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The Bryce Harlow Workshop on Ethics and Lobbying

Spring 2021

It's Time to Modernize the Office of Government Ethics

The aftermath of the Watergate scandal¹ gave rise to a significant era of government ethics reform. Driven by pressure from the media and public concern over governmental abuses of power, policymakers began introducing legislation aimed at cultivating a more transparent and accountable government. One of the notable reforms that emerged during this era is the Ethics in Government Act (EIGA).² This act was signed into law on October 26, 1978 by former President Jimmy Carter with the goal of restoring public confidence in the federal government and serving as a model for state and local governments.³ EIGA contains multiple components that target this goal. First, EIGA requires all Members of Congress, high-level executive branch officials, and senior members of the judicial branch to disclose their personal finances to the public. Prior to this mandate, there were no explicit regulations that held government employees accountable for using nonpublic information for private financial gain. The act goes even further to tackle this issue by setting limitations on outside earned income and employment for government officials. In his remarks on signing the bill into law, President Carter asserted that EIGA “broadens protection against abuses caused by postemployment conflicts of interest, so

¹ Information on the Watergate scandal is available [here](#).

² United States, Congress. “Public Law 95-521: Ethics in Government Act of 1978.” 95th Cong., 2d sess., *Government Printing Office*, 1978, <https://www.gpo.gov/fdsys/pkg/STATUTE-92/pdf/STATUTE-92-Pg1824.pdf>.

³ “Ethics in Government Act of 1978 Remarks on Signing S. 555 Into Law.” *The American Presidency Project*, 26 Oct. 1978, www.presidency.ucsb.edu/node/243561.

that people who have been employed in the Government cannot use this employment to go and enrich themselves by going into an area of private employment which would use their influence recently derived from government service.”⁴ In addition to imposing mandatory financial disclosures, EIGA established the Office of Government Ethics (OGE) to monitor and publicize ethics information regarding the executive branch. More specifically, this agency was designed “to bring some continuity and uniformity to ethics policies across the executive branch and to establish a system of financial disclosure for senior officials and officials in positions with an elevated risk for conflicts of interest.”⁵ The creation of OGE is arguably the most impactful provision within EIGA, which laid the groundwork for government ethics rules as we know them today. However, after operating for 43 years with virtually no structural changes, an upgrade is long overdue. In this paper, I will dive further into the functions of OGE, discuss its successes and failures, and explore opportunities for reform.

Responsibilities and Contributions of the Office of Government Ethics

Before the establishment of OGE, the power to oversee executive branch ethics was not concentrated in a specific agency, which made it difficult to prevent executive officials from engaging in conflicts of interest. This difficulty was brought to light by the General Accounting Office (GAO) in 1976.⁶ In a report to Congress, GAO stated that “a major and perhaps the most substantial contributing factor to all these problems was the decided lack of a central supervisory authority.” OGE was established in direct response to this concern regarding the absence of

⁴ “Ethics in Government Act of 1978 Remarks on Signing S. 555 Into Law.” *The American Presidency Project*, 26 Oct. 1978, www.presidency.ucsb.edu/node/243561.

⁵ “Our History.” *USOGE | About*, U.S. Office of Government Ethics, www.oge.gov/web/oge.nsf/about_our-history.

⁶ The General Accounting Office is now the Government Accountability Office. Information on GAO is available [here](#).

centralized authority over executive ethics regulations.⁷ OGE is the first non-partisan federal agency whose sole mission is to interpret, refine, and implement an ethics program for the executive branch.

As listed on the official OGE website, the agency's key functions include:

- Making and interpreting ethics laws and regulations
- Supporting and training executive branch ethics officials
- Administering the executive branch financial disclosure systems
- Monitoring senior leaders' compliance with ethics commitments
- Ensuring agencies comply with ethics program requirements
- Making ethics information available to the public⁸

Since 1978, OGE has made significant contributions to the executive ethics program. Within a year of its establishment, OGE began restoring public trust in the executive branch by requiring senior officials and nominees to disclose their financial holdings and undergo an ethics vetting process.⁹ By publicizing this information for the first time, OGE promoted a higher level of transparency between the executive branch and the American people. The next noteworthy development occurred under the leadership of President George H.W. Bush. In 1990, President Bush issued Executive Order 12731, "Principles of Ethical Conduct for Government Officers and Employees," in which he tasked OGE with "[p]romulgating, in consultation with the

⁷ OGE was not entirely independent upon its creation; it was a part of the Office of Personnel Management (OPM) until 1988. Information about OPM is available [here](#).

⁸ "What We Do." *USOGE | About*, U.S. Office of Government Ethics, https://www.oge.gov/web/OGE.nsf/about_what-we-do.

⁹ "Our History." *USOGE | About*, U.S. Office of Government Ethics, www.oge.gov/web/oge.nsf/about_our-history.

Attorney General and the Office of Personnel Management, regulations that establish a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable.”¹⁰ In response, OGE published the Standards of Ethical Conduct for Employees of the Executive Branch.¹¹ Even though OGE had previously issued many ethics rules and regulations, this was the first set of detailed, uniform standards applicable to all executive branch employees. The Standards of Ethical Conduct defines clear guidelines regarding the use of government positions, conflicting financial interests, impartiality, seeking other employment, outside activities, gifts from outside sources, and gifts between employees.¹² From then on, OGE has worked diligently to continue implementing and improving ethics regulations for the executive branch.

Unethical Conduct of the Trump Administration and the Need for Reform

In theory, OGE’s executive branch ethics program is thorough and impactful, and for the majority of its history, it has performed fairly well in practice. With few exceptions, executive employees under both Democratic and Republican administrations have willingly disclosed their personal finances, divested from potential conflicts of interest, and abided by the rules set by OGE—until the presidency of Donald J. Trump.¹³ Under the Trump Administration, the weaknesses of OGE became apparent and undeniable. It was evident that Trump would abandon the tradition of voluntary compliance with OGE from the day he was elected, if not sooner. In an interview with *The New York Times*, just a few days after winning the 2016 election, Trump said

¹⁰ United States, Executive Office of the President George H.W. Bush. “Executive Order 12731: Principles of Ethical Conduct for Government Officers and Employees.” 17 Oct. 1990. Available [here](#).

¹¹ United States, Office of Government Ethics. “Standards of Ethical Conduct for Employees of the Executive Branch.” 3 Feb. 1993. Available [here](#).

¹² A summary of the Standards of Ethical Conduct is available [here](#).

¹³ Canter, Virginia, et al. Edited by Norman Eisen, The Brookings Institution, 2021, pp. 9, *IF IT’S BROKE, FIX IT Restoring Federal Government Ethics and Rule of Law*.

that “the law’s totally on my side, the president can’t have a conflict of interest.”¹⁴ While this is technically true,¹⁵ every other president since the 1970s has willingly divested from conflicting assets or set up a blind trust while in office.¹⁶ Trump’s disregard for executive ethics norms materialized throughout his time as president. For example, he used his presidency as a means to promote his business and grow his personal finances, all while refusing to disclose his tax returns. Trump maintained control of his assets by giving ownership of the companies within the Trump Organization to his oldest sons, Eric and Donald Jr.¹⁷ He profited from foreign and domestic governments, special interest groups, and other government officials who patronized his properties.¹⁸ Trump abused his power even further by appointing his daughter Ivanka and son-in-law Jared Kushner to positions in the White House, both of whom retained conflicting interests as well. Trump’s unethical conduct did not end there; not only did he reject ethics guidelines for the benefit of himself and his family, but he also extended this opportunity to his cabinet and administration. In a memo on strengthening OGE, Issue One explained that:

[I]n building his cabinet and his administration, President Trump, a businessman, nominated a larger number of individuals from business, many of whom have complex holdings and more private-sector ties than previous administrations. OGE plays a critical role in working with nominees to arrive at agreements on how to deal with conflicts of interest through qualified blind trusts, divestments or other mechanisms to avoid conflicts. Reaching those agreements can be a long and arduous process, made more so by the number of business people entering the administration.¹⁹

¹⁴ Arnsdorf, Isaac. “Trump: ‘The President Can’t Have a Conflict of Interest!’” *POLITICO*, 22 Nov. 2016, www.politico.com/story/2016/11/trump-the-president-cant-have-a-conflict-of-interest-231760.

¹⁵ Congress exempted the president from the federal conflicts of interest statute under [18 U.S.C. § 208](http://www.uscode.gov/title-18/chapter-28/section-208).

¹⁶ Canter, Virginia, et al. Edited by Norman Eisen, The Brookings Institution, 2021, pp. 10, *IF IT’S BROKE, FIX IT Restoring Federal Government Ethics and Rule of Law*.

¹⁷ *Ibid.*, pp. 17.

¹⁸ *Ibid.*, pp. 16-19.

¹⁹ Issue One, 2017, *Time to Revise the Office of Government Ethics (OGE)*, www.issueone.org/wp-content/uploads/2017/08/IO-OGE-Edit-Memo-2017.pdf.

By nominating a significant number of individuals with ties to businesses, Trump placed a substantial burden on OGE. Additionally, in accordance with Trump's Executive Order 13770, "Ethics Commitments by Executive Branch Appointees," OGE was tasked with ensuring that no individuals were appointed to participate in matters on which they had lobbied within two years prior to their appointment.²⁰ Appointees who did not satisfy this regulation were supposed to be barred from employment unless they received a special waiver. However, in violation of his own executive order, Trump refused to disclose which appointees had received a waiver.²¹ This was especially problematic for OGE because 25% of Trump's appointees had been registered lobbyists.²² Research conducted by Public Citizen identified at least 30 lobbyists who were appointed by Trump to oversee the same exact issue areas they had lobbied, none of whom provided proof of a waiver.²³ Without Trump's compliance, the OGE was unable to carry out its necessary functions.

Tension between OGE and Trump culminated in July 2017 when Walter M. Shaub Jr. resigned from his position as director of OGE. Shaub had been appointed as director by President Barack Obama, and he still had one year remaining of his five-year term. Upon his early departure, Shaub expressed that "[t]here isn't much more I could accomplish at the Office of Government Ethics, given the current situation. OGE's recent experiences have made it clear that the ethics program needs to be strengthened."²⁴ Shaub's resignation is a clear indication of

²⁰ United States, Executive Office of the President Donald Trump. "Executive Order 13770: Ethics Commitments by Executive Branch Appointees." 28 Jan. 2017. Available [here](#).

²¹ Issue One, 2017, *Time to Revise the Office of Government Ethics (OGE)*, www.issueone.org/wp-content/uploads/2017/08/IO-OGE-Edit-Memo-2017.pdf.

²² Holman, Craig. "Perspectives on Ethics and Lobbying Reform in 2021." The Bryce Harlow Workshop on Ethics and Lobbying. American University. 6 Feb. 2021. Lecture.

²³ Ibid.

²⁴ Fandos, Nicholas. "Government Ethics Chief Resigns, Casting Uncertainty Over Agency." *The New York Times*, 6 July 2017, www.nytimes.com/2017/07/06/us/politics/walter-shaub-office-of-government-ethics-resign.html.

the need for reform; the director of OGE should not feel powerless enough to relinquish his position when responding to executive branch ethics violations. According to Shaub, “[t]he executive branch lacks an effective mechanism for enforcing conflict of interest laws and ethics regulations against political appointees when a president does not care about ethics.”²⁵

Deficiencies of the Office of Government Ethics

How was Trump able to consistently refuse the requests of OGE while seemingly facing no consequences? The aforementioned examples represent a mere fraction of the 3,400 conflicts of interests retained by the Trump Administration,²⁶ yet they are more than enough to demonstrate the inadequacy of OGE. Part of the issue stems from gaps in legislation, but I believe Trump’s unethical conduct could have been drastically reduced if OGE had the power of enforcement. OGE is strictly an advisory agency; it establishes ethics guidelines but relies on voluntary compliance from executive officials. The current system of ethics enforcement is administered separately from OGE by Designated Agency Ethics Officials (DAEOs).²⁷ The head of each federal agency is responsible for appointing a DAEO to monitor the agency’s adherence to ethics rules and regulations. If a DAEO suspects that an executive official is acting in violation of the established guidelines, they must refer complaints to the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), or the inspector general of the appropriate agency.²⁸ DAEOs are responsible for informing OGE when they refer complaints, but the

²⁵ Canter, Virginia, et al. Edited by Norman Eisen, The Brookings Institution, 2021, pp. 28, *IF IT’S BROKE, FIX IT Restoring Federal Government Ethics and Rule of Law*.

²⁶ *Ibid.*, pp. 19.

²⁷ “Enforcement Responsibilities.” *USOGE | Resources for Ethics Officials*, U.S. Office of Government Ethics, https://www.oge.gov/Web/OGEnsf/ethicsofficials_enforcement-resp?OpenForm.

²⁸ Issue One, 2017, *Time to Revise the Office of Government Ethics (OGE)*, www.issueone.org/wp-content/uploads/2017/08/IO-OGE-Edit-Memo-2017.pdf.

outcomes are beyond OGE's control. It is unrealistic to believe that this system of enforcement is effective. Because each DAEO works beneath their respective agency rather than as a part of OGE, they cannot necessarily be trusted to hold the head of their agency—i.e. their boss—accountable for breaking ethics regulations.²⁹

Another limitation of OGE is its inability to enforce the president's executive orders on ethics. This was not an issue prior to Trump's presidency because all former presidents were committed to enforcing their own standards of ethical conduct. By neglecting the regulations set by his executive order, Trump's presidency made it clear that an additional enforcement mechanism is necessary for holding executive officials accountable. OGE's executive ethics program failed to stand the test of time when confronted with a president who rejected the ethical norms and traditions of his predecessors.

Opportunities for Impactful Reform and Conclusion

I propose that OGE should be responsible for appointing and overseeing DAEOs. This would prevent potential political pressure or conflicts of interest from interfering in a DAEO's decision whether to issue an ethics complaint against the head of their particular agency. I also propose that OGE should be given full authority to conduct investigations into unethical conduct of all executive branch employees. Rather than referring complaints to an external department or agency, DAEOs should bring all ethics-related concerns directly to OGE. By concentrating advice and enforcement in the same agency, executive officials will assuredly be held accountable for violating ethics regulations. This also guarantees that the investigatory agency is extremely well-informed about the standards of ethics because they will have been the ones who

²⁹ McGehee, Meredith. "A History of Ethics and Lobbying: Perspective of a Reformer." The Bryce Harlow Workshop on Ethics and Lobbying. American University. 13 Feb. 2021. Lecture.

created them. If an ethics investigation concludes that the executive official in question has violated an ethics regulation, OGE should be able to sanction punishment in the form of a civil penalty or fine.³⁰ This would allow OGE to hold executive officials accountable for breaking ethics rules without pursuing a criminal investigation. If OGE determines that the violation is beyond their purview and does necessitate a criminal investigation, OGE can refer the complaint to the DOJ or the FBI. This improved organizational structure gives responsibility over unethical conduct directly to OGE rather than placing it in the hands of the agencies under investigation.

Lastly, OGE should be given the power to codify and enforce compliance with the president's ethics executive orders. When OGE was first established as a part of the Ethics in Government Act in 1978, policymakers failed to consider that we may one day have a president who holds low regard for precedent. The Trump Administration revealed the OGE's lack of authority when working under a president who refuses to act pursuant to established norms. Although OGE has proven itself to be weak and insufficient, there are clear opportunities for impactful reform. Without Trump's presidency, the topic of government ethics would not have been thrust to the forefront of conversation, and these deficiencies may have never come to light. I am confident that with a few adjustments, the Office of Government Ethics will continue to strengthen the trust and transparency between the federal government and the American people.

³⁰ Issue One, 2017, *Time to Revise the Office of Government Ethics (OGE)*, www.issueone.org/wp-content/uploads/2017/08/IO-OGE-Edit-Memo-2017.pdf.

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