



United States Office
Of Government Ethics

Highlights

Model Practices

- JSC provides public and confidential financial disclosure filers with cautionary memorandums.
- JSC and NASA leverage ethics-training resources by sharing responsibility for preparing annual ethics training presentations.
- JSC makes ethics training available to all employees and uses "JSC Today" and the "HR Notification System" to communicate directly with employees regarding ethics issues.
- JSC uses the NASA-developed written procedures for administration of the advice and counseling component of the ethics program

OGE Suggests

- JSC take additional steps to help ensure all financial disclosure reports are filed and certified timely.
- JSC closely examine all requests related to approval for travel that might be authorized under the authority of either 31 U.S.C. § 1353 or the widely attended gathering exception to the gift rules at 5 CFR § 2635.204(g) and ensure that the proper authority is used to allow employees to engage in relevant travel

If you have comments or would like to discuss the report, please contact Patricia Zemple, Associate Director, Program Review Division, at 202-482-9286 or pczemple@oge.gov.

Ethics Program Review National Aeronautics and Space Administration/ Lyndon B. Johnson Space Center

2010 Report

Executive Summary

The Office of Government Ethics (OGE) has completed its review of the ethics program at the National Aeronautics and Space Administration's (NASA) Lyndon B. Johnson Space Center (JSC). The purpose of a review is to identify and report on the strengths and weaknesses of a program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

During its ethics program reviews, OGE identifies model practices that agencies have implemented to enhance their programs. OGE's review of JSC's ethics program identified a number of model practices. The model practices include:

- providing public and confidential financial disclosure filers with cautionary memorandums,
- leveraging ethics-training resources by sharing responsibility for preparing annual ethics training presentations,
- making ethics training available to all employees and using "JSC Today" and the "HR Notification System" to communicate directly with employees regarding ethics issues,
- developing written procedures for administration of the advice and counseling component of the ethics program.

To enhance JSC's ethics program, OGE suggests that JSC ethics officials take additional steps to help ensure all financial disclosure reports are filed and certified timely. OGE also suggests that JSC ethics officials closely examine all requests related to approval for travel that might be authorized under the authority of either 31 U.S.C. § 1353 or the widely attended gathering exception to the gift rules at 5 CFR § 2635.204(g) and ensure that the proper authority is used to allow employees to engage in relevant travel.

This report has been forwarded to NASA's Designated Agency Ethics Official and NASA's Acting Inspector General.



United States Office
Of Government Ethics

Ethics Program Review

National Aeronautics and Space Administration Lyndon B. Johnson Space Center

March 2010 Report

Introduction

OGE MISSION

The United States Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance initiatives.

PURPOSE OF A REVIEW

The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

REVIEW AUTHORITY AND SCOPE

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the National Aeronautics and Space Administration (NASA) focused on the elements listed below:

- Leadership
- Program structure
- Financial disclosure systems
- Ethics training
- Ethics counseling
- Outside employment
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

Ethics Program Review: NASA – JSC

OGE's review of NASA focused on the ethics programs at three NASA Centers: Langley Research Center (LARC), Marshall Space Flight Center (MSFC), and the Lyndon B. Johnson Space Center (JSC). This report details OGE's review of JSC. Reports detailing OGE's review of LARC and MSFC are being issued separately.

Program Elements

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

LEADERSHIP

Commitment and action by agency leadership is the keystone for ensuring the integrity of an agency's ethical culture and for fostering public confidence in the decision-making processes of Government. During the course of an ethics program review, OGE looks for indications that agency leadership has taken concrete actions to support the ethics program. These actions can include signing guidance to employees emphasizing the importance of adherence to ethical principles, attending ethics training sessions with less senior employees, and otherwise emphasizing the importance of ethics requirements such as filing financial disclosure reports and attending required ethics training. While there is no reason to believe that JSC's senior leaders do not fully support the ethics program, there was no evidence of their affirmative action to communicate that support.

PROGRAM STRUCTURE

JSC's Chief Counsel has primary responsibility for administering the ethics program for approximately 3,000 employees. In addition, the Chief Counsel has delegated authority for carrying out ethics-related functions to 11 members of his staff.

FINANCIAL DISCLOSURE SYSTEMS

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (SF 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest review (OGE Form 450). Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs in providing counseling to employees. *See* 5 CFR § 2634.104(b).

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General Comments

OGE's examination of the public and confidential financial disclosure systems at JSC found that comprehensive written procedures are in place and allow for the efficient administration of both systems. These procedures are found in Chapter 4 of the NASA Procedural Requirements (NPR). Written comments on reports, documentation in files, and conversations with ethics officials indicated that public and confidential financial disclosure reports were thoroughly reviewed by JSC ethics officials.

JSC ethics officials provide public and confidential financial disclosure report filers with cautionary memorandums when interests disclosed on reports indicate the potential for a conflict of interest. This is considered a model practice because it reminds filers to remain vigilant to the possibility that their personal financial interests could potentially conflict with their official duties. Cautionary memorandums also demonstrate to filers that their reports are closely examined and that JSC is actively engaged in preventing conflicts of interest. Additionally, cautionary memorandums are another opportunity for ethics officials to have contact with employees, which raises general awareness of the ethics program.

Public Financial Disclosure System (SF 278)

To evaluate the filing, review, and certification of public reports filed by JSC employees, OGE examined 20 of the 94 public reports required to be filed by JSC employees in 2007. As detailed below, three reports were identified as having a delayed certification. These reports did not appear to disclose information that would require complicated analyses sufficient to warrant the 6 to 8 month delay between submission and certification. Timely filing of public financial disclosure reports bolsters public confidence in government processes, enhances employee respect for the ethics program and prevents embarrassment to filers. OGE suggests that ethics officials certify reports as soon as possible after submission and, when necessary, document the reason for delay of certification of reports. The following is a summary of OGE's examination.

Table 1
Public Financial Disclosure Reports

Report Type	Number in Sample	Filed Late	Reviewed Late	Delayed Certification
Incumbent	15	0	0	3
New Entrant	4	1	0	0
Termination	1	0	0	0
Total in Category	20	1	0	3

Confidential Financial Disclosure System

The confidential financial disclosure system within NASA is administered centrally through the NASA Shared Services Center (NSSC). NSSC created an electronic filing system, the Ethics Program Tracking System (EPTS), to administer the system. Ethics officials at NASA

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headquarters and the three reviewed components noted that there were many problems with the tracking and routing of reports through EPTS in 2007, the first year in which reports were centrally filed using the system. However, ethics officials were also universal in stating that the electronic filing and handling of reports through NSSC during the 2008 annual filing cycle was vastly improved over 2007. Weekly teleconferences with headquarters and component ethics officials and NSSC representatives were instituted and are still being held to discuss potential improvements and resolve technical issues.

To evaluate the filing, review, and certification of confidential reports at JSC, OGE examined 50 out of the approximately 1,731 confidential reports required to be filed by JSC employees in 2008. As detailed below, a number of confidential reports examined by the OGE review team were filed late. Timely filing of reports is important because it allows ethics officials to more quickly identify and prevent real or potential conflicts of interest.

OGE suggests that JSC take steps to ensure all reports are filed timely. In regard to incumbent reports, these steps could include more reminders to filers as filing dates approach, notices on bulletin boards, or memorandums to supervisors reminding them to ask filers to submit reports or request extensions, if appropriate. In regard to new entrant reports, these steps could include making the determination of an employee's filing status (either by a supervisor or an ethics official) a part of general in-processing procedures. Periodic reminders to supervisors to review employee's filing status when duties and responsibilities change or an employee is newly assigned or promoted may also be effective. JSC ethics officials may also want to consider issuing notices to employees via bulletin boards and newsletters stating the general criteria used to determine filing status and asking employees to discuss their filing status with supervisors or ethics officials, if appropriate. The following is a summary of OGE's examination of confidential financial disclosure reports.

Table 2
Confidential Financial Disclosure Reports

Report Type	Number in Sample	Filed Late	Reviewed Late	Delayed Certification
Incumbent	36	5	0	0
New Entrant	14	4	0	0
Total in Category	50	9	0	0

ETHICS TRAINING

An ethics training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees.

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Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with an initial ethics orientation. An initial ethics orientation must include

- the Standards of Ethical Conduct for Employees of the Executive Branch (Standards);
- any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. *See* 5 CFR § 2638.703.

The Human Resources Office provides new JSC employees with a link to a website-based training module during in-processing. The training module includes all required material, is designed to take one hour to complete, and automatically records individual employee's completion of initial ethics orientation. All employees required to receive initial ethics orientation in 2007 were trained.

Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training each year. *See* 5 CFR § 2638.704(a). Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See* 5 CFR § 2638.704(c)(2). Other covered employees (e.g., confidential filers) are required to receive verbal annual ethics training at least once every three years and written annual training in the intervening years. *See* 5 CFR § 2638.705(c). The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of the following:

- the 14 Principles of Ethical Conduct,
- the Standards,
- any agency supplemental standards,
- the Federal conflict of interest statutes, and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See* 5 CFR § 2638.704(b).

Approximately 1,825 JSC employees were required to receive annual ethics training in 2007. According to ethics officials, all but approximately two people completed the training by either attending one of several in-person instructor-led training sessions conducted by JSC's ethics officials or by completing an online training module. Based on an examination of the materials used to provide annual ethics training in both in-person instructor-led training and online training module formats, OGE concluded that the training met the relevant requirements.

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Each year, one NASA Center is designated to develop a web-based training module to be used throughout NASA to meet annual training requirements. Kennedy Space Center developed the training module used in 2007. Once the training module is prepared in “draft” form, it is shared with NASA ethics officials at headquarters and other Centers for comment. Changes are made based on comments that are received.

The training module prepared by Kennedy Space Center and used at JSC was interactive. The module presented likely scenarios, asked what the appropriate action would be in a multiple choice answer format, and provided a link to the underlying rules from which the correct answers were derived. The substantive content was general enough to be relevant to all NASA employees yet still address the ethics-related issues which JSC employees are most likely to encounter. The leveraging of ethics-training resources is a model practice because it allows ethics officials to devote more time and effort to other elements of the ethics program without compromising the quality of ethics training provided to employees.

To receive credit for completing computer-based annual training, employees must complete the entire training module. The receipt of training is tracked in two ways. Computer-based training is automatically tracked through EPTS, which provides documentation that training was completed. Employees attending in-person instructor-led training are required to sign in to receive credit for completing training. Sign-in sheets are then retained by ethics officials.

In addition to the 1,825 employees required to receive annual training, many more have reviewed the online initial ethics orientation and annual training modules, according to ethics officials. Making ethics training available to all employees is a model practice strongly endorsed by OGE. It serves to educate employees who might not otherwise be exposed to ethics-related guidance and instruction. It is also a means of raising awareness of the ethics program throughout an agency. JSC ethics officials also provide targeted training for supervisory personnel to address the ethics issues they are likely to encounter.

Ethics officials make extra efforts to educate employees and raise awareness of ethics-related issues. These efforts include using “JSC Today” and the “HR Notification System” to disseminate ethics-related notices and guidance. The JSC Today and HR Notification System are email/newsletter formats used to communicate JSC news and important information directly to JSC employees. Ethics officials have used these systems to educate all JSC employees regarding specific issues such as the rules governing fundraising and giving and receiving gifts. OGE also strongly endorses this type of ongoing effort to educate employees and raise general awareness of ethical principles.

ETHICS COUNSELING

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. *See* 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 CFR § 2638.204. OGE’s assessment of an ethics counseling program focuses on five

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factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Based on the review of the sample of advice and counseling and procedures as described above, OGE concluded that JSC's ethics officials are providing advice in a manner that is transparent, accountable and consistent.

NASA has established an agency-wide internal policy for administering the ethics advice and counseling component of the ethics program. This policy is found in Chapter 3 of the NPR. The policy stipulates, among other things, when advice must be requested and provided in writing, which office within NASA (either at headquarters or within each Center) is responsible for providing advice to specified groups of employees (e.g., SES versus non-SES), who shall be responsible for approving outside activity requests, and the process for seeking and approving statutory waivers. Establishing a written policy is an important model practice because it provides for succession planning and serves to inform all ethics officials responsible for providing advice to employees of the relevant requirements. If followed, NASA's internal procedures should help ensure that ethics-related advice is transparent and consistent. Requiring advice to be provided in writing also helps ensure accountability on the part of ethics officials who render such advice. Transparency, consistency, and accountability help to ensure confidence in Government processes and credibility for the ethics program at NASA.

In addition to the Chief Counsel, seven attorneys within JSC's Office of Chief Counsel are responsible for providing ethics advice and counseling. OGE reviewed approximately 49 pieces of advice and counseling in the areas of gifts, endorsements, awards and honorary degrees, letters of recommendation, fundraising, widely attended gatherings (WAG), conflict of interest/impartiality, and post employment. Generally, the advice rendered in the areas of gifts, endorsements, awards, letters of recommendation and fundraising appeared to be accurate and timely.

Of special note are the documents that have been developed to address recurring situations. For example, JSC has developed what appears to be a "standard response" letter for purposes of returning otherwise prohibited gifts to donors. The letter explains to the donor the Government-wide restrictions on gift acceptance. Similarly, JSC sends a standard response letter to organizations requesting support from NASA for charitable fundraising events. Again the relevant provisions of the Standards of Conduct regarding official and personal fundraising restrictions are briefly explained. Finally, JSC has developed a standard memorandum to document awards and honorary degree determinations. These documents help maintain transparency, accountability, and consistency in the advice and counseling rendered.

OGE did note that some widely-attended gathering (WAG) determinations were problematic. This does not appear to be unique to JSC. OGE has observed similar determinations at other NASA facilities. Specifically, NASA employees from various Centers are being given WAG determinations to attend events associated with Shuttle launches at Kennedy Space Center in Florida. It appears that the events in question are the events for which the employee has been placed in travel status by NASA. Accordingly, it is likely that NASA should be accepting the free attendance at some, if not all, of these launch-related events under the authority of 31 USC § 1353 rather than under the WAG provisions. OGE suggests that JSC

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closely examine all related requests and ensure that the proper authority is used to allow employees to attend these events.

OGE's review of advice regarding post-employment restrictions found in 18 USC § 207 also raised concern that provisions of that statute were not being properly applied by JSC ethics officials. In response to OGE's concerns, JSC ethics officials have implemented new procedures, including coordinating with NASA headquarters ethics officials when providing advice that is complex in nature. OGE will continue to work with NASA to further enhance the advice and counseling element of NASA's ethics program. OGE is satisfied that the issues raised have been adequately addressed and, therefore, no recommendation is being made.

OUTSIDE EMPLOYMENT

NASA's supplemental standards prohibit NASA employees, other than special Government employees, from engaging in certain types of outside employment activities and require employees to seek prior approval before engaging in other types of outside employment activities. *See* 5 CFR part 6901. The supplemental standards also prescribe an approval process designed to prevent employees from engaging in outside employment activities that would create a conflict of interest with their official duties. JSC ethics officials maintain a list of current approvals to engage in outside employment activities. Approvals may be granted for a period of up to 3 years. OGE examined eight requests for approval to engage in a variety of outside employment activities. All eight requests appear to have included sufficient information for ethics officials to conduct a conflict of interest analysis and all eight were approved.

ENFORCEMENT

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).

Ethics officials and representatives from the NASA Office of the Inspector General's Resident Agent in Charge indicated that there is an effective working relationship between their two offices. This relationship allows for coordination to ensure that information developed by the Resident Agent in Charge and his staff regarding alleged ethics-related violations is shared with ethics officials.

The Resident Agent in Charge made two referrals to the U.S. Attorney's Office for the Southern district of Texas in 2006. Both referrals involved JSC employees who were suspected of violating 18 U.S.C. § 208(a). Both employees eventually plead guilty and were convicted. Typically, there are few ethics-related violations of the criminal conflict of interest statutes or the Standards in a given year. Those violations that are identified are not separately tracked as "ethics offences," according to ethics officials.

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ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports of travel payments from non-Federal sources in excess of \$250 to OGE. *See* 31 U.S.C. § 1353.

JSC accepts travel payments from non-Federal sources under the authority of 31 U.S.C. § 1353. The procedures for requesting and receiving authorization for acceptance of travel payments from a non-Federal source are detailed in NASA Policy Directive NPD 9710.1Y and JSC guidance. Requests for acceptance of travel payments from non-Federal sources under the authority of 31 U.S.C. §1353 are made by completing NASA Form 1167. The form is an efficient tool for gathering the information required to conduct a conflict of interest analysis.

OGE examined two semiannual reports of travel payments from non-Federal sources in excess of \$250 covering the period October 1, 2006, through September 30, 2007. The two reports included 67 instances of payments that were approved under the authority of 31 U.S.C. §1353. OGE also examined the supporting documentation related to 9 of the 67 payments. In each case a conflict of interest analysis was conducted and approval was granted prior to the travel taking place and the acceptance of payment from the non-Federal source.

Summary

OGE's review identified a number of model practices that have been incorporated into the JSC ethics program. The model practices include:

- providing public and confidential financial disclosure filers with cautionary memorandums,
- leveraging ethics-training resources by sharing responsibility for preparing annual ethics training presentations,
- making ethics training available to all employees, and using "JSC Today" and the "HR Notification System" to communicate directly with employees regarding ethics issues, and
- developing written procedures for administration of the advice and counseling component of the ethics program.

Suggestions

To enhance JSC's ethics program, OGE suggests that JSC ethics officials take additional steps to help ensure all financial disclosure reports are filed and certified timely. OGE also suggests that JSC closely examine all requests related to approval for travel that might be authorized under the authority of either 31 U.S.C. § 1353 or the WAG exception to the gift rules at 5 CFR § 2635.204(g) and ensure that the proper authority is used to allow employees to engage in relevant travel/activities.

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If you have comments or would like to discuss this report, please contact Trish Zemple, Associate Director, Program Review Division, at 202-482-9286.

Agency Comments

OGE released a draft of this report to JSC and NASA Headquarters for comment in December 2009. NASA's comments were received on March 2, 2010 and addressed the two suggestions contained in the draft report and this final report.

In response to the suggestion that JSC ethics officials take additional steps to help ensure all financial disclosure reports are filed and certified timely, JSC noted that at the time of the review, NASA had only recently transitioned to an electronic filing and record keeping system for financial disclosure reporting. The system was subsequently improved so that automated initial notifications and reminder notices would be provided to new entrant and annual filers in advance of their respective reporting deadlines. In addition, JSC has begun using the Center's Human Resources Notification System and Center-drafted batch e-mails as additional tools to notify filers of approaching filing deadlines and points of contact to request necessary extensions. JSC also intends to adopt OGE's idea to involve supervisors to encourage subordinates to file or request timely extensions.

OGE also suggested that JSC closely examine all requests related to approval for travel that might be authorized under the authority of either 31 U.S.C. § 1353 or the WAG exception to the gift rules at 5 CFR § 2635.204(g) and ensure that the proper authority is used to allow employees to engage in relevant travel/activities. In response, JSC comments were consistent with those provided in response to OGE's report on its review of MSFC's ethics program in which the same suggestion was made. JSC stated that:

OGE observes in the draft report that employees from various Centers including JSC are being given WAG determinations to attend events associated with Shuttle launches at Kennedy Space Center (KSC) in Florida. The draft report noted that "It appears that the events in question are the events for which the employee has been placed in a travel status by NASA. Accordingly, it is likely that NASA should be accepting the free attendance at some, if not all, of these launch related events under the authority of 31 U.S.C. § 1353 rather than under the WAG provisions."

The relevant WAG determinations reviewed by OGE during the JSC program review involved pre-launch receptions. These WAGs involved ancillary events that occurred in the days preceding launches. Although JSC generally uses 31 U.S.C. § 1353 authority to accept free attendance where appropriate for employees attending events while in a travel status, our practice has been to rely on WAG authority to accept free attendance for employees attending events in a travel status, our practice has been to rely on WAG authority to accept free attendance for most pre and post launch receptions.

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During the period preceding any launch, Federal employees from NASA's spaceflight centers and NASA Headquarters travel to KSC for mission-required pre-launch meetings. These employees are usually on official NASA travel with the primary purpose of attending pre-launch meetings and other events culminating in the launch. Attendance at pre-launch receptions is ancillary to these official NASA activities. JSC employees attend these launch receptions in their personal capacities, and not as part of their official NASA duties. Additionally, the pertinent GSA regulations also exclude mission travel from the definition of the types of events where the use of reimbursable travel might be appropriate. (See 41 CFR 304-2.1.)

For these reasons, we feel it is appropriate to continue to follow the practice of relying on WAG authority to approve attendance at pre or post launch receptions where appropriate. JSC will continue to examine all requests related to approval for travel and will carefully apply the authority of 31 U.S.C. § 1353 to accept unsolicited offers from non-Federal sponsors to provide travel and related expenses to attend qualifying meetings or similar functions where possible.

OGE appreciates JSC's comments and recognizes that WAG determinations are within the purview of the agency making the determination. However, OGE continues to suggest that JSC closely examine all requests related to approval for travel that might be authorized under the authority of either 31 U.S.C. § 1353 or the WAG exception to the gift rules at 5 CFR § 2635.204(g) and ensure that the proper authority is used to allow employees to engage in relevant travel or activities. JSC, as stated in their comments on the report, has agreed to continue to examine all requests related to approval of travel and carefully apply the authority of 31 U.S.C. § 1353. OGE, as always, is available for consultation regarding these issues.