

**GAO****Testimony**

Before the Subcommittee on Human Resources, Committee on  
Post Office and Civil Service, House of Representatives

For Release on Delivery  
Expected at  
10:00 a.m. EST  
Wednesday  
March 4, 1992

**OFFICE OF GOVERNMENT  
ETHICS****Need for Additional Funding  
for Regulation Development  
and Oversight**

Statement of Bernard L. Ungar, Director, Federal Human  
Resource Management Issues, General Government Division





Mr. Chairman:

We appreciate the opportunity to take part in the Subcommittee's hearing on the proposed removal of the cap on the Office of Government Ethics' (OGE) authorization of appropriations. At present, the cap is set at \$5 million for each fiscal year 1990 through 1994. H. R. 2828 would remove this ceiling and authorize such sums as may be necessary through fiscal year 1994.

You requested that we provide our views on how increased funding would aid OGE in achieving its mission. You were also interested in any recommendations we have on how OGE might better carry out its responsibilities and operate in a more efficient and effective manner. Our testimony today is based on work we have done in recent years (see Related GAO Products) on OGE's programs and operations, including the adequacy of its funding levels.

Our work at OGE through June 1990 showed that OGE needed additional staff for developing regulations to implement new requirements and reviewing agency ethics programs. Although we are not in a position to say what size OGE's budget should be or how many additional staff would currently be appropriate for the various OGE activities, we believe that OGE would be unable to effectively carry out its responsibilities if its funding level were limited to the \$5 million cap on its authorization.

For fiscal year 1991, OGE received an appropriation of \$3,725,000, slightly more than \$300,000 over its fiscal year 1990 appropriation. For fiscal year 1992, Congress appropriated \$6.3 million for OGE, \$1.3 million more than the \$5 million authorization limit imposed in 1990. Congress imposed the limit to help control OGE activities. However, because Congress can appropriate funds in excess of the authorization cap, the Subcommittee may want to explore options in place of or in addition to an authorization cap, such as continued use of limited authorization periods, to help control OGE activities.

My comments will address OGE's increased responsibilities, including the need for OGE to issue ethics regulations more quickly and to review agency ethics programs more frequently. We have made recommendations to OGE regarding both of these areas, and I will provide the status of those recommendations. I will also address alternatives to the existing limitation on OGE's appropriation authorization for providing congressional oversight.

#### OGE'S RESPONSIBILITIES AND WORKLOAD HAVE INCREASED

In recent years, new legislation and executive orders have increased OGE responsibilities and workload, and it expects even further increases. For example:

- The Office of Government Ethics Reauthorization Act of 1988, among other things, removed OGE from the Office of Personnel Management and made OGE an independent executive agency, effective October 1, 1989. A number of provisions in the 1988 act created the need for OGE to develop and administer new regulations, thereby significantly increasing its overall workload. For example, OGE is now required to issue notices of deficiencies and orders of corrective actions when OGE finds that agencies' ethics programs do not comply with applicable laws, orders, and regulations. In addition, as a result of that act, OGE is required to report every 2 years to the President and Congress on the status of all executive agencies' ethics programs.
- Executive Order 12674, issued by President Bush in April 1989 and amended by Executive Order 12731 in October 1990, requires OGE to establish and administer a single set of standards of conduct applicable to all executive branch agencies. The order also assigned OGE new responsibilities regarding annual ethics briefings that are now required of numerous federal employees.
- The Ethics Reform Act of 1989 assigned new responsibilities to OGE in several areas. The 1989 act, as well as the previously mentioned executive order, require OGE to issue or revise regulations on conflict-of-interest statutes affecting current and former employees (18 U.S.C. 207 and 208). As a result of the act, OGE is also required to issue and administer regulations on employees' acceptance of gifts and filing of public financial disclosure reports in the executive branch.

New responsibilities will increase the workload of OGE staff responsible for developing, interpreting, and administering ethics regulations. OGE staff are required to train executive branch ethics officials on new requirements. In turn, these officials must then train other officials and employees. OGE staff must also review whether agencies' ethics programs comply with new and previously existing laws, orders, and regulations.

Along with the increased responsibilities already assigned to OGE since 1988, new legislation and executive orders may further expand the scope of OGE's responsibilities. For example, a proposal introduced in Congress last week (S.2279) on lobbying reform in the executive and legislative branches could further increase OGE's responsibilities and, in turn, possibly increase its budget requirements.

To respond to its increasing workload, OGE has received funds for an estimated additional 25 staff years for fiscal year 1992, and OGE is requesting funds for an estimated increase of 31 staff years for fiscal year 1993. Thus, if the additional 31 staff

years are granted, OGE will have increased its staff years from 45 total staff years in 1991 to 101 total staff years in 1993, an increase of 124 percent. For fiscal year 1992, OGE received funding for additional staff to be assigned largely to OGE components responsible for developing or interpreting regulations and reviewing agency ethics programs. Primarily due to the funds necessary for this increased staff, OGE's fiscal year 1992 appropriation, totaling \$6,303,000, exceeded the \$5 million cap by \$1,303,000.<sup>1</sup> As set out in the President's fiscal year 1993 budget, OGE is requesting an appropriation of \$8,365,000.

Most of the proposed increase for fiscal year 1993 would be used for funding the additional 31 staff years requested. Three of the 31 staff years are for OGE's legal policy and general law unit which has responsibility for, among other duties, developing ethics regulations. Twenty-two additional staff years are for the OGE program development and compliance unit which is responsible for, among other duties, reviewing agency ethics programs. The remaining increase in staff years is to be allocated to OGE administration and education activities.

#### STAFFING CONSTRAINTS HAVE DELAYED ISSUANCE OF ETHICS REGULATIONS

OGE's limited staffing, coupled with its expanding responsibilities, impeded its ability to develop or revise important regulations quickly enough to meet agencies' needs for them. At the same time, OGE had to carry out other related responsibilities, such as providing training to agency ethics officials and reviewing financial disclosure reports. OGE's inability to carry out all of its responsibilities in a timely manner has adversely affected agencies' implementation of ethics programs. For example, some agencies have deferred making changes to their regulations until OGE issues its final regulations.

According to OGE, it needs additional staff to issue new OGE regulations, update existing regulations, and administer ethics regulations on an ongoing basis. For fiscal year 1991, OGE allocated a total of 12 staff years for these activities. Because of growing workload, OGE increased the allocation to an estimated 18 staff years for fiscal year 1992, and its 1993 request is for an estimated 21 staff years for legal policy and general law activities.

OGE indicated that, as of February 1992, 11 sets of substantive regulations must be issued in final form. OGE legal staff

---

<sup>1</sup>An amount appropriated in excess of a cost limitation contained in the authorization act is a valid appropriation, and the agency may spend the higher amount. 36 Comp. Gen. 240 (1956).

working on these regulations are also responsible for a range of other responsibilities. These responsibilities include providing advisory opinions to agencies on how to interpret and comply with conflict-of-interest statutes, standard of conduct regulations, and financial disclosure requirements. This staff is also responsible for reviewing ethics regulations issued by all executive branch agencies; reviewing the initial public financial disclosure reports filed by Presidential nominees subject to Senate confirmation; and working with Justice on the referral, investigation, and prosecution of possible conflict-of-interest violations. At various times in the past, OGE has shifted staff from other functions, such as its audits of agency ethics programs, to help with regulation development, but this shift adversely affected those operations which lost staff.

We believe that OGE needs more staff than it had in the 1990-91 time period to develop or revise regulations in a timely manner as well as train ethics officials, review disclosure reports, and issue advisory opinions as required. However, we do not know what total number of additional staff would be most appropriate for these activities. To help determine what staffing level would be appropriate, the Subcommittee may want to request OGE to provide information on the estimated time periods for issuing new or revised regulation based on various staffing levels.

Our reviews at several agencies have shown that agency ethics officials need, but have not always had available, current OGE regulations for effectively administering agency ethics programs. For example, agencies' standard of conduct regulations were developed on the basis of federal conduct standards issued more than 25 years ago in 1965. We and OGE have found that some agencies, such as the Department of Health and Human Services and the National Science Foundation, were postponing making needed changes to existing agency regulations, pending the issuance by OGE of regulations that would apply throughout the executive branch. OGE officials said they expect to issue final conduct regulations in May 1992 for use by the agencies in updating their standards.

In considering the trade-offs between the time to develop regulations and staff levels, the Subcommittee should note that OGE's overall effectiveness is closely related to the speed with which it develops or revises regulations. OGE regulations not only help agencies develop and implement their programs, but also set forth requirements related to OGE's training assistance, advisory service, and program review functions.

Along with our views on OGE's need for increased funding, you asked about recommendations on how OGE might better carry out its responsibilities. We have twice recommended that OGE issue regulations on the establishment of a uniform system of confidential financial disclosure in the executive branch. OGE

circulated draft regulations for comment in 1986 but has not issued final regulations. We found that the Department of Agriculture had deferred making needed changes to its confidential regulations, and the Department of Justice had deferred even establishing a confidential disclosure system until OGE issues its regulations on the subject. Because of agencies' need for the regulations and the delay in developing them, we recommended in 1988 and again in 1990 that OGE issue the regulations.<sup>2</sup> According to OGE officials, they expect to issue a new set of interim regulations for comment this month. OGE plans to obtain public comments on the interim regulations before making them final.

More recently, in a February 1992 report, we recommended that OGE strengthen the provisions on federal employees' outside employment included in OGE's proposed standards-of-conduct regulations mentioned previously.<sup>3</sup> OGE accepted all of our recommendations.

#### ADDITIONAL REVIEW COVERAGE OF ETHICS PROGRAMS TO BE PROVIDED

The review of agency ethics programs is OGE's principal means of determining whether executive branch agencies and employees are complying with relevant laws, orders, and regulations. However, OGE has been unable to provide the level of review attention to agency ethics programs that OGE considers necessary.

OGE has been unable to achieve its goal of reviewing once every 3 years the universe of roughly 300 ethics programs administered by agencies and installations. According to OGE, it has never had sufficient staff to accomplish this goal. Although the number of staff has varied over the years, we testified in 1990 that OGE at that time had as few as two staff during the 1989-90 time frame to review all ethics programs in the executive branch every 3 years. Some relatively large agencies, such as the Small Business Administration and the Federal Reserve System, had not been reviewed for over 5 years. OGE had not reviewed 27 federal entities with ethics programs at all during the 9 years 1981 through 1989. Thirty other entities had been reviewed only once during this period.

---

<sup>2</sup>Ethics: Office of Government Ethics' Policy Development Role (GAO/GGD-89-3, Oct. 1988), and Office of Government Ethics' Oversight Role (GAO/T-GGD-90-48, June 5, 1990).

<sup>3</sup>Employee Conduct Standards: Some Outside Activities Present Conflict-of-Interest Issues (GAO/GGD-92-34, Feb. 1992.)

Overall, our 1990 review showed that OGE's reviews were of reasonable scope and depth, and agencies had implemented many of the recommendations made by OGE to improve their ethics programs and thereby prevent or address conflicts of interest. We also reported that, due to insufficient staffing, OGE had not been able to do follow-up reviews to the extent OGE desired to determine whether previously reported deficiencies in ethics programs had been corrected. We recommended some changes in reporting and follow-up procedures to improve the agencies' adoption of OGE recommendations. OGE made these changes.

Perhaps more importantly, OGE has since allocated the vast majority of its increased staffing to the program development and compliance unit. In March 1992, OGE had 17 staff on board to do reviews. It expects to increase this number to about 20 by September 1992 and, as mentioned previously, is requesting further increases in its 1993 request to accomplish its 3-year review cycle goal.

Along with the agency program reviews, the program development and compliance unit is responsible for reviewing certain financial disclosure reports (such as recurring reports filed by Senate-confirmed political appointees) and routinely advising and assisting agency ethics officials in the development of their programs. OGE plans to allocate a portion of the requested staff increase for fiscal year 1993 to these other activities.

We have not done the work necessary to determine exactly how many additional staff OGE needs to achieve its program review goal. However, we believe that its 1990-91 staffing level was not enough in light of the scope and depth of the review work required, the number of programs to be reviewed, and the planned 3-year review cycle. The Subcommittee may want to explore with OGE the staffing level and program effects of alternative agency review cycles. For example, OGE could modify its review cycle to cover smaller agencies or agencies that OGE has found in previous reviews to have good ethics programs on a less frequent basis.

#### OTHER CONTROL MECHANISMS AVAILABLE IF CAP IS LIFTED

We believe that OGE's inability to provide sufficient review coverage of agencies' ethics program and its inability to quickly complete all the work necessary on new and revised ethics regulations stemming from increased responsibilities were largely due to staff shortages for these activities. Although we believe OGE needs additional staff, we are not in a position to estimate the specific number of additional staff needed. As we have indicated, given the overall federal budgetary situation and the fact that many agencies do not always have enough resources to fully carry out all their functions, the Subcommittee may want to explore with OGE various trade-offs that might have to be made



between timeliness of regulation-development and frequency of review coverage.

The legislative history of OGE's 1988 reauthorization shows that Congress capped OGE's appropriation to permit the authorizing committees to retain more control over the conduct of OGE's activities. Although Congress appropriated an amount of funds for OGE that exceeded the 1992 appropriation authorization, OGE believes that it needs more flexibility in requesting the funds necessary to meet its increasing responsibilities. At OGE's request, in 1990, Congress increased the cap from \$3.5 million to \$5 million for each fiscal year 1991 through 1994. OGE requested that the cap be removed in 1991 when its 1992 appropriation request exceeded \$5 million. OGE believes the removal of the ceiling is necessary to provide the agency with more flexibility in requesting the resources necessary to fulfill its expanding responsibilities.

If Congress lifts the cap on OGE's appropriation authorization, there would still be other means available to the authorizing committees for maintaining oversight of and accountability for OGE's activities. OGE would still be subject to the reauthorization process provided for in its enabling legislation. OGE's current authorization runs through fiscal year 1994. This reauthorization process, along with oversight hearings as necessary, would continue to be available to the authorizing committees. In addition, as you know, Mr. Chairman, when the amount that is to be appropriated by Congress exceeds the authorized amount, the appropriation is subject to a point of order under House rules allowing a Member to question the amount proposed in excess of the authorization.

- - - - -  
That concludes my prepared statement. We will be happy to answer any questions.

---

**Related GAO Products**

---

Employee Conduct Standards: Some Outside Activities Present Conflict-of-Interest Issues (GAO/GGD-92-34, Feb. 1992).

Employee Financial Disclosure: CFTC System Affords Reasonable Protection Against Conflicts of Interest (GAO/GGD-91-3, Nov. 1990).

Employee Financial Disclosure: Farm Credit Administration System Is Generally Operating Effectively (GAO/GGD-90-115, Sept. 1990).

Financial Disclosure: USDA's Systems Limited by Insufficient Top Management Support (GAO/GGD-90-100, July 1990).

Office of Government Ethics' Oversight Role (GAO/T-GGD-90-48, June 5, 1990).

Government Ethics: HUD Financial Disclosure Reports Missing or Not Reviewed (GAO/GGD-90-51, Feb. 1990).

The President's Ethics Proposals (GAO/T-GGD-89-29, June 13, 1989).

Ethics: Office of Government Ethics' Policy Development Role (GAO/GGD-89-3, Oct. 1988).

Ethics: The Department of Justice's Ethics Program (GAO/GGD-88-112BR, July 1988).

Issues Related To The Office of Government Ethics (GAO/T-GGD-88-29, April 13, 1988).

Ethics Enforcement: Results of Conflict of Interest Investigations (GAO/GGD-88-34, Feb. 1988).

---

---

**Ordering Information**

**The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.**

**U.S. General Accounting Office  
P.O. Box 6015  
Gaithersburg, MD 20877**

**Orders may also be placed by calling (202) 275-6241.**

---

**United States  
General Accounting Office  
Washington, D.C. 20548**

**Official Business  
Penalty for Private Use \$300**

|  |
|--|
| <p><b>First-Class Mail<br/>Postage &amp; Fees Paid<br/>GAO<br/>Permit No. G100</b></p> |
|--|