I have already demonstrated that we do, and the significant activities we carry out with a relatively small budget.

As the old adage goes, an ounce of prevention is worth a pound of cure, and OGE has been very successful, I think, in delivering that ounce of prevention.

Now I would be happy to answer any questions you might have.

[The prepared statement of Ms. Glynn follows:]

WRITTEN TESTIMONY OF MARILYN L. GLYNN
ACTING DIRECTOR AND GENERAL COUNSEL, OFFICE OF GOVERNMENT ETHICS
BEFORE THE COMMITTEE ON GOVERNMENT REFORM, SUBCOMMITTEE ON THE FEDERAL WORKFORCE AND AGENCY ORGANIZATION
U.S. HOUSE OF REPRESENTATIVES
ON THE REAUTHORIZATION OF THE OFFICE OF GOVERNMENT ETHICS

MAY 23, 2006

Chairman Porter, Ranking Member Davis and Members of the Subcommittee:

My name is Marilyn Glynn, and I am Acting Director and General Counsel of the Office of Government Ethics. I am pleased to testify today concerning the reauthorization of OGE. As you know, OGE's current authorization expires on September 30, 2006. OGE is seeking a five year reauthorization. We therefore support the approach of H.R. 4701, which would authorize OGE through FY 2011.

OGE is a small agency, but we have a unique and crucial mission. Our organic act puts it succinctly: OGE is charged with the "overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency." 5 U.S.C. app. § 402(a)(emphasis added). Although other agencies are involved in the enforcement of conflict of interest laws and regulations, OGE is the only agency whose fundamental statutory mission is to prevent conflicts. As I will describe in a few moments, OGE carries out its conflict prevention mission through many different functions.

History

Let me start with OGE's historical background. OGE was created by Congress, in Title IV of the Ethics in Government Act of 1978. At that time, Congress found that a central, expert ethics office was needed in the executive branch. This was in response to several related problems that had been identified, primarily through a series of General Accounting Office studies. See S. Rep. 170, 95th Cong., 1st Sess. 29-31 (1977). Three concerns, in particular, were noted:

First, with respect to standards of conduct, there was neither consistency nor credibility in interpretation or enforcement. Prior efforts by individual agencies, as well as

by the former Civil Service Commission, were compromised by the lack of any central interpretive or oversight authority.

Second, the existing financial disclosure systems were ineffective because of the absence of uniform procedures and oversight. Essentially, there was no central body with authority to ensure adequate collection and review of financial disclosure statements.

Third, there was a pattern of agencies permitting known conflicts of interest to persist for significant periods of time without corrective action. In the absence of any supervisory office that could press for an administrative resolution of conflicts, the ethics problems often lingered indefinitely.

To address all of these deficiencies, OGE was created to fill the need for a central, supervising office, whose mission and expertise is the prevention of conflicts of interest. This is not to say that there were no existing criminal sanctions for conflicts of interest; there were (and still are) criminal statutes that might have covered many of the types of conflicts identified in the 1970s. Nevertheless, a new focus on prevention of conflicts—through financial disclosure, better guidance, and administrative corrective action—was deemed a necessary complement to criminal enforcement. In part, this reflects an appreciation that criminal enforcement of conflict of interest laws can be a blunt instrument for some ethics matters, as well as a recognition that administrative prevention efforts can yield more extensive compliance than could be obtained solely through criminal enforcement. See, e.g., Robert G. Vaughn, Conflict-of-Interest Regulation in the Executive Branch 25-26 (1979).

Originally, OGE was made a part of the Office of Personnel Management. However, in connection with OGE's first reauthorization, in 1983, concerns were expressed in Congress concerning the need for OGE to exercise greater independence from OPM. See S. Rep. 59, 98th Cong., 1st Sess. 20-22 (1983). At that time, OGE was not removed from OPM, but it was granted greater authority to issue regulations directly (rather than through the Director of OPM), and it also was given a separate line item in the OPM budget. P.L. 98-150, §§ 3, 4, November 11, 1983. However, concerns about OGE's ability to operate independently of OPM were raised again during OGE's next reauthorization, in 1988. See H. Rep. 1017, Part 1, 100th Cong., 2d Sess. 16-18 (1988); S. Rep. 392, 100th Cong., 2d Sess. 10-12

(1988). This time, Congress removed OGE entirely from OPM. P.L. 100-598, § 3, November 3, 1988 (effective October 1, 1989).

Congress established OGE as a separate agency for several reasons. A primary purpose was to raise the visibility and stature of the ethics office, which had been "buried" within the OPM organization. Concerns also were expressed that, given the sensitivity of OGE's functions, it was important that the agency enjoy the necessary independence to make ethics decisions and report directly to the President, rather than through OPM superiors. Furthermore, OGE's administrative efficiency was impeded by being a part of a much larger organization: for example, OGE had to submit budgetary requests through the OPM hierarchy and, as one former director put it, "[b]ecause of OGE's small staff and budget, a small ripple in OPM's budget becomes a tidal wave when it impacts on OGE." H. Rep. 1017, at 16.

OGE now has operated for over a quarter century, including nearly two decades as a separate agency. OGE has been reauthorized four times, most recently in 2002 for a period of five years. P.L. 107-119, January 15, 2002.

Current Functions

OGE continues to perform the important conflict prevention functions for which it was originally created and later established as a separate agency.

A. Presidential Transitions

OGE plays an important role in the Presidential Transition process. Even prior to a Presidential election, candidates for President and Vice President file financial disclosure forms with OGE, which are reviewed by OGE for compliance with the law. During the period leading up to the Presidential election, OGE meets with representatives of each major party's candidate to brief them on a number of ethics matters. These briefings include information about the process for screening potential Cabinet and other appointees for conflicts of interest, the overall confirmation process, and the need to establish codes of conduct and operating procedures for transition team members. During the period between a Presidential election and the Inauguration of a new President, OGE works closely with transition team members to review the financial disclosure statements of prospective Cabinet nominees and resolve any potential conflicts of interest. After Inauguration, OGE turns

to the potential nominees for Senate-confirmed positions below the Cabinet level, a process that generally occupies the majority of OGE's time and attention for a substantial portion of the first year of an Administration. In 2001, for example, OGE certified 564 nominee reports and worked on approximately 100 other draft nominee reports.

B. Financial Disclosure and the Confirmation Process

During any year, not just Presidential transition periods, OGE reviews the financial disclosure statements of all nominees for Senate-confirmed positions to ensure that all potential conflicts of interest are identified and resolved. In FY 2005, OGE reviewed well over 300 nominee statements. In over 200 of these cases, OGE obtained specific ethics agreements from the nominees, committing them to take measures to resolve potential conflicts, such as divestiture, resignation, or recusal. OGE also reviews the annual and termination forms for all of these Presidential appointees. In FY 2005, for example, OGE reviewed a total of nearly 1500 financial disclosure statements from nominees, incumbents and terminating officials. OGE also responded in a timely manner to public requests for copies of over 1100 of these financial disclosure statements. OGE currently is working on a program to provide for electronic filing of financial disclosure statements.

C. Oversight of Executive Agencies

OGE engages in numerous activities to provide oversight of executive agencies. OGE's most formal oversight mechanism is the periodic audit of agency ethics programs, known as program reviews. These reviews examine in detail the systems agencies have in place for reviewing financial disclosure statements, providing ethics advice and training, cooperating with Inspector General offices, and other ethics program components. In FY 2005, OGE conducted evaluations of the ethics programs at 34 agencies, regional offices and military commands, as well as 16 follow-up reviews of programs that previously had received OGE recommendations for specific improvements. During FY 2005 and FY 2006, OGE worked with the Department of Health and Human Services to implement recommendations, including important new supplemental agency regulations, arising from an OGE program review focusing on the outside consulting activities of employees of the National Institutes of Health.

Other recent examples of OGE oversight include the development of an improved system for tracking compliance with

ethics agreements by Presidential appointees, and the development of an improved system to track consultations with agencies concerning waivers of the financial conflict of interest law, under 18 U.S.C. § 208(b). OGE also provides oversight in other, less formal ways, such as by contacting agency ethics officials and Inspector General offices to make sure that allegations of ethical misconduct by agency employees are taken seriously and addressed appropriately.

D. Ethics Regulations

OGE issues ethics regulations on a wide range of subjects, including: employee standards of conduct, public and confidential financial disclosure, financial conflict of interest, post-employment conflicts of interest, certificates of divestiture (a program to minimize the tax impact of ethics compliance), responsibilities of agency ethics officers, and ethics training requirements. For example, just this month, OGE issued a final rule to improve the confidential financial disclosure system, as well as a proposed new rule to clarify the standards of conduct applicable to detailees from non-Federal entities under the Intergovernmental Personnel Act. OGE also recently completed draft final regulations providing comprehensive guidance on the executive branch post-employment requirements of 18 U.S.C. § 207, and OGE is now working with the Department of Justice and other agencies to finalize this important rule. OGE also jointly promulgates agency-specific supplemental ethics regulations (such as the recent HHS regulations discussed above) and continues to work with a number of agencies to develop and promulgate their supplemental rules.

E. Written Guidance

One of the most important resources OGE provides to agencies and the public generally is a large body of written guidance concerning the application of the ethics laws and regulations. Each year, OGE publishes a number of advisory letters, which are written in response to specific questions posed by agency ethics officials, employees, Members of Congress, and the public. Additionally, OGE publishes "DAEOgrams," which are memoranda addressed to Designated Agency Ethics Officials and typically focus on a topic about which OGE has received a number of inquiries or which OGE perceives to be a source of interpretive difficulty among agency ethics officials. In recent years, for example, OGE published a comprehensive memorandum on post-employment conflicts, as well as a guide to ethics issues related to seeking non-Federal

employment, in which OGE emphasized, among other things, that agencies should issue conflict of interest waivers for employees negotiating for future employment only in compelling circumstances. In FY 2005, OGE also published a book-length "Reviewer's Reference," which provides detailed guidance to agency ethics officials on the review of public financial disclosure statements and the identification of potential conflicts of interest.

F. Liaison and Counseling for Agency Ethics Officials

OGE maintains an active outreach program to agency ethics officials. This includes a desk officer system that assigns designated OGE employees to provide prompt assistance to specific executive branch agencies. During FY 2005, OGE desk officers answered over 8000 inquiries from agency officials. Additionally, OGE attorneys are contacted frequently by agency officials for advice in applying the ethics requirements. In FY 2005, the Office of General Counsel and Legal Policy responded to over 2000 inquiries, mostly from agency ethics officials. During the same time, OGE expanded its e-mail Listserve, which provides updated ethics information to agency ethics officials and enforcement personnel, to include over 2300 recipients.

G. Training

In addition to promulgating regulations requiring agencies to provide ethics training to their employees, OGE actively develops training resources and conducts its own training. In FY 2005, OGE developed three ethics training programs for agencies to use with their employees, as well as two new instructor-led courses to train ethics officials. OGE also developed two new videos for use in training new agency ethics officials and new agency employees, and over 1200 duplicates of these items were requested and distributed. OGE directly provided training and advice to incoming and outgoing Presidential appointees, Schedule C's and noncareer SES. OGE presented its 14th Annual National Government Ethics Conference, which educated approximately 600 ethics officials from 94 executive departments and agencies, as well as two regional symposia, which were attended by approximately 160 officials. OGE also makes numerous presentations every year to outside organizations, such as professional associations and other non-governmental organizations, concerning Government ethics issues.

G. Focus on emerging issues

In light of its mission to direct overall executive branch policies for preventing conflicts of interest, OGE is uniquely positioned to focus on emerging ethics issues. In January of 2006, OGE issued a report to the President and Congress on the effectiveness of the criminal conflict of interest laws, including recommendations concerning improvements and emerging issues. In FY 2005, OGE issued a report to the President and Congress recommending improvements to the financial disclosure laws. OGE also testified before the Services Acquisition Advisory Panel to draw attention to new issues pertaining to conflicts of interest on the part of contractor personnel. OGE recently organized ethics officials from agencies involved in emergency response activities to work together in developing best practices for handling ethics issues that arise during emergency response situations. OGE currently is evaluating the impact of pay-for-performance and other alternative pay systems on the Federal ethics program, particularly the standards for determining which employees should be subject to financial disclosure requirements and certain post-employment requirements.

H. Liaison with Enforcement Community

Recognizing that enforcement, as a credible deterrent, is an important element in the prevention of conflicts of interest, OGE maintains an effective relationship with the enforcement community, including agency Inspectors General and the Department of Justice. At the formal level, OGE works with the IG community as a member of the President's Council on Integrity and Efficiency, as well as the Executive Council on Integrity and Efficiency. OGE also regularly participates in conferences, meetings, and training seminars for IG officials. In a less public, but no less important, role, OGE frequently provides assistance to IGs with respect to the application of the ethics laws and regulations in specific investigations. OGE also refers matters, including complaints and allegations, to IGs for evaluation and action as necessary. Where appropriate, OGE refers matters for civil or criminal enforcement to the Department of Justice. OGE also maintains a close liaison with the Public Integrity Section of the Criminal Division of DOJ, as well as with the Office of Legal Counsel at DOJ, in order to ensure consistent guidance with respect to the application of the conflict of interest laws.

I. International Anti-Corruption Efforts

In recent years, OGE has been called upon by U.S. foreign policy agencies to provide technical assistance to foreign governments regarding methods for preventing conflicts of interest, as part of broader anti-corruption efforts in these countries. In FY 2005, for example, OGE provided briefings to 37 delegations of foreign visitors totaling 287 individuals from 55 countries.

Reauthorization

OGE is seeking reauthorization for five years to continue these important conflict of interest prevention efforts. A five year authorization period would end in 2011, which would be the third year of a Presidential term. This would avoid the need for OGE to go through a reauthorization during the first or last year of a Presidential term, when OGE's resources are devoted in large part to matters arising from the election and transition. In the past, Congress has accommodated OGE's preference for this timing. See S. Rep. 88, 107th Cong., 1st Sess. 4 (2001).

Mr. PORTER. Thank you for your testimony. Before we go on to the questions section, I would like to know, Mr. Van Hollen, any opening statement you would like to make at this time?

Mr. VAN HOLLEN. Thank you, Mr. Chairman, I want to get to the questions as soon as possible. Just to underline my support for your work at OGE and instead of even considering any weakening of OGE and the resources we provide to OGE, I think the current climate and recent events throughout Washington are testimony to the fact that we need to make sure we strengthen our ethics laws and our ethics oversight. And I have a number of questions at the appropriate time.

Thank you, Mr. Chairman.

Mr. PORTER. Thank you.

I guess just a couple of things before we get into the questions, more of a comment. I think we need to strengthen our ethics rules and regulations and enforcement. I understand you are not in the enforcement end, but could you maybe walk us through the process? Let's say I am an applicant or I am going to have to go before an appointment hearing in the Senate or considering an appointment. Can you walk us through how that process works?

Ms. GLYNN. Sure. If you are talking about senior officials, Presidential appointees, obviously they are selected by the White House. The first thing after they fill out those mounds of paper that everyone complains about they come to our office, not physically but via their financial disclosure statement.

That statement is really important because what it does, it gives us the opportunity to kind of set the stage to get them off on the right foot in government. We go through these statements literally with a fine tooth comb, line by line, and we communicate either with the appointee or the nominee directly or their attorney or an accountant or the agency where this person would go, and we highlight all the things that create problems, conflicts of interest or impartiality concerns.

We are not that popular, frankly, with this group because we require a lot of divestitures, a lot of recusal, and resignations from positions. So people tend to have to turn their lives upside down when they come into the executive branch in government, and we are the body that is in place to make sure that it happens.

As I say, they, all this is sort of consolidated into a written document called the ethics agreement, which they sign or the agency signs in a letter to our office, and then we transmit that entire package to the Senate committee that is considering the nomination and they take that into account in deciding whether to confirm the person.

Once they are in the position, they have 90 days to comply with all these promises they made in this ethics agreement, and we track each person carefully. They need to get actual written extensions of time if they have some reason why they can't comply, but the overwhelming majority comply promptly if not sooner than the 90 days.

Then after they are in their position I would say a lot of the responsibility for this nominee shifts over to the agency ethics official, who is the person designated for spearheading that ethics ef-

fort at that agency. And that person presumably works with the appointee on a frequent basis to advise them.

They only come back to our office after that, once again as a form, because they file financial disclosure forms every year. And then when they leave government we do carefully once again review those forms and we are required to certify them. If we are not satisfied we don't certify them. And once again we make people take steps to make changes if there are problems.

So that is kind of the life cycle of a nominee. They are also required to have annual ethics training, but their agency does that training for them. We see our job more as training the trainers. In other words, I think I mentioned in my oral statement that we are training 2,300 ethics officials this year at 70 sessions. So our job is to make sure that this army of ethics officials understands the advice that they need to be giving to their appointees.

Now for an average employee, a person that is not a Presidential appointee, the majority of those do not file financial disclosure forms although, honestly, 260,000 Federal, mid-level Federal employees file financial forms that are confidential. They are not made available to the public. And those folks get an initial ethics orientation when they come into government, and then they are on the receiving end of ethics training. But I would say that they probably don't get the same hands-on attention that the top level people would get for obvious reasons. I think that the top level people who are more in the public's eye are those that are most likely to be scrutinized carefully by the media and others. So those are the ones we are most concerned that don't take any missteps.

Mr. PORTER. Are there any things that you would suggest that would give more teeth to the process, to give you more authority? And by the way, I don't hear complaints and I appreciate the job that you do, and you should be commended.

But are there some things that you would suggest as we look to the future that would improve your ability to be a larger part of this process?

Ms. GLYNN. I honestly believe that the process is working pretty well right now. I don't believe that there are many unresolved conflicts of interest or instances of unethical conduct in the executive branch that go unpunished.

We do have currently so-called corrective action authority that allows us to actually hold a hearing if an agency or an individual at an agency refuses to comply on an ongoing basis with some direction in effect that we have given them, and we have never had to use it. I think we have a little bit of the power of the bully pulpit. We can call very high level folks at the agency, all the way up to a Secretary's office or an Administrator's office, and say, so and so on your staff is doing thus and such and it needs to stop. And it stops immediately. We do not find pushback from agencies. So I am not sure that there is a need to particularly strengthen our role.

Since every agency has an Inspector General, there is a body in place already to investigate allegations of actual misconduct, and I am not sure that having us duplicate that function would really make sense. So we are——

Mr. PORTER. If you find something then you turn it over to the IG. Then the next time if you find a problem——

Ms. GLYNN. Yes.

Mr. PORTER [continuing]. That is not correctable, I assume?

Ms. GLYNN. Yes, that is true. Well, let me put it this way. If it is something that rises to the level of potential criminal violation we would refer it to the Department of Justice, to the Public Integrity Section of the Criminal Division.

If it is not something of that type, if it is more in the sort of fuzzy, gray ethical area, we would then talk to the Inspector General. And if it is a really fuzzy area we just go directly to the agency ethics official. I would say, for example, in any given week I make about three phone calls to agencies based on articles I read in the paper about certain things that may have happened. And of course as we all know, the papers are not necessarily always right on target.

But it is a common practice for us to call agencies and say, can you look into this and report back to us? And they always do. I can't think of a case where they haven't responded appropriately.

Mr. PORTER. Maybe you can check into some of the papers, too, at the same time to make sure that they are saying everything properly. I am saying that in jest.

Ms. GLYNN. I know you are, but just as an aside I can't tell you how many times we have written to the Washington Post asking them to correct certain things that they have written and they never do.

Mr. PORTER. Mr. Davis.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman.

Ms. Glynn, do you know how many Presidential appointees require financial confirmation?

Ms. GLYNN. 1,100. 1,100, thereabouts. That is a rough——

Mr. DAVIS OF ILLINOIS. Roughly 1,100 of those.

The chairman mentioned in his opening statement some question relative to the possibility—or some people believe or think that it might make sense to rejoin the function with another agency. Of course there are others who think that its independent status is absolutely essential.

Do you have a position?

Ms. GLYNN. Yes, I do. I don't favor folding us into another agency for some of the reasons that we spelled out in our written testimony.

Honestly, I think history shows that being buried in a bigger organization really diminishes the importance of the function and it sort of suggests that it is just another government program.

I also think that I would be a little concerned about hampering with the independence of the Director of the office. I think our agency, while small but mighty, has a good reputation for independence. In the time that I have been there, which is about 15 years, I don't recall us ever being accused of acting on the basis of partisan, any kind of political partisanship, and I think that is a very, very important quality that needs to be recognized.

Honestly, I think if this agency ever were to become politicized then I would have to agree, I think it should be abolished because I think it wouldn't be performing a useful function.

But having it independent—although it is not truly independent of course, the Director reports to the President—but having it independent of another agency I think ensures somewhat that we wouldn't fall into any kind of partisan political squabbles and, in particular, I think if we were to be merged into an enforcement oriented agency such as the Department of Justice, I would be very concerned that the kind of preventive activities that we consider important would be sort of lost in that sexier and more glamorous activity of prosecution. I would think it would be a mistake to do that.

Mr. DAVIS OF ILLINOIS. There are always those who attempt to make cases on the basis of cost efficiency and effectiveness. Do you think that the preventive nature of the agency is such that it really diminishes the notion? Because it seems to me that if you prevent something from happening, then you don't have to go through all of the other processes of what to do about it, and it would actually be more cost effective in the long run to keep the agency independent than to be able to make the case that if it was some place else you might save a bit of money.

Ms. GLYNN. I wish I could prove that with statistics, but I do believe that, as I said, an ounce of prevention is worth a pound of cure. I would think that a single criminal prosecution would be vastly more expensive than some kind of a training effort directed at thousands of employees, and hopefully we could keep the vast majority of those thousands of employees out of trouble through a training effort.

As far as the cost effectiveness of rolling us into another agency, I have to question whether $11 million truly would be saved. Our budget for fiscal year 2007 is $11.4 I think, and unless we were to truly abolish all the functions all that money couldn't be saved. I guess I would have to concede, and I certainly don't want to quibble, that we would probably be able to save on some administrative costs because we wouldn't need to have our own IT people, let's say, or our own administrative officer. But I am not sure that if we wanted to continue these preventive activities whether we would really truly save that much.

Mr. DAVIS OF ILLINOIS. Can you think of one instance, without divulging any information, where you could pretty concretely suggest that a preventive action had occurred that probably saved the government some money?

Ms. GLYNN. Honestly, I could probably name hundreds of them. Particularly when a top level official gets in trouble for some kind of misconduct, we all know what happens in Washington. The media descends like herpes essentially on this person, and the agency's Public Affairs Program and Office of General Counsel spends essentially all their time in trying to explain why this happened, and so on. Really very good people who come into government with good motivation and a lot of talent sometimes get sidetracked by some small ethical misstep, and then the attention of the entire agency is devoted to explaining why this misstep wasn't as bad as it really seems.

As far as a concrete example is concerned, I can think of a case—we see a lot of the issues come up on financial disclosure forms, of

course, because people have outside activities and outside associations that need to be dealt with and addressed.

I can think of a situation where a person was—once again this was a Presidential appointee—was very reluctant to sell certain stock and to get out of a certain company and divest interest in that company, and we insisted that this person do that. And that company turned out to be Enron, and that person turned out to be in a position that had some governmental involvement with Enron. So I think that is a concrete example.

Mr. DAVIS OF ILLINOIS. Thank you very much and thank you, Mr. Chairman, for your indulgence. I know I went a bit over but I appreciate it.

Ms. SCHMIDT. Yes, thank you. First off, reaction to the $11.4 million in your budget. Even if you were to be placed into another department or agency, you would still have to have an operating budget to process all of the volumes of activity, so the savings would not be in moving it over just in one or two positions, am I correct?

Ms. GLYNN. Oh, absolutely. As I say, if we want to really continue these functions focused on prevention, really, I think all we would lose is our administrative staff, which is—there would be a savings there but I think we would be talking more in the realm of——

Ms. SCHMIDT. Pennies compared to when you are talking $11 million, your savings would be far less?

Ms. GLYNN. Yes, I agree.

Ms. SCHMIDT. I guess what I would like to hear, what have been the major accomplishments of OGE since its independence from OPM?

Ms. GLYNN. Once it was made independent from OPM, the then President Bush signed an Executive order which more or less vastly increased our responsibilities. He charged us with drafting a comprehensive code of conduct for the entire executive branch which there had never really been anything of that type before. That was a very big project and we did that in a timely way, and it has been, I think, a good exercise.

He also charged us in an Executive order with drafting regulations interpreting criminal conflict of interest laws, post-employment laws, and we have done all that. Those are all major accomplishments of the office.

It has been really a very useful exercise because finally the various agencies are all kind of on the same page to the extent possible in interpreting these laws.

What I think is another big accomplishment is that we established this agency audit function. This means we go into agencies, we do right now, with our current staffing, about 35 a year, and we actually examine how well their ethics programs are operating. As I mentioned in my oral testimony, a good example of that is the NIH and involving the problems of NIH a couple of years ago. There was a certain preventive effect in having those audits because when the agency knows we are coming in then they all rush around and that is when they start putting resources toward the programs.

So it is actually quite a useful thing. I think we have done a very good job with those agency audits. I think we have done a decent job with our training program as well.

But we are now moving into a new era, and I wanted to emphasize something that I mentioned in my oral testimony and I think is in my statement, too, and that is that we are seeing, as we all know, an increasing use of contractors as more or less substitutes for government employees, and I think this is really the big issue that we need to address next. I think there is going to be concern raised that contractor personnel who function more or less as employees sitting in government agency buildings side by side with real—when I say real government employees, you know what I mean—and yet they are not held to the same level of accountability as employees are. And I think we need to get on top of this question. And I am not suggesting that I know the answer, and I am not suggesting that I think they need to be subject to the whole panoply of rules that regular employees are subject to, but I think we ought to start addressing the question and deciding for purposes of ensuring confidence in government that our contractor employees are also held to high ethical standards.

So that is our next—on my watch anyway—our next big project.

Ms. SCHMIDT. Thank you. And one final question, how would you describe the current state of ethics in the executive branch, and what is your basis for this assessment?

Ms. GLYNN. I think it is pretty good. We do a survey of agencies every year and ask them how many disciplinary actions they take against employees for violation of ethics rules. Now I wish I could swear to the accuracy of this, but this is information reported by the agencies, so you know I can't. But what we found is that consistently the overwhelming majority of violations occur with misuse of property and time. You know the kind that, I don't want to say penny ante things but the smaller things, sort of taking a piece of paper home, small things, wasting time on government time. As far as significant violations of things like criminal laws and having conflicting financial interests, those kinds of violations reported to us are barely in the hundreds every year. And we do a prosecution survey every year. We go to the Department of Justice and all the individual U.S. Attorney's offices and ask them to report to us the prosecutions that they have each year. And I would say it is usually in the 15 to 25 range. So considering there are almost 3 million executive branch employees, I think we are doing pretty well.

Ms. SCHMIDT. Thank you.

Mr. PORTER. When working with the GAO study I would like to include the contract portion and your recommendation.

Ms. GLYNN. I would welcome that.

Mr. PORTER. I think it is critical that they be held to as high a standard, if not higher in some cases, but I certainly would appreciate as we work together on that to include that in the GAO report.

Ms. GLYNN. Thank you. I appreciate that. I think that would be very helpful because there is a lack of data right now on exactly how many contractors there are and what they are doing and if GAO could assist us in gathering data of that type I think that would be extremely useful.

Mr. PORTER. Thank you. Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Mr. Chairman. Thank you, Ms. Glynn, for your testimony. I agree with respect to the contractors because you said you have Federal employees sitting right next to Federal contractors doing in many cases similar work, and it makes no sense to have different sets of ethics rules applying to them both. They should both be held to the high standard. So I would encourage all of us to work together toward that end.

The full committee, the full Government Reform Committee, back in February had a hearing on various ethics issues in the government and the result of that was actually a piece of legislation that was introduced by the chairman of the full committee, Tom Davis. Mr. Waxman and I was the cosponsor which later I believe unanimously passed the full committee, and part of that gave additional responsibility actually to the OGE. Have you had a chance to look at that bill?

Ms. GLYNN. I have, I am familiar with it. I have some concerns about that bill. As far as the additional responsibilities for OGE, I think it is evident that we couldn't do it with our current staffing and budget, so we would be begging for more money. That goes without saying. But beyond that aspect of it, which I know seems a little parochial, I have concerns with two major things or maybe three.

One is there is some overlap in that bill with existing provisions in criminal law, and I think there is a potential for some confusion among employees, were the bill to be passed, about which law applies in which situation.

The second thing I am somewhat concerned about is the fact that it would call for current employees to keep a record of all contacts made to them by folks outside the government and I honestly——

Mr. VAN HOLLEN. By employees covered by the bill I believe not every, but certain, depending on their level of responsibility.

Ms. GLYNN. Of responsibility, that is right. But I think some thought needs to be given to how practical that really would be and whether changes, exceptions need to be made for common sense situations.

I understand that it is addressed at lobbying type communications made to government officials. But as drafted, it is considerably broader than that.

And finally, this is my own major concern with the bill, and that is the cooling, I guess what I would call a reverse cooling off period that would require folks who come from certain industries for, I think it is 2 years, from participating in government matters, affecting or involving that industry.

I think that would be very difficult. I think we would have trouble getting the experts that we need in certain agencies, scientists and securities experts and things of that type.

So honestly I think it needs a little massaging.

Mr. VAN HOLLEN. I appreciate the comments and maybe it would be helpful for all of us if you could put some of these suggestions in writing if you have the opportunity to do that.

Ms. GLYNN. Yes. If I can get clearance from the Office of Management and Budget, I will.

Mr. VAN HOLLEN. You don't have any objection to the other cooling off period; in other words, if you are a Federal employee and you are doing business with somebody and part of your responsibilities involved overseeing someone in the private sector, that you would have a 2-year cooling off period before you left government service and——

Ms. GLYNN. We issued——

Mr. VAN HOLLEN [continuing]. Started lobbying the same government agency that you were——

Ms. GLYNN. Right. It is the extension of. There is a current 1-year cooling off period. This would extend to 2 years. We have a report on the criminal conflict of interest laws that we just issued January of this year in which we do not endorse that provision. We think that the current restrictions are sufficient, but I can't say that it particularly troubles me if that bill were to pass.

Mr. VAN HOLLEN. And who is it that made that recommendation?

Ms. GLYNN. Our office.

Mr. VAN HOLLEN. Against the 2 years. OK, let me ask you with respect to waiver authority, because as I understand the situation now, if you wanted to get a waiver from, for example, the 1-year cooling off period, you don't come through your office, you go through the office—or the provisions that prevents you from negotiating, outside employment——

Ms. GLYNN. It is that. It is that. It is that.

Mr. VAN HOLLAND. Outside employment at the same time you are in a job. Those are important provisions, wouldn't you agree?

Ms. GLYNN. Yes.

Mr. VAN HOLLEN. But the waiver right now as I understand it your office has no oversight—you provide guidance but you don't provide direct, you don't have the sign-off?

Ms. GLYNN. We don't have the sign-off authority. By Executive order agencies are supposed to consult with us as practicable.

Mr. VAN HOLLEN. One of the provisions in this bill that this committee passed would give you some centralized sign-off authority to provide uniformity. Do you have any objection to that?

Ms. GLYNN. Honestly I am not sure if we are in the best position to make the decisions, but it may be a tempest in a teapot because these waivers for negotiating employment are extremely rare. And I know which ones, I know which waiver prompted this provision to be put into the bill. But honestly very few agencies issue waivers. It may have been a kind of unique situation. So while I am not sure that it is a necessary provision, I don't think that the workload for OGE would be that great because these waivers are hardly ever issued anyway.

Mr. VAN HOLLEN. If I could, Mr. Chairman, and again this is testimony that was given before the full committee at the time that we were considering these issues back in February from Public Citizen, who pointed out that at the Department of Health and Human Services in a period of time from January 2000 to 2004 there were 37 requests for waivers, all 37 were granted. That is in one agency.

And as you point out, there was one that was particularly controversial because Tom Scully, who at the time was the head of CMS, as you know, was given the authority by the then Secretary

of the Department, Secretary Thompson, to negotiate an employment contract with a number of entities at the same time that had an interest in the prescription drug bill, the pharmaceutical bill before the Congress and before the administration. And at the same time he was the head of CMS which, as you know, is an agency with a direct interest as well.

Ms. GLYNN. Hmm-hmm.

Mr. VAN HOLLEN. It seems to me, and I don't know why, assuming you had the resources to do it, why it doesn't make sense to have one entity make decisions with respect to granting waivers so this is not done on a political basis, so it is done in a uniform manner, and that everybody knows what the rules are and everyone is playing by one set of rules.

Ms. GLYNN. I mean, the argument against having it come to OGE is that we are not really close to the facts. So using Mr. Scully as an example, we would have to kind of do a little mini investigation to figure out exactly what is he involved in, what are the hot issues in the Medicare program. Those are things we would not normally know.

I am not saying we can't do it. I am not sure that it needs to come to us because of the rarity of these waivers to begin with. And in that particular case I have to say that I think the government, the executive branch as a whole, took very swift and decisive action in response to it. Our office put out a memo right after that explaining why we think these waivers are a bad idea and reminding agencies that they are supposed to consult with us on them, which they did not in that case by the way, as well as the White House put out a memo saying that for Presidential appointees any such waiver also had to be cleared through the White House Counsel's Office.

Mr. VAN HOLLEN. That is now administration policy and that could change. I thought you made a good argument about the need for the independence for OGE and not folding it into another agency, and so I find it a little bit contradictory to say, well, in cases of waivers it is OK if those are made within an agency when I think it probably would make sense from an ethics point of view to have an independent agency, such as yourself, make that review for the same reasons you said it was important to maintain the independence of the agency. Otherwise you have people within an agency making decisions about waivers for other individuals within that same agency and, looking at the data, and maybe all 37 cases were good but 37 out of 37, especially since Scully was one of them, everybody recognizes this was a case that should not have been granted. It seems to me an independent review on a centralized uniform basis makes sense.

Thank you, Mr. Chairman.

Mr. PORTER. Thank you. I am going to have another round of questions here in a moment, but Ms. Eleanor Holmes Norton is here and would like to make an opening comment.

Ms. NORTON. I am sorry I wasn't here to hear your entire testimony. Just following my colleague's concern, I heard you, and I can understand what you are talking about, we are not—the notion of independence for me is really not to have somebody do a—how

would we say it in the law—a de novo review. It is much more like appellate, it is much more like fresh eyes to break it down.

I am concerned about notification of somebody who can ask questions. They may not have the background, as you I think quite rightly say, to do the review because knowledge of the underlying issues are important here. And I am not sure I would want you to go through that so long as the staff knew the kind—and here one doesn't have to know a thing about the agency, not a thing, in order to ask questions that could rise, that could bring issues to the top, which might otherwise not be flagged. But that of course requires that every time there is a waiver there is a mandatory opportunity for your office to give that kind of fresh eyed look and that you are given the opportunity to raise those questions and that it is required of the agency to respond to those questions within a period of time before the waiver is granted.

I am not certain whether that is in the legislation, I mean whether those steps are specifically included in the legislation, but, Mr. Chairman, that would be my concern. Could you indicate to me whether those are in the legislation or if you have any difficulty with any of that?

Ms. GLYNN. I think the point you made is very well taken about the benefit of our office being involved is that we can point out things that others haven't thought of. And in particular one of the things that we stress now on these waiver consultations is that we tell agencies what other agencies are doing. They are not uniform at all. Some agencies are very free with waivers. Others are not. And I am not talking about waivers for negotiating for employment. I am just talking about waivers generally.

We try to not impose a sense of uniformity here, but we try to get agencies to understand the kinds of things that other agencies are taking into account so that they can sort of improve their thinking on the process.

Now, if what you believe needs to be done is that after that whole consultation is done that we still need to be the issuing entity, as I say, for waivers for negotiating an employment, that wouldn't concern me terribly. I think it would be a little bit of a workload, but not so much that it would be debilitating because there aren't many of those waivers. If we were talking about waivers from the criminal conflict of interest law generally, then we would have a huge problem, because the criminal conflict of interest law is extremely broad and very prophylactic and waivers for stock holdings and things of that sort are issued by some agencies routinely and if we had to be sign-off authority on every single one of those we would be in trouble.

Ms. NORTON. I am also less concerned about the bureaucracy. I understand the piling on of regulations. I believe in, I believe that government should regulate things and I believe that we do a disservice if we just make it so hard to regulate and people say what the hell in the first place. I am really, I am looking for what concerns me, and frankly, the issuance is of less concern to me.

And I don't speak for anyone but myself. What is of concern to me, though, is that the fresh eyes again speak in, I think, terms that I think everybody can understand, that the concerns that were raised, the questions were raised be written down somewhere, that

the answers be written down somewhere. And here I am not talking about a transcript, and that we have a written understanding that these issues were ever raised.

Now, if somebody wants to go ahead, after you have raised the flag, you know, at their own peril, I really wonder if they'd do that. Let me tell you what my overall concern is. My concern is less for straight out violations of the kind we seldom see. It's the extent to which we have lost our way on appearance. When you're a first year law student, you learn that violations of the law are rare, but lawyers are held to a higher standard. Government officials are held to a higher standard than whether or not you've done something crooked.

Because you have the public trust in your hands, the standard is how does this appear. Because if it does not appear to be straight, then, of course, confidence in that, not only you, but in government, is lost. So for me, this is, an agency might well not see the appearances problem. The agency knows exactly what this person is going to be doing and they know good and well it doesn't involve any conflict, and that may be quite beside the point. When you raise issues, I take it that appearances are as important as violations.

Ms. GLYNN. Well, we've certainly raised the appearance question. I think that everyone commonly calls that the "Washington Post Test," that if it's something that you wouldn't want seen written in the paper about you the next day, then you better think twice about doing it. We actually have a rule that narrows that test quite a bit, and what we say is if a reasonable person with knowledge of the relevant facts would question your impartiality, then you shouldn't do it. We always raise those issues with people. We might say, legally you can do this, but do you really want to? Is this a good idea? So I think your point is well taken.

Ms. NORTON. I like your Washington Post rule. I think that somehow gets the point across. I thank you, Mr. Chairman.

Mr. PORTER. You know, I mentioned earlier about the GAO being involved over a period of time and a short window of time. But also, I am convinced that we must reauthorize it as soon as possible. And I certainly have an open mind as to the changes. It appears to me, from the short time I have had to look at this, that things are working quite well. And again, I applaud you for that.

Under the assumption of the reauthorization, I would like to work closer in the reauthorization bill on the contract issue, which means there is a shorter window of time. I would like to work with you soon so we can and provide some language to at least start that process. I think it's critical.

Ms. GLYNN. Sir, I would beg you not to make the reauthorization go to 2009, because that is the first year after a Presidential election, and honestly, we're a madhouse that year.

Mr. PORTER. Well, we would like to help you and not hurt you, because by helping you, it helps the government, and helps our country. So I would like to work with you on those issues. Also, if there is anything we should or could be doing to help streamline the process, I know we have talked about maybe expanding your role within some of your suggestions, if there are certain areas. But also we would like to streamline, there are some processes that you

think that we could do to help you do your job better. I think now is a good time for that also. Are there a few things that you would suggest?

Ms. GLYNN. We issued a report March 2005 with a long laundry list of recommendations for streamlining financial disclosure. It is a difficult issue because the financial disclosure law, of course, applies to all three branches of government, and then the question naturally comes up, should these streamlining measures apply to all three branches or only to the executive branch. The administration's position is that they should apply to all three branches, but our recommendations would significantly, we think, improve the information required to be reported by fewer categories and so on. That would be something we would be very focused on.

We are also trying to work with the Department of the Army on developing an electronic financial disclosure system, both for our public forums and our confidential forums. They're the ones with the money, so they're the ones that can develop the system for the executive branch, and we are moving along quite well with them. They've got it as a pilot project right now within the Army, and they are expanding it to other parts of DOD. Those are the two areas that we have identified as needing, particularly in need of streamlining. The actual information required to be disclosed on financial disclosure, as well as the method of reporting it, electronic versus paper.

Mr. PORTER. I understand we have spent some time on the financial reporting, and I would like to spend a moment on the training the trainer and the ethics training. Is there consistency throughout the government, or does everyone do something a little bit different?

Ms. GLYNN. Everybody does something a little bit differently as far as format. Some people use on-line training have computers essentially. Some people like to use the video because it's cute and it's entertaining. Some people like only the stand-up presentation where you can answer questions directly from the audience at that time. So each agency does their training a little bit differently and actually, within agencies they vary it.

But the content, of course, hopefully is going to all be the same because the rules are essentially all the same for all agencies. We feel that we can assist agencies by providing some sort of templates in training that they can use. Typically agencies though want to add on with examples of situations that might come up at that agency to make it seem more real to the employees hearing the training. So we focus more of our efforts on training the trainers and trying to get the right information to them so that when they develop their own training, they're delivering the right information.

Mr. PORTER. Your ethics training is not limited to just financial training, correct?

Ms. GLYNN. Oh, no, no, no, no. Gifts, misuse of position, financial interest post employment, any one of the areas that our laws and rules cover.

Mr. PORTER. Thank you. Mr. Davis.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman. Ms. Glynn, I know it pretty much hurts you to even think this way, but if you had an additional million dollars, I mean, you have a

budget of $11 million, if you had an additional $1 million, how would you use it? What would you do with it?

Ms. GLYNN. If it were up to me, I don't think the additional million would be enough to work out this electronic filing issue. And as I say, we are using, partnering with the Army to do that. So I would put it into training. I would use more money to get sort of higher quality training, more interesting on-line stuff. You know, today's employee population grew up on TV and video games and things of that type. And it's an ever increasing problem to keep people's attention. And so we need expert help in developing training that's cute and glitzy to get people's attention. That's where I would use the million dollars.

Mr. DAVIS. You know, I was thinking pretty much along the same lines as I tried to think of what one could actually do with that amount of resources, so I would certainly be in agreement with you.

The things that we mostly see, are many of them criminal in nature? Or are they really oversight kinds of things or sometimes the lack of understanding or a lack of recognition? I mean, is there much criminality, have you seen?

Ms. GLYNN. No. I would say the kinds of missteps that we see are overwhelmingly technical, first of all, and certainly not criminal, but more in that grayer ethics area. The vast majority of government employees are folks who want to do the best job that they can do and are devoted to upholding high ethical standards. And I am talking about people in the highest level to the lowest level in government. I am talking about political appointees, career appointees.

Most people, the vast majority of people want to do the right thing, but some of our rules and laws are complicated and not all of them are entirely intuitive and they need a little help to understand what to do. So the mistakes we see are often merely technical mistakes, no venality at all.

Mr. DAVIS OF ILLINOIS. You know, I am so pleased to actually hear that, because I think there is becoming such a high level of cynicism on the part of many people in the general public who continue to lose confidence in government overall, and just don't believe that government is moving in the direction of honesty of integrity, of fairness, of fair play, and there is this mythical feeling that underneath it all, there is the wheeling and the dealing and the manipulation, and so it really warms my heart to hear you say that it is not criminality or criminal intent that we often see, but it is, in fact, technical oversight, it is mistakes that people make or it is not knowing, and training certainly could go a long ways toward that. So I thank you very much for your appearance. And I thank you, Mr. Chairman.

Mr. PORTER. I think that Mr. Davis would do a good job with some of your training.

Ms. GLYNN. He would.

Mr. PORTER. Adding some glitz.

Ms. GLYNN. I think he's very dynamic.

Mr. PORTER. Actually, the words he said, I'd like to reiterate. We are very fortunate in the Federal Government to have some of the

best, the brightest, most honest work force in the country, and it's really refreshing to hear what you've had to say. Congresswoman.

Ms. NORTON. No questions.

Mr. PORTER. Mr. Van Hollen.

Mr. VAN HOLLEN. Just to followup a little bit on the legislation we were talking about earlier. I just want to make it clear that the provisions that are in the bill with respect to providing OGE with the oversight responsibility on negotiations relates to the area where we're talking about, which is people negotiating outside employment. It does not apply to the other areas, which I agree that would be a huge workload. And we've already talked about the fact that you have fairly limited resources and we need to work on that.

Let me ask you a question with regard to the disclosure of lobbying activities. We talked very briefly, referred to the provision in the bill on that. But under current law, as I understand it, if someone's lobbying, at least certain individuals in the executive branch on a certain level, they do file disclosure requirements, but they do that, I believe, with the House and the Senate; is that right?

Ms. GLYNN. That's right. Although I don't even want to talk about it because I am not an expert in that. I'm afraid I'll make a misstatement. We don't really get involved in lobbying disclosure at all, so I'm not even sure how often the reports have to be filed.

Mr. VAN HOLLEN. OK. Well one question that's been raised is No. 1, whether lobbyists really understand that, they have that responsibility, No. 1. No. 2, whether it makes better sense with respect to people who are lobbying the executive branch that they file that kind of information with your office. And I understand the resource limitations. I'm not asking you to accept a lot of work without, on the existing budget. But it just seems to me in terms of coordinating this information and making, you know, available to the public and encouraging more disclosure and more sunshine on activities, it might make sense to have that low lobbying disclosure requirement be filed in the executive branch instead of with Members of Congress.

You said that you were, or I guess the OGE had made certain recommendations with respect to the legislation that was introduced. I thought you did. I wasn't clear. What group was it that made—you said you looked at these recommendations.

Ms. GLYNN. We looked at them, but we have not made—the administration has not made official recommendations, no.

Mr. VAN HOLLEN. OK. That's what I was going to ask you. I mean, the administration, for example, is not, let me just make sure I understand correctly, I don't want to mischaracterize your testimony. They are not opposed to a 2-year ban on people's future, people who are within the administration, on their ability to leave the administration and come back and lobby.

Ms. GLYNN. I cannot speak for the administration on that. As I say, our own view in OGE has been in the past that we don't particularly favor that, although personally, it doesn't, you know, it doesn't trouble me personally, Marilyn Glynn. But I can't speak for the administration on that. We have not submitted an official comment yet on that bill.

Mr. VAN HOLLEN. OK. OGE, is one of its responsibilities to review legislation and provide comment on it?

Ms. GLYNN. That's right.

Mr. VAN HOLLEN. In other words, will the Congress be receiving official comment from OGE?

Ms. GLYNN. That's up to OMB.

Mr. VAN HOLLEN. OK. That's their decision. All right. Well, I encourage you to look, I think it's an important piece of legislation, obviously, as with every piece of legislation, you know, changes can be made, and it's important for us to get your input on that. But I do think that, especially in the current climate, which I think we have seen the results of, I think a lobbying sort of culture that's gotten out of control, and the failure of Members of Congress and Congress to hold itself accountable, that your organization is critical.

I think its independence is critical. And I think it needs to be strengthened in a number of ways, as do I think the oversight of Congress and its own oversight with respect to these also. I thank you, Mr. Chairman.

Mr. PORTER. Again, I appreciate your being here today Ms. Glynn. You have done a very good job answering our questions.

Ms. GLYNN. Thank you for asking me.

Mr. PORTER. Just in summary, we would like to work with you very soon on the reauthorization portion regarding the contractors, what you think we should do, maybe some streamlining to help you process and maybe additional technology, if necessary. And the training portion, if there's things that we can do, first, we will get Mr. Davis as part of your training film.

Ms. GLYNN. Yeah. To be on our team.

Mr. PORTER. But again, I think my colleague has said it well. You have a very important role, a critical role, and I believe that the independence is important. I would like to take a look at GAO perspective, any additional suggestions, but I would like to compliment you on work you have done and we are counting on you, because it is a very important part of the process.

Ms. GLYNN. Thank you. I appreciate your kind comments. Thank you very much.

Mr. PORTER. The meeting's adjourned. Thank you all.

[Whereupon, at 3:15 p.m., the subcommittee was adjourned.]

[The prepared statement of Hon. Jean Schmidt and additional information submitted for the hearing record follow:]

The Honorable Jean Schmidt

Hearing of the House Government Reform Committee

Subcommittee on Federal Workforce and Agency Organization

Opening Statement

May 23, 2006

Mr. Chairman, thank you for holding this hearing on the reauthorization of the Office of Government Ethics (OGE). It is imperative that we carefully consider the issues related to this reauthorization, and I am looking forward to hearing from Ms. Glynn, the Acting Director of OGE.

OGE was established in 1978 by the Ethics in Government Act to provide leadership and guidance to the executive branch on ethics matters. OGE educates executive branch employees on ethics matters, issues regulations and opinions, provides oversight, attempts to prevent ethics conflicts, and resolves conflicts that do occur.

Fostering the highest ethical standards is of the utmost importance in our democratic system of government. We must do all that we can to ensure that our citizens have confidence in our government and our leaders. OGE's leadership is an important part of that process.

H.R. 4701, legislation introduced by my colleague from Cincinnati, Representative Steve Chabot, would extend the authorization of the Office of Government Ethics through fiscal year 2011. This is indeed a prudent use of our taxpayer dollars.

Again, thank you, Mr. Chairman, for holding this hearing, and I look forward to hearing Ms. Glynn's testimony.

TOM DAVIS, VIRGINIA,
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June 8, 2006

Ms. Marilyn Glynn
Acting Director
Office of Government Ethics
1201 New York Ave. NW
Washington, DC 20005

Dear Ms. Glynn,

I would like to thank you once again for appearing before the Subcommittee on Federal Workforce and Agency Organization for our hearing entitled, "Reauthorization of the Office of Government Ethics." I appreciate your willingness to testify before the Subcommittee regarding not only the reauthorization of the Office of Government Ethics (OGE), but also giving me a better understanding of the OGE's important functions.

As discussed during the hearing, I have attached to this letter a list of questions that I would like to be added to the hearing record. This letter and attachment were sent electronically by fax and e-mail on June 8, 2006.

I request that these questions be answered and submitted electronically to the following e-mail address no later than June 22, 2006: alex.cooper@mail.house.gov. If this deadline cannot be met, I ask that my Subcommittee staff be informed as soon as possible.

Once again, I thank you for your assistance on this important subject. If you have any questions, please do not hesitate to contact me.

Sincerely,

Jon C. Porter
Chairman
Subcommittee on Federal Workforce
and Agency Organization

- Would OGE have a problem with the Government Accountability Office ("GAO") studying the functions of the OGE with the intent of measuring their effectiveness as a separate entity, and also making recommendations regarding a permanent reauthorization?

- What do you need from Congress to address issues regarding ethics with respect to private sector government contractors working alongside government employees?

- What is it specifically about a reauthorization during an election year that is an inconvenience? In other words, what does it take from your agency's part to be reauthorized that causes an inconvenience?

- You briefly discussed the goal of streamlining OGE's processing. What sorts of things would you recommend in order to do this, and what additionally would it take financially to accomplish this goal? Is OGE operating with the best technology reasonably available to ensure efficiency?

- What challenges are there in maintaining and improving the ethical conduct of executive branch employees? How has OGE responded to these challenges in the past and how does it plan to respond to these challenges in the future?

- In your view, what are the major internal and external challenges facing OGE? To what extent, if at all, have these factors limited OGE in carrying out is mission? What has OGE done and what actions does it plan to take to address these challenges?

- Compliance with ethical rules is a minimum standard of conduct. It is important for ethics programs to emphasize ethical behavior and leadership, in addition to addressing compliance issues. What are your views on the role that OGE could play in helping department and agency leadership instill an understanding of the importance of ethics programs and requirements, and spearhead efforts to adopt ethical principles throughout the organization?

- What are OGE's major achievements since the last reauthorization?

- How have OGE's responsibilities and workload increased over time?

- OGE's strategic plan covering fiscal years 2001- 2006 established four strategic goals:

  -provide overall policy direction to the executive branch ethics;
  -support the President, executive branch agency heads and employees in administering effective, fair, and consistent ethics programs within the executive branch and individual agencies;

-develop and make available to agencies innovative training, and
-administer an effective outreach program.

- What is your assessment and basis for your assessment of how well OGE has met each of these goals? Assuming that more progress is appropriate for the goals, what more do you believe OGE should do in relation to each goal?

- In response to GAO's December 2005 report on ethics-related management controls in the Department of Homeland Security's Science and Technology Directorate (GAO-06-206), OGE stated that it would examine the transparency and accountability issues in DHS's ethics program identified in GAO's report as part of its planned ethics program review of DHS. What is the status of this review? What are OGE's plans for conducting similar reviews at other agencies?

- In a 2004 report (GAO-04-328), GAO recommended that OGE clarify its guidance on federal advisory committees because current guidance was unclear and could result in questions arising as to conflicts of interest or the balance of particular committees. What steps has OGE taken in response to this recommendation?

- Within the past five years, how many criminal referrals of conflict of interest violations has OGE made to the Department of Justice? In your view, has the Department of Justice appropriately acted on these referrals?

- What is the organizational structure of your Agency?

- What is your system for fielding calls and inquiries from agencies on ethics laws and regulations?

- With regard to OGE's focus on emerging issues, what types of issues have you confronted? Have you had to evaluate the impact of pay-for-performance systems on the Federal ethics program? If so, what was the outcome?

- OGE has revised its strategic plan, with the new plan to cover fiscal years 2007 – 2011. Please describe the principal differences between the current plan and the plan that will be in effect in fiscal year 2007.

- In creating and updating the strategic plan, what stakeholders did OGE consult?

- The revised strategic plan establishes the following strategic goals:
  -strengthen the ethical culture within the executive branch,
  -prevent conflicts of interest, and
  -promote good governance.

- Please describe OGE's plan to carry out these objectives and how it intends to measure progress in achieving these objectives.

- In the revised strategic plan, OGE states that because the day-to-day execution of the executive branch ethics program is the responsibility of each individual agency, the success of OGE's goals regarding agency ethics programs is largely dependent on agency leadership's commitment to, and involvement in the program, including agency leadership's willingness to adequately staff the function. How does OGE assess agency leadership's commitment to and involvement in the program? What is OGE's view of agency leadership's commitment and involvement overall and among individual agencies? To the extent that OGE has found agency leadership commitment to and involvement in the program lacking, what has OGE done and with what success?

- In the revised strategic plan, some measures to track progress in achieving strategic goals are new. What are the new measures and what are they intended to show?

- Within the past five years, how many agency investigations and Director's determinations have been made for corrective and remedial action in cases involving individual executive agency employees under 5 C.F.R. § 2638.503? Has the Director issued any notices of noncompliance? In your opinion, what additional authorities or procedures are required to facilitate better compliance with government ethics rules?

- Under the Ethics in Government Act, OGE has the authority to order corrective action to departments, agencies, or employees. How often has OGE used this authority? Has OGE incurred any resistance, and if so, was it successful in obtaining the corrective action it originally sought?

- What is your view as to the adequacy of independence of the Designated Agency Ethics Officials (DAEOs)? Are any other approaches or actions needed to enhance the DAEO's independence?

- OMB had provided guidance to agencies to assess their workforces for, among other things (1) retirement eligibility and expected retirements over the next five years, and attrition, including trends in recent retirements and (2) skills needs. To what extent has OGE performed such analyses? What estimates has OGE developed regarding attrition, including that from retirements, over the coming five years? What succession planning has OGE done? To what extent has OGE identified skills imbalances? If skills imbalances have been identified, what actions does OGE have in place or planned to address such imbalances?

- You testified that the missteps in ethics issues were of an "overwhelmingly technical" nature, and that many of the ethics rules are not "entirely intuitive." In the vein that "an ounce of prevention is worth a pound of cure," preventing people

from being in violation in the first place would be most effective. Does the OGE provide ethics training to an agency based upon what the most common violations are in the said agency?

RESPONSES OF THE OFFICE OF GOVERNMENT ETHICS TO QUESTIONS FROM THE HOUSE COMMITTEE ON GOVERNMENT REFORM SUBCOMMITTEE ON FEDERAL WORKFORCE AND AGENCY ORGANIZATION

Would OGE have a problem with the Government Accountability Office ("GAO") studying the functions of the OGE with the intent of measuring their effectiveness as a separate entity, and also making recommendations regarding a permanent authorization?

The Office of Government Ethics (OGE) has no reason to be concerned about undergoing a study by GAO, and we believe that the results of any study would be positive. However, we see no particularized need for a study of this kind, as we are aware of no specific concerns regarding OGE's performance that would prompt investigation.

As you know, the draft OGE reauthorization bill prepared by the Subcommittee staff and shared informally with OGE would require that GAO conduct a broad-based and open-ended study of OGE. For example, the draft bill proposes that GAO evaluate OGE's performance since its inception, a period of nearly 30 years. During its existence, OGE has had 6 Directors, and has had numerous changes in its responsibilities. The agency has been reauthorized 4 times, a process which has involved Congressional oversight of our program at each stage. We believe it is difficult to judge OGE over the history of its existence based on current standards and that a review of OGE's performance over this entire period would duplicate what has been done in previous reauthorization cycles.

The draft bill would also ask GAO's opinion of OGE's functions and whether any changes in those functions are warranted, as well as whether OGE should be permanently authorized or if all or any portion of the agency should be transferred to another agency. In our view, the policy reasons for maintaining OGE as a separate agency within the executive branch are clear and the soundness of this approach has been demonstrated by OGE's history as an agency. A study is not necessary to prove this point. OGE began its existence as an agency within the Office of Personnel Management, and this experience led Congress to conclude that establishing OGE as a separate agency was the better course. OGE's status as a separate agency facilitates its ability to make decisions and provide guidance to the executive branch in a timely and effective manner, without undue political overtones that could undermine the agency's credibility. It also promotes greater visibility and respect for the importance of ethics in the executive branch. That approach has worked well since 1988 and we are aware of no information that indicates otherwise.

What do you need from Congress to address issues regarding ethics with respect to private sector government contractors working alongside government employees?

The Office of Government Ethics has identified two sets of contractor ethics issues that raise potential concerns. Both sets of issues have arisen because contractor personnel often work side-by-side with Government employees in the Federal workplace, and are performing increasingly critical functions.

As a preliminary matter, we note that the draft bill provided to OGE by Subcommittee staff seems to address too broad a range of contractors. Typically, the ethics issues we see are not arising in the context of a simple and purely commercial transaction, e.g., the Government's arms-length negotiation and purchase of office equipment from a vendor. Rather, the emerging issues tend to occur in those kinds of contracts where the contractor personnel are engaging in the following activities: providing advisory services (especially in Government facilities where they participate in deliberative meetings with Government employees); overseeing other contractors; making decisions and recommendations that bind the Government; and making decisions and recommendations concerning the Government's disbursement of Federal funds.

The first set of issues arises because contractor personnel generally are not subject to the conflict of interest laws or the Standards of Ethical Conduct. There is a fair amount of disagreement as to whether existing laws and regulations relating to the procurement process are sufficient to ensure integrity in Governmental decision-making when contractors perform work for or on behalf of the Government.

There also seems to be disagreement over what solution(s), if any, should be pursued. The draft reauthorization bill seems to focus on whether to apply the Standards of Conduct to contractor employees, and whether OGE should be responsible for administering the requirements as they apply to contractors. This approach may not address all of the possible concerns and does not appear to be the only, or perhaps even the best, solution available. The following other options have been suggested by ethics officials and may also be viable solutions: use the existing organizational conflict of interest rule, Subpart 9.5 of the FAR, to address individual contractor employee conflicts; include relevant contract clauses; educate contracting officers, program managers, and contractors about potential ethics vulnerabilities; and enforce existing and/or new contractor ethics requirements.

OGE does not endorse any particular solution. At this stage, we believe that obtaining additional information about the nature of the problem and what the best solution(s) may be will help us make an informed recommendation. Congressional assistance in obtaining this information could be extremely helpful. For example, directing an agency with many contractors to conduct a review of these issues is one way to gather new data. Another avenue is requesting GAO to conduct a review of contractor ethics issues at one or more agencies (or components thereof). In the meantime, OGE believes that it is important for our agency to continue to monitor and raise awareness of this issue with various audiences.

The second set of contractor ethics issues relates to ensuring that Government employees comply with their own ethics obligations as they work with contractors. OGE is pursuing numerous initiatives (e.g., giving speeches, publishing pamphlets, and issuing other written materials) to provide guidance to Government employees working with contractors, ethics officials, Federal contractors, and the public concerning existing procurement and ethics rules. Given that this issue falls squarely within our purview, we are not requesting any Congressional assistance in order to further these initiatives.

What is it specifically about a reauthorization during an election year that is an inconvenience? In other words, what does it take from your agency's part to be reauthorized that causes an inconvenience?

OGE has cyclical increases in its workload that are specifically related to the year in which a Presidential election occurs and the following year—the first year of a Presidential term when a President seeks to fill as quickly as possible senior positions in the Administration. This increase in workload is true even if an incumbent President is a candidate or wins the election.

During a Presidential election year, the increase is attributable to a variety of factors. For example, more individual officials and ethics officials raise questions regarding the rules on negotiating for employment and post employment restrictions; we receive a greater number of financial disclosure termination reports requiring review; additional conflict of interest analyses are required because persons in one executive branch position often are appointed to fill, temporarily or otherwise, other positions that become vacant toward the end of the term; and OGE devotes resources to coordinating with the campaign committees/transition planners of major Presidential candidates in order to help them prepare for the conflict of interest/financial disclosure analysis for new personnel in the Administration should their candidate be elected.

In the first year of an Administration, the President seeks to fill senior leadership positions in an expeditious manner and we work to provide effective and thorough conflict of interest and financial disclosure analyses without causing any unnecessary delay in the confirmation process. This work not only assists the Government in ensuring that new senior officials have appropriately addressed potential conflicts of interest before beginning the duties of their new positions, it also serves to enhance senior officials' understanding of (in a very personal way) the conflict of interest and ethical requirements of the executive branch and to introduce them to their ethics officials and agency ethics program. Because this first-year-of-a-term work meets two large goals of a conflicts prevention program, OGE's use of personnel resources for this effort takes precedence over all other agency activities. (A longer discussion of our Presidential transition work is found in Ms. Glynn's written statement for the May 23 hearing.)

In the second and third years of a Presidential term, OGE can more easily meet the needs of Congress for information about our program. Our experience shows these requests can require significant OGE resources in order to provide the information in a complete and timely manner and we want to be able to meet those requests. Thus,

OGE's continued request that reauthorization fall during either the second or third years of a Presidential term is based upon our very practical and historical recognition of the somewhat cyclical nature of our workload and our desire to manage our limited resources in the most effective manner for the Government. In the past, Congress has accommodated OGE's request for this timing.

You briefly discussed the goal of streamlining OGE's processing. What sorts of things would you recommend in order to do this, and what additionally would it take financially to accomplish this goal? Is OGE operating with the best technology reasonably available to ensure efficiency?

The most visible and time consuming OGE work process is the review and certification of Public Financial Disclosure Reports. OGE is partnering with the Department of the Army to develop an electronic process for the completion, submission, and review of these reports, the Standard Form (SF) 278. At present, the pilot project is being tested by filers within the Department of the Army. Upon successful completion of those tests, the electronic process will migrate to the other military departments and defense agencies. It is envisioned that the electronic process then will be made available to the civilian agencies of the executive branch. The cost of development of the electronic process is being borne by the Department of the Army.

OGE has also made recommendations to Congress in 2001 and 2005 to streamline the public financial disclosure requirements. We believe that the current reporting requirements exceed what is necessary to make appropriate conflict of interest determinations. These recommendations, and a fuller discussion of the related provisions, can be found in OGE's Report to Congress Evaluating the Financial Disclosure Process for Employees of the Executive Branch, and Recommending Improvements to It (March 2005).

In addition to its work on the public financial disclosure process, OGE has taken steps to streamline the current confidential financial disclosure form (SF 450) and is finalizing plans to make an electronic version of this form available in early 2007.

OGE's technology infrastructure meets the Agency's current needs. OGE hopes to have its computer system compatible with the new Internet address system known as IPv6 and to upgrade the personal computers used by the staff and related hardware in the next few years.

What challenges are there in maintaining and improving the ethical conduct of executive branch employees? How has OGE responded to these challenges in the past and how does it plan to respond to these challenges in the future?

The consistent challenge is finding the most successful ways to instill and to reinforce in employees an understanding and appreciation of the ethical responsibilities of public service and to promote a genuine understanding and acceptance of how the standards of conduct and conflict of interest laws underpin those responsibilities. Since

OGE's creation we have seen and expect to continue to see change in the nature of, the age of, and the career expectations of the workforce, the nature of their duties and Government services, the nature of their (and their spouses') private interests, and their senior leadership. This requires consistent reinforcement of the standards of conduct and other ethics principles in the context of these changing environments. OGE continually seeks new ways of raising the visibility of these issues, presenting training that is interesting and instructive, offering helpful and accessible guidance, and generally raising the level of discourse regarding ethics within the executive branch.

In your view, what are the major internal and external challenges facing OGE? To what extent, if at all, have those factors limited OGE in carrying out its mission? What has OGE done and what actions does it plan to take to address these challenges?

As stated in our strategic plan, one external challenge facing OGE is the level of commitment to, and involvement in, the ethics program among executive branch agency leaders, including that leadership's willingness to adequately staff the ethics function. To address this challenge, OGE is engaging agency leadership as part of OGE's program review function and is establishing specific criteria by which agency leadership can measure its commitment to the ethics program. Another challenge is that the vast majority of ethics officials perform ethics-related duties part-time and their other priorities may detract from the timely execution of ethics program requirements. Again, OGE believes that this challenge can be met by engaging agency leadership and communicating to them how a sound ethical culture and a commitment to the program can enhance an agency's ability to carry out its mission.

There is also a "graying" of the ethics community: many of our Designated Agency Ethics Officials (DAEOs) have been with the program since its inception and will be retiring within the next five years. In recognition of the turnover, OGE does specific outreach to new DAEOs and conducts extensive instructor-led training for new ethics officials.

In addition, a Presidential transition is always a challenge for the Office. The particularly large and varied workload that accompanies a new or re-elected President requires OGE to shift its resources to meet the immediate needs of the new administration or second term. As in the past, OGE meets this challenge by ensuring its staff are cross-trained and by prioritizing matters not directly related to the transition.

Internally, OGE is facing a possible drain on its own talent pool. A number of senior and non-senior employees are eligible to retire in the next five years. With their departure, OGE stands to lose a lot of its institutional knowledge. The problem is further exacerbated by the fact that OGE is a small agency with fewer than 80 employees. While there are always instances of employees leaving one job for another, the impending retirement of key personnel will have significant ramifications. OGE is focusing on succession planning and internal training to help offset the effects of these future losses.

Compliance with ethical rules is a minimum standard of conduct. It is important for ethics programs to emphasize ethical behavior and leadership, in addition to addressing compliance issues. What are your views on the role that OGE could play in helping department and agency leadership instill an understanding of the importance of ethics programs and requirements, and spearhead efforts to adopt ethical principles throughout the organization?

OGE has several avenues for facilitating department and agency leadership efforts to instill a greater understanding of the importance of ethics programs and requirements. OGE has already developed and is implementing strategies designed to enhance leadership support of achieving and maintaining an ethical culture. As we continue to focus on this important component of the executive branch ethics program, we anticipate that OGE's role will become even more prominent.

OGE recently launched an initiative to help agency leadership underscore its support for the ethics program by meeting with OGE's senior management in connection with the program review process. The initiative is designed to foster discussion at the leadership level of concrete measures that can be taken to achieve and demonstrate commitment to an ethical culture throughout the agency. The meetings are intended to emphasize the fundamental purpose of an ethics program: to ensure the public's trust in the integrity of governmental process and decision making. The objective is to develop and share specific leadership strategies.

As part of the onsite program review process, OGE has incorporated the goal of identifying and disseminating model practices that agency leadership officials are currently implementing. These encompass a wide range of comprehensive strategies, including leadership participation in employee ethics training, program awareness building, recognition of accomplishments in the ethics training area, agency wide statements of support, publication of news media accounts illustrating the pitfalls of neglecting ethical considerations in decision making, inclusion of ethics elements in emergency preparedness plans, inclusion of ethics elements in performance reviews, use of information technology resources from outside the ethics office to support training and data collection responsibilities of the ethics office, and announcements of timely compliance with financial disclosure deadlines by agency leadership.

OGE has also developed survey methodology to assess employees' perceptions of their agency leaders' attention to ethics and is working to develop a survey for self-assessments by agencies.

What are OGE's major achievements since the last reauthorization?

The Office of Government Ethics has undertaken and successfully completed numerous critical initiatives since our last reauthorization in 2002. These achievements include:

- Reviewing and certifying nearly 1500 nominee financial disclosure forms and nearly 5000 annual and termination financial disclosure reports of Presidential appointees as well as executing and monitoring nearly 1000 ethics agreements (by the close of FY06)
- Improving the oversight of executive branch agencies' ethics programs.
    - Increased audits of agency ethics programs, completing 132 program reviews, and followed-up to correct any problems revealed by the review
    - Developed new audit guidelines to better assess the quality of agency ethics programs
    - Worked with the National Institutes of Health (NIH) after OGE ethics program review and Congressional inquiries uncovered ethics concerns there to develop important, new supplemental regulations on employees' outside activities
    - Developed an improved electronic system for tracking compliance with Presidential appointees' ethics agreements and consultations with agencies regarding waivers of financial conflicts of interest
- Promulgating ethics regulations to set standards, ensure uniform interpretations and address ongoing and emerging concerns
    - Promulgated rules on issues such as financial disclosure, post-employment, and certificates of divestiture and amendments to the standards of conduct and financial conflicts of interest rules
    - Worked with agencies to develop supplementary ethics rules providing additional employee guidelines tailored to the needs of those agencies
    - Developed up-to-date, comprehensive regulatory guidance on post-employment issues that is currently awaiting clearance
- Providing substantial written guidance to ethics officers and employees.
    - Updated and published a book-length "Reviewer's Reference" to assist agency ethics officers in reviewing public financial disclosure statements and identifying potential conflicts of interest
    - Published advisory opinions and memoranda to agency ethics officials, providing guidance on issues of concern to the ethics community
- Increasing counseling of agency ethics officers.
    - Established and expanded an electronic ListServ that reaches 2300 recipients and keeps them up-to-date on executive branch ethics issues
    - Responded to over 26,000 inquiries from agency ethics officers through our desk officer liaison system and the Office of General Counsel and Legal Policy
- Creating numerous new training tools/programs and training thousands of individuals.
    - Trained over 6,000 ethics officials and employees (by the end of FY06)
    - Educated nearly 2,000 attendees at 3 OGE national ethics conferences [during FY02-05]
    - Initiated the practice of holding 2 – 3 regional ethics symposiums a year to reach ethics officials unable to attend the national conference

  - Increased the number of presentations to outside groups such as associations, universities, private-sector organizations and intergovernmental forums to increase visibility and understanding of executive branch ethics issues
- Getting and staying in front of significant emerging ethics issues.
  - Presented reports to the President and Congress evaluating and recommending improvements to the financial disclosure and conflict of interest laws
  - Convened a multi-agency working group to address ethics issues raised during federal emergency response efforts
  - Met with numerous government officials, spoke to outside groups and testified to draw attention to the potential for federal contractor personnel conflicts of interest
  - Currently evaluating the effects of proposed pay-for-performance plans and other alternative pay systems on the federal ethics program
- Harnessing technology to streamline financial disclosures and to improve access to ethics information
  - Finalizing a streamlined electronic confidential financial disclosure form (SF 450); published corresponding changes to the underlying regulation
  - Working with the Department of Army to finalize an electronic public financial disclosure form (SF 278)
  - Initiated an overhaul of the OGE website to improve access to ethics information
- Providing critical assistance in support of U.S. international anti-corruption initiatives or obligations under international agreements
  - Served as U.S. representative to (and evaluation team coordinator) for successful evaluations of the U.S. conducted by the Group of States Against Corruption (GRECO) and through the Follow-Up Mechanism for the Inter-American Convention Against Corruption (MESICIC).
  - Served as the U.S. expert in corruption prevention programs individually or as a part of a U.S. delegation in regional initiatives, including that for Arab countries in the Middle East and North Africa (MENA); in the two meetings of the Global Forum Against Corruption; in conflict of interest and public governance programs of the OECD; and in individual country initiatives/programs such as those for Slovenia, Argentina and China.

How have OGE's responsibilities and workload increased over time?

Since our last reauthorization, we have seen substantial changes in the sophistication and complexity of nominees' financial holdings, which has had a commensurate impact on our review of those holdings for conflict of interest purposes. OGE's General Counsel's Office makes every effort to stay abreast of developments in executive compensation, the creation of new financial instruments and investments, and changes in laws such as the Internal Revenue Code that can affect what nominees must do to remove financial conflicts.

The questions posed to OGE by ethics officials and employees are also significantly more complicated than they were in the past. Easier issues have largely been addressed and can be handled by agency ethics officers; the more difficult questions, and those of first impression, are the ones that now come to OGE for resolution. Often, these inquiries involve substantial study and discussion to reach a satisfactory response. When appropriate, we prepare a memorandum for general circulation to the ethics community, providing guidance on the issue for future reference.

OGE's program reviews of agency ethics programs have become more complex as a result of our new audit guidelines. These reviews take more time and require more knowledgeable review staff because they perform a more in-depth review of agency programs.

Our efforts to place more emphasis on online training, as a supplement to our ongoing instructor-led training, has both changed and increased OGE's responsibilities. Developing instructor-led training requires input from a subject matter expert and an instructional designer. Online training requires the additional skills of a programmer and graphic artist. The amount of time needed to develop online training is approximately three times greater than that for instructor-led training.

The Department of State and Justice have relied more heavily on the recognized expertise of OGE in meeting U.S. commitments under anti-corruption agreements (for example, MESICIC and GRECO) and other U.S. initiatives abroad (for example, Good Governance for Development initiative in the MENA countries). With OGE's more than 27 years of experience in implementing a financial disclosure program, standards of conduct, training, education and counseling program, and agency ethics program evaluations, requests through the State Department for OGE's technical assistance to developing programs around the world have also increased.

OGE's strategic plan covering fiscal years 2001-2006 established four strategic goals:

-provide overall policy direction to the executive branch ethics [program];
-support the President, executive branch agency heads and employees in administering effective, fair, and consistent ethics programs within the executive branch and individual agencies;
- will develop and make available to agencies innovative training . . . .; and
-administer an effective outreach program.

What is your assessment and basis for your assessment of how well OGE has met each of these goals? Assuming that more progress is appropriate for the goals, what more do you believe OGE should do in relation to each goal?

For each of the fiscal years 2001 -2005, OGE has written an annual performance report about its success in meeting each of the four strategic goals based upon the performance criteria established in the annual performance plan for that year. Those

performance plans and reports have been submitted to Congress with OGE's budget submissions. We have attached a copy of our most recent report, for FY 2005, as an example of how we have evaluated our performance in meeting each of these four goals. We are pleased with our success in meeting these four goals for fiscal years 2001 through 2005 and fully expect that to be the case for the current fiscal year. Overall, we believe that, due to OGE's efforts, the ethics program is marked by consistent administration and implementation of a basic program structure within the executive branch and by uniform interpretation and application of ethics laws and rules.

As you know, we have developed a new strategic plan for FY 2007-2011 which contains three new strategic goals. The development of these new goals was informed by our experience with the FY 2001-2006 strategic plan and by the process through which our annual performance measurements were developed, evaluated, amended, discarded or enhanced. The underlying program supporting the four goals outlined above has not disappeared in this new plan. However, the new strategic plan will challenge OGE to enhance the ethics program by building on the foundation it has created.

In response to GAO's December 2005 report on ethics-related management controls in the Department of Homeland Security's Science and Technology Directorate (GAO-06-2-6), OGE stated that it would examine the transparency and accountability issues in DHS's ethics program identified in GAO's report as part of its planned ethics program review of DHS. What is the status of this review? What are OGE's plans for conducting similar reviews at other agencies?

OGE's ethics program review at DHS is focused on six DHS components, including the Science and Technology Directorate. Our review of all of these components is in the fieldwork stage. The fieldwork has been completed in two components, and will be completed in the other four by the end of July. The final reports on all components are scheduled for completion by the end of FY 2006.

The purpose of OGE's program reviews is to identify and report on the strengths and weaknesses of an agency's ethics program. A review measures agency compliance with ethics requirements found in the relevant laws, regulations, and policies. It also evaluates ethics-related systems, practices, processes, and procedures in place for administering the program. The concepts of transparency and accountability are integral to measuring compliance and evaluating the administration of an ethics program and we routinely employ these concepts in all of our reviews.

In a 2004 report (GAO-04-328), GAO recommended that OGE clarify its guidance on federal advisory committees because current guidance was unclear and could result in questions arising as to conflicts of interest or the balance of particular committees. What steps has OGE taken in response to this recommendation?

OGE has complied fully with the steps it agreed to take in the "Statement of Actions and Comments" plan that OGE submitted in July 2004 to GAO and certain Congressional committees. OGE's response has included the following actions:

(1) New Ethics Guidance. OGE issued a policy memorandum in July 2004 that clarified OGE's guidance for designating the status of members serving on Federal advisory committees. The memorandum also provided a list of steps agencies should take to address ethics-related concerns about the committee appointments process. In August 2005, OGE followed up with another comprehensive memorandum that provided an overview of the committee formation and appointment process and related ethics management concerns.

(2) Improved Program Review Guidelines. To better assess if OGE guidance in this area is being adequately implemented by agencies, OGE strengthened its program review guidelines relating to Federal advisory committees in October 2004. OGE has paid particular attention to whether agencies were taking appropriate steps to review their processes, policies, and practices for designating the status of committee members. Moreover, OGE has changed its program review guidelines to ensure that ethics officials are establishing and maintaining open lines of communication with their agency's committee management officials.

(3) Revised Course Manuals and Instructional Materials: OGE has worked closely with the Committee Management Secretariat at the General Services Administration (GSA). In 2004 and 2006, OGE and GSA amended the ethics materials in the Federal Advisory Committee Act (FACA) Management Course Manual relating to member designations. OGE also continues to support GSA by providing a senior ethics instructor to teach the ethics component of GSA's FACA courses.

(4) Ethics Conference Panel Session: OGE provided a specific panel session discussing the details of GAO's report and OGE's updated ethics guidance relating to advisory committees at OGE's annual ethics conference in September 2005. OGE will continue to educate ethics officials in this area by including panel sessions on the ethics issues facing advisory committees in future conference sessions.

(5) Increasing Ethics Awareness: OGE has worked and continues to work with our GSA partner to ensure that advisory committee materials address ethics issues and correctly reflect OGE guidance. OGE worked with GSA in 2005 to improve GSA's database of federal advisory committees as it pertains to the designation of committee members for ethics purposes to provide public transparency regarding committee member designations. In March 2006, OGE commented on a proposed GSA template for improving the process of establishing Federal advisory committees. OGE will also participate in a review of GSA's FACA course training materials and efforts at a July 2006 training workshop.

Within the past five years, how many criminal referrals of conflict of interest violations has OGE made to the Department of Justice? In your view, has the Department of Justice appropriately acted on these referrals?

Typically, OGE works with ethics officials and Inspector General (IG) offices at individual agencies to determine whether a possible criminal matter should be referred to the Department of Justice. Almost always, the agency is in a better position to know or acquire information concerning the facts relating to a possible offense. It is OGE's primary role to see that the agency takes appropriate action to determine those facts and put those facts in the hands of officials who can make prosecutorial decisions. To this end, OGE frequently refers matters to Designated Agency Ethics Officials (DAEOs) and/or IGs for further evaluation. In cases where the DAEO has received allegations that appear to meet the elements of a criminal statute, OGE generally advises the DAEO to refer the matter for investigation by the agency IG, although OGE also will advise that DAEOs may refer such matters directly to DOJ, consistent with agency operating procedures for reporting allegations. (Agencies have an affirmative obligation to refer matters to the Department of Justice under 28 U.S.C. § 535.) Additionally, OGE frequently consults with ethics officials and IG officials about legal issues arising in connection with allegations or investigations of allegations. OGE does not keep statistics concerning the number of these matters and consultations. Ultimately, it is usually the agency IG that makes the actual referral to the Department of Justice.

In some instances—for example, where the agency does not have an IG, or where the DAEO otherwise determines to contact DOJ directly—OGE will assist the agency in communicating with an appropriate DOJ office. In those cases, OGE might participate with agency officials in an initial telephone call to DOJ to help explain the significance of the allegations. OGE does not keep statistics concerning the number of these communications. OGE believes that prosecutorial decisions by DOJ are committed to the discretion of that Department and may reflect considerations outside of OGE's competence.

What is the organizational structure of your Agency?

OGE has four major components to assist the Director in managing the executive branch ethics program, as shown in the attached organization chart.

The Office of General Counsel and Legal Policy is responsible for establishing and maintaining a uniform legal framework for the executive branch ethics program. In doing so, it develops ethics policies, interprets laws and regulations, and recommends changes in conflict of interest and ethics statutes. It also manages OGE's nominee financial disclosure system and performs OGE's Congressional liaison functions.

The Office of Agency Programs (OAP) is responsible for monitoring and providing services to executive branch agency ethics programs. OAP has three divisions: the Program Services Division, Education Division, and Program Review Division. They work closely with agencies to identify and resolve problem areas and provide educational

materials. They also assist in review of nominee financial disclosure forms. In addition, they oversee collection and review of annual and termination financial statements and tracks compliance with ethics agreements.

The Office of International Assistance and Governance Initiatives coordinates OGE's support to U.S. efforts in promoting international ethics, accountability and anti-corruption programs and domestic good governance initiatives.

The Office of Administrative and Information Management provides essential support to OGE programs and has two divisions. The Administration Division has responsibilities for human resources, payroll, fiscal resource management, graphics, travel, procurement, and other support functions. The Information Resource Management Division is responsible for telecommunications, records management, information technologies, and web site technologies.

What is your system for fielding calls and inquiries from agencies on ethics laws and regulations?

OGE's primary method for handling calls from agency ethics officials is through our Program Services Division. This Division is composed of a cadre of desk officers who are assigned as a point of contact to specified agencies. Each desk officer communicates with the ethics officials at his or her specified agencies on a large variety of matters. Either the agency ethics official or the desk officer may initiate the communication, but in any event, the agency always knows that it has an established point of contact within OGE. An agency may call to ask for an interpretation of an ethics rule, to find out about scheduled training, or to discuss the submission of a required report. Similarly, an OGE desk officer might contact his assigned agencies to convey information about a new ethics requirement, or to ask for information about an agency's ethics program. Over the course of a year, there are many thousands of such communications.

Agency ethics officials also contact OGE attorneys for advice. Agencies are more likely to contact an attorney when an issue is particularly complex or sensitive, or when it appears to be a case of first impression. In a typical year, we receive about two thousand of these calls and inquiries.

Finally, OGE has a system for handling random telephone calls. These calls may come from federal employees, members of the public, or Congressional staff. Such calls are fielded by one of two OGE staffers who are then responsible for ascertaining who within OGE can best respond to the inquiry.

With regard to OGE's focus on emerging issues, what types of issues have you confronted?

- One emerging issue that OGE has confronted is how to ensure integrity in

Government decision-making when contractor employees are providing advisory services and other critical functions for or on behalf of the Government. Federal ethics officials have observed that there may be certain situations where individual contractor personnel may have personal conflicts of interest that are at odds with the Government's and the public's interest. OGE has reviewed this issue internally, explored the issue with other Federal officials, and raised awareness of this issue at various events, including testifying before the Services Acquisition Advisory Panel. We believe there are many possible solutions to the perceived issues, but that more information is needed before OGE can recommend a course of action.

- Another issue involves the impact of alternative pay systems, such as pay-for-performance, on the standards for determining which employees shall be required to file public financial disclosure forms, as well as the application of certain post-employment restrictions. The existing financial disclosure and post-employment standards are premised on the assumption that an individual's pay is an indicator of his level of authority and responsibility, but these alternative pay systems have altered this relationship. OGE is evaluating this issue and is considering recommending legislative remedies, among other solutions.

- At the end of 2004, OGE was asked by Congress to evaluate the effectiveness of the financial disclosure laws. OGE's March 2005 report recommended improvements to the financial disclosure laws, such as reducing the number of valuation categories, shortening some of the reporting time-periods, raising the dollar thresholds, and eliminating other details we believe exceed what is necessary to make appropriate conflict of interest determinations.

- OGE was also asked by Congress to evaluate and recommend improvements to the criminal conflict of interest statutes. We believe that a few, tailored amendments to 18 U.S.C. §§ 203-209 would more accurately reflect the needs of today's Executive Branch, while continuing to proscribe conduct that is improper. For a full discussion of the statutory provisions and OGE's recommended changes, see OGE's January 2006 "Report to the President and Congressional Committees on the Conflict of Interest Laws Relating to Executive Branch Employment."

- Finally, natural disasters such as Hurricane Katrina have raised a broad range of issues for many Executive Branch agencies, including many that affect the ethics program. Substantive ethics issues that emerged during recent emergency situations include questions about fundraising; agency gift acceptance authority; hospitality and other issues associated with a Government employee's ability to accept gifts on a personal basis; and post-employment restrictions. In addition, procedural issues have

surfaced, such as the need, through advance planning, to raise employee awareness of ethics issues likely to arise; the need to provide ethics officials in advance with specific information needed to resolve ethics issues during an emergency; and the need to identify lines of responsibility for addressing ethics questions if normal lines of communication are disrupted. Agencies involved in disaster response need strategies to address these issues to ensure that their ethical culture is not undermined during these events. At its conference "Ethical Implications of Emergency Response" held in March 2006, OGE and numerous ethics officials from various departments and agencies met to discuss and formulate a process for addressing these challenges. The conference report will be distributed in June 2006. OGE is working with other departments and agencies to assist them in meeting these challenges in times of disaster.

OGE has revised its strategic plan, with the new plan to cover fiscal years 2007-2011. Please describe the principal differences between the current plan and the plan that will be in effect in fiscal year 2007.

The FY 2007-2011 OGE strategic plan is aligned with the current OMB guidance provided in Circular No. A-11 and matches the model of many other strategic plans adopted by executive branch agencies. Thus, the new strategic plan is more action oriented, provides a clearer link between the strategic plan, annual performance plans and the OGE budget, and shifts to an approach that emphasizes results rather than the process of providing a particular service or participating in particular actions. It achieves this by using more outcome based, as opposed to output based, measures. These new measures will allow the Office to determine the effectiveness of its efforts and be in a better position to make incremental corrections if, for example, the results of various surveys indicate that certain goals may not be reached with the outlined strategies. The FY 2007-2011 plan also provides incremental targets which will keep the Office on track to ultimately achieve its goals.

In creating and updating the strategic plan, what stakeholders did OGE consult?

OGE conducted extensive interviews with staff and senior management in preparing its new plan. Because of the constant and varied interaction staff have with members of the ethics community, staff were able to articulate the views of the ethics community as well. OGE then circulated its draft strategic plan for comment to OMB and to majority and minority staff on its Congressional authorizing and appropriations committees, including OGE's Senate and House appropriations subcommittees, the House Government Reform Committee, the House Judiciary Committee and the Senate Committee on Homeland Security and Governmental Affairs.

The revised strategic plan establishes the following strategic goals:

- **strengthen the ethical culture within the executive branch,**
- **prevent conflicts of interest, and**
- **promote good governance.**

Please describe OGE's plan to carry out these objectives and how it intends to measure progress in achieving these objectives.

Generally, OGE will carry out the objectives as follows: For strategic goal 1, "Strengthen the ethical culture and promote an ethical workforce within the executive branch", OGE will improve the effectiveness of ethics policy, enhance assistance to and oversight of agency ethics programs, increase employee awareness of their ethics responsibilities, and increase our focus on senior officials' role in implementing the ethics program. For strategic goal 2, "Prevent conflicts of interest", the Office will enhance its assistance to the President and the Congress in the Presidential appointments process, monitor continued compliance with conflict of interest laws, and administer an effective confidential financial disclosure system. For strategic goal 3, "Promote good governance", OGE will increase our support of and cooperation with various other government agencies to implement programs that help support good governance, increase outreach to the private sector and civil society, and support U.S. foreign policy anti-corruption and good governance initiatives.

Progress toward all of these objectives will be measured through a variety of means: surveys of the ethics community in which we measure the effectiveness of our various products and responsiveness to the needs of the community; percentage increases in such things as agency use of a self-assessment tool and incorporation of OGE training products into agency ethics training programs; assessments of ethical culture within agencies, with a focus on the agency leadership; increased numbers of agencies using technology and alternative filing systems to improve their conflict review processes; compliance rates among PAS officials and employees who file public reports; and targeted program reviews looking for model practices.

In the revised strategic plan, OGE states that because the day-to-day execution of the executive branch ethics program is the responsibility of each individual agency, the success of OGE's goals regarding agency ethics programs is largely dependent on agency leadership's commitment to, and involvement in the program, including agency leadership's willingness to adequately staff the function. How does OGE assess agency leadership's commitment to and involvement in the program? What is OGE's view of agency leadership's commitment and involvement overall among individual agencies? To the extent that OGE has found agency leadership commitment to and involvement in the program lacking, what has OGE done and with what success?

Support from the top is critical in maintaining a viable ethics program. In order to effectively implement the new strategic plan, OGE has begun to modify its program review process to better assess and highlight the role of leadership. The standard engagement letter that initiates an onsite review has recently been modified to include a specific invitation to agency leadership to meet with the Deputy Director for the Office of Agency Programs and, when appropriate, the Director. The purpose of the meeting is to focus on concrete measures that leadership officials can take to enhance the ethical

culture and the effectiveness of the ethics program, rather than on details of other program elements under review.

Onsite reviews address staffing needs and senior leadership's oversight of the program. We also obtain information concerning the integration of ethics program objectives into the activities and policies of other agency programs. Our review process has been evolving to include a greater range of relevant information, including a review of whether job performance plans for all employees include ethics elements, whether awards are given to recognize accomplishments relating to implementation of the ethics program, whether agency leadership timely files required disclosure forms, whether agency leadership formally addresses the importance of ethics in agency wide statements, whether agency leadership participates in OGE or other ethics community events, whether agency leadership participate in ethics training programs with employees, whether administrative actions are taken to address ethics violations and delinquencies of financial disclosure reports, whether critical elements pertaining to ethics duties are appropriately incorporated into the annual performance plans of ethics officials and their supervisors, whether ethics related issues are addressed in the agency's strategic plan, and whether electronic technology is being used to enhance the ethics program.

We have also modified our practice of reporting our findings. We have moved from a system of notification and presentation of findings by letter to the Designated Agency Ethics Official to a process involving wider dissemination of the report within an agency, including agency leadership. Where agency leadership commitment to the program is found lacking, our recommendations address the need to develop specific ethics leadership strategies and suggest appropriate strategies. Agencies are required to respond to our recommendations within sixty days and follow-ups are scheduled for six months after the report is completed.

In addition, OGE surveys agencies to assess their ethical culture and the leadership aspects of agency programs. OGE is currently working to develop a self-assessment survey tool that can be used by agencies to develop information useful in setting program priorities, including specific information concerning employee perceptions of leadership's commitment to the program.

This approach is predicated on the understanding that while the technical aspects of an agency's ethics program are administered by an ethics office, leadership is responsible for the overall direction and success of the program.

In the revised strategic plan, some measures to track progress in achieving strategic goals are new. What are the new measures and what are they intended to show?

Because the Office of Government Ethics moved to a more proactive plan that measures progress through outcome versus output, it had to revise almost all of its measures in the FY 2007-2011 strategic plan. For example, in the previous strategic plan, one of the goals of the Office was to provide overall policy direction to the executive branch. Therefore, it measured such things as the number of meetings held

with ethics officials to ascertain recommendations for changes in policy. In the revised strategic plan, that goal was modified to emphasize the effectiveness of ethics policy. Therefore, it was necessary to shift our measurement tools to such things as surveys so that the Office can determine whether or not our customers find our guidance useful, helpful and responsive. This reframing of goals and measures was done throughout the new strategic plan. All the measures are now geared towards assessing whether or not the Office is making a positive difference and allow for identification of areas in which improvement may be needed.

Within the past five years, how many agency investigations and Director's determinations have been made for corrective and remedial action in cases involving individual executive agency employees under 5 C.F.R. § 2638.503? Has the Director issued any notices of noncompliance? In your opinion, what additional authorities or procedures are required to facilitate better compliance with government ethics rules?

OGE has never had the need to invoke the formal procedures of 5 C.F.R. § 2638.503 for initiating an agency investigation of an individual employee and making a determination concerning the adequacy and findings of such investigation. We have found that direct communications with agency officials, including Designated Agency Ethics Officials (DAEOs) and agency Inspectors General, have been an efficient and successful means of obtaining compliance by agencies with their duty to take prompt and effective action to remedy actual or potential ethics violations. No doubt, the authority in 5 CFR §2838.503 creates a clear incentive for agencies to comply with OGE's informal requests; however, compliance is fostered also by the fact that OGE can, and sometimes does, escalate its informal requests to higher levels, including the agency head and even the White House where appropriate.

In least two respects, OGE is pleased that we have not had to invoke the formal investigation and determination procedures. First, OGE has been successful in obtaining good results more quickly than the formal procedures would permit. Second, invoking those procedures would have increased the transaction costs in obtaining compliance, as a result of the time and resources that both OGE and the agency would devote to the formal steps outlined in the regulation.

Furthermore, one should not overlook what is probably OGE's most powerful and efficient tool for obtaining ethical compliance from high level officials: the public financial disclosure system. Under section 106 of the Ethics in Government Act, OGE has authority to certify the nominee, annual, and termination financial disclosure reports of Senate-confirmed appointees, including the authority to require specific steps to assure compliance with the ethics requirements. The prospect that OGE will not certify a report that reveals an unresolved conflict is generally sufficient to induce agency ethics officials to obtain the necessary information and commitments from filers to resolve any ethics issues identified by OGE. Section 110 of the Ethics in Government Act adds additional assurance by requiring officials to provide timely notice of compliance with agreements they have made to resolve any conflicts identified during the review of financial

disclosure reports. In this connection, OGE maintains a tracking system to document and review evidence of compliance, and OGE contacts DAEOs to rectify any detected inadequacies.

For all of these reasons, OGE does not believe that additional authorities or procedures are needed to promote better compliance with the ethics rules, as the current authorities and procedures, including OGE's ability to obtain agency cooperation, have worked well.

Under the Ethics in Government Act, OGE has the authority to order corrective action to departments, agencies, or employees. How often has OGE used this authority? Has OGE incurred any resistance, and if so, was it successful in obtaining the corrective action it originally sought?

Individual Employees

As described above, OGE has not found the need to invoke its formal processes to order corrective action with respect to an individual employee.

Resort to the procedures outlined in 5 C.F.R. §§ 2638.504, 2638.505, and 2638.506 would be necessary only in situations where the relevant agency itself did not pursue adequate remedial action concerning an individual employee. In any case, it would be the employing agency, not OGE, that has the authority to take any necessary disciplinary action to enforce the ethics rules, see 5 C.F.R. § 2638.506, so OGE's first goal always is to get the agency to fulfill its own responsibility. See 5 C.F.R. § 2638.203(b)(9)(agency responsibility to ensure that prompt and effective action is taken to remedy violations). Historically, when OGE has found reason to believe that an employee may have violated an ethics provision, OGE has been successful in obtaining cooperation from the agency involved to find the facts and take appropriate remedial action.

Where employees have resisted agency efforts, OGE has provided vigorous assistance in defending against challenges to disciplinary action or other legal challenges to agency orders. See, for example, our recent victory in a court case upholding the determination by OGE and the Social Security Administration (SSA) that an SSA employee could not receive compensation for publishing a book that was related to his official duties, in violation of the OGE standards of conduct. Wolfe v. Barnhart, 446 F.3d 1096 (10th Cir. 2006).

It is also worth noting again that OGE frequently uses its authority under sections 106 and 110 of the Ethics in Government Act to obtain compliance from individual high level officials with regard to matters discovered in the review of their financial disclosure statements.

Agencies

Additionally, OGE has authority, pursuant to section 402(b)(9) and section 402(f), to order action on the part of an agency to correct deficiencies in the agency's ethics program. This authority was added by the Office of Government Ethics Reauthorization Act of 1988, and OGE issued implementing regulations in January,1990. See 5 C.F.R. part 2638, subpart D.

Since the implementing regulations were promulgated, OGE has issued eleven "Notices of Deficiency," pursuant to 5 C.F.R. § 2638.402(a). Only once did OGE also have to issue an order to the agency head, after the agency response to the original Notice of Deficiency was inadequate. See 5 C.F.R. § 2638.402(c)(3), (d)(issuance of order to agency head when deficiency not corrected). In that case, the agency immediately complied with the order.

Usually, problems or potential problems with an agency ethics program are identified through periodic program reviews, or audits, by OGE. In the vast majority of cases, any problems identified in the OGE program review report are corrected promptly by the agency, without the need for a Notice of Deficiency. In our experience, most DAEOs prefer to implement the recommendations in the OGE report rather than risk the potential embarrassment of a Notice of Deficiency or an order to the agency head. Although agencies occasionally take issue with specific aspects of certain OGE recommendations—and OGE may make such adjustments as it deems warranted—in the end, OGE obtains appropriate compliance.

What is your view as to the adequacy of independence of the Designated Agency Ethics Officials (DAEOs)? Are any other approaches or actions needed to enhance the DAEOs' independence?

As one would expect, there is variation within the ethics community as to the level of independence of the DAEOs. In general, the vast majority of DAEOs are sufficiently independent of agency management. We encourage agency heads to select individuals for the DAEO function who are in positions with a significant amount of authority and visibility within the agency (such as an agency General Counsel). Selecting such individuals demonstrates the commitment of the agency head to the ethics program, and helps ensure that adherence to ethics rules and standards is taken seriously. Additionally, our regulations require an agency head to select a DAEO whose experience adequately demonstrates the ability to carry out the core functions of the DAEO position. In any case in which we might perceive that a DAEO was not fully implementing the duties of his position due to some interference or other undue influence from agency management, we would initially counsel the DAEO. If the expected results were not achieved through counseling, we would contact the agency head, and might even recommend that the DAEO be replaced. At this time, we do not think that there are identifiable problems within the DAEO community that need to be addressed through other means, particularly through legislation.

OMB had provided guidance to agencies to assess their workforce for, among other things (1) retirement eligibility and expected retirements over the next five years, and attrition, including trends in recent retirements and (2) needed skills. To what extent has OGE performed such analyses? What estimates has OGE developed regarding attrition, including that from retirements, over the coming five years? What succession planning has OGE done? To what extent has OGE identified skills imbalances? If skills imbalances have been identified, what actions does OGE have in place or planned to address such imbalances?

OGE conducted an analysis in 2004 regarding attrition and retirements over the next five years. That analysis indicated approximately 36% of OGE's workforce (29 employees) would be eligible to retire in the next five years. A third of that group has now left the Agency. To date, we have a done a good job in filling vacancies, particularly those that have occurred in our core competencies (attorneys, management analysts, and government ethics specialists). We have recently updated the 2004 analysis and found that approximately 26% of OGE's workforce (21 employees) will be eligible to retire in the next five years.

To round out our succession planning, each Office has identified and implemented individual development plans and on-the-job training activities to enhance the knowledge, skills and abilities of subordinate staff members and to enhance their migration to higher-level positions most likely to be vacated by retirement over the next five years. Based upon our success to date in filling vacancies and our efforts to address needed skills, we feel we can maintain the high level of competency we currently enjoy.

You testified that the missteps in ethics issues were of an "overwhelmingly technical" nature, and that many of the ethics rules are not "entirely intuitive." In the vein that "an ounce of prevention is worth a pound of cure," preventing people from being in violation in the first place would be most effective. Does the OGE provide ethics training to an agency based upon what the most common violations are in the said agency?

Generally, OGE does not design ethics training programs for specific agencies; rather, we develop a range of training products that are intended to ensure that ethics officials have the knowledge required to effectively carry out their duties. OGE provides training opportunities through classroom instruction, educational tools, regional conferences, and a national conference. Our primary focus is on training ethics officials in the technical aspects of administering their ethics programs and on training agency officials to conduct in-house training ('training the trainer" programs).

A significant amount of ethics training for employees is developed by agencies in-house in order to meet agency-specific needs. On an annual basis, OGE gathers information from all agencies concerning the scope, frequency, and content of their training programs. When requested, OGE works with agencies to develop the substantive content for agency-developed courses and to provide advice concerning training design.

Also, as part of the onsite review process, OGE typically reviews agency training efforts and seeks to identify particularly useful products that may be efficiently adapted to use by other agencies. A review may result in specific recommendations being made to an agency concerning its training program; recommendations are subject to a formal response and follow-up process.

Overall, we develop new courses and training products when appropriate and seek to leverage the value of training achievements by others in the ethics community. Our decisions about the type of training to develop and the types of courses to provide are based on assessment of risk and the premise that OGE must allocate its resources as efficiently as possible. Our objective is to efficiently serve the needs expressed by the ethics community, including through: survey responses, contacts with desk officers, discussions during program reviews, planning for regional and national conferences, and meetings of agency officials with OGE's leadership. In addition, we develop training priorities by otherwise assessing the needs of the community. Reports of violations of ethics provisions are only one of the factors that we consider. Other factors include reports of allegations, issues raised by the Congress and media, emerging issues (such as emergency response activities, contractors in the workplace, and post-employment issues raised by a spike in government retirements), and feedback from ethics officials who have attended our training programs.

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