MEMORANDUM

TO: OGE Employees

FROM: Walter M. Shaub, Jr.
            Director

SUBJECT: OGE Policy on Volunteer and Pro Bono Activities by OGE Employees

Executive Order 12988 prompts federal agencies to develop appropriate programs to “encourage and facilitate pro bono legal and other volunteer service by Government employees.” Consistent with Section 2 of Executive Order 12988, Executive Order 13401, and the Office of Personnel Management’s (OPM) Guidelines, the Office of Government Ethics (OGE) encourages employees to participate voluntarily in direct and consequential community service. These services include pro bono legal services and other volunteer activities to be performed by employees on their own time, in accordance with applicable statutes, regulations, and rules of conduct.

For employees who are interested in becoming involved in volunteer activities, but are uncertain of an outlet, a list of volunteer and pro bono resources and opportunities is included in Attachment A. Employees should not feel that their potential volunteer or pro bono opportunities are limited to those organizations and activities on this attached list. OGE does not seek to restrict the types of volunteer activities in which employees may engage in their free time, provided that the activities do not violate any statutory or regulatory restrictions.

I. Definitions

   a. Pro Bono Legal Services: Pro Bono legal services are those legal services performed without compensation and include, but are not limited to, the provision of legal services to:

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4 This definition is based on Rule 6.1 of the ABA Model Rules of Professional Conduct, with some modifications that, among other things, make clear that pro bono legal services must be provided without fee. This definition of pro bono legal services includes a broad range of activities; the listed activities are intended as examples only. OGE recognizes, however, that statutory or regulatory restrictions may prohibit government lawyers from performing certain pro bono services. See Section II.
5 “Performed without compensation” means that no person or organization may be compensated for the employee’s time, e.g., fees may not be sought by anyone for an OGE attorney’s services in a pro bono case.
i. persons of limited means or other disadvantaged persons;

ii. charitable, religious, civic community, governmental, health, and educational organizations in matters which are designated primarily to address the needs of persons of limited means or other disadvantaged persons, or to further their organizational purpose;

iii. individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties or public rights; or

iv. activities seeking to improve the law, the legal system, or the legal profession.

b. *Volunteer Activities*: Volunteer Activities are those activities, other than the practice of law, performed without compensation. They include, but are not limited to, the provision of services to:

i. persons of limited means or other disadvantaged persons;

ii. charitable, religious, civic community, governmental, health, and educational organizations in matters which are designated primarily to address the needs of persons of limited means or other disadvantaged persons, or to further their organizational purpose.

II. Limitations on Volunteer and *Pro Bono* Activities

Certain restrictions apply to outside activities performed by executive branch employees, even if the activity is a voluntary and/or charitable one. OGE employees may not engage in volunteer or *pro bono* activities that create or appear to create a conflict of interest with their work here at OGE. *See generally*, 18 U.S.C. § 201 et. seq. and 5 C.F.R. part 2635.

Under the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), 5 C.F.R. part 2635, employees are prohibited from engaging in activities that would:

a. require the recusal of the employee from significant aspects of the employee’s official duties, see 5 C.F.R. § 2635.802(b);

b. create an appearance that the employee’s official duties were performed in a biased or less than impartial manner, see 5 C.F.R. § 2635.502,\(^6\) or

\(^6\) Employees should bear in mind that participation in an outside organization could give rise to a covered relationship under 5 C.F.R. § 2635.502(b)(1)(v). Employees should remain conscious of potential appearance problems and use the process described at section 2635.502 of the Standards to determine whether an outside activity would require them to recuse from aspects of their official duties.
c. create an appearance of official sanction or endorsement, see 5 C.F.R. § 2635.702(b).

In addition, 18 U.S.C. § 205 prohibits an employee from representing another person before any court or agency of the United States, in a matter in which the United States is a party or has a direct and substantial interest. There are limited exceptions for representing immediate family (spouse, child, and parents), fellow employees in personnel administration proceedings, and certain employee organizations in limited circumstances.

Outside activities by OGE employees must also comport with the Hatch Act, which limits certain political activities of most executive branch employees. See 5 U.S.C. §§ 7321-7326. The Hatch Act and related regulations govern participation with organizations or persons whose activities are geared towards the success or failure of a partisan political party, candidate, or group. You should consult with OGE’s Alternate Designated Agency Ethics Official and review information from the U.S. Office of Special Counsel if you have questions about the rules for engaging in partisan political activities in a volunteer capacity.

If you are unsure about the application of the restrictions to a proposed volunteer or pro bono activity, you should consult with OGE’s Alternate Designated Agency Ethics Official.

III. Use of Official Property and Staff

Under the Standards, an employee may only use Government property for official business or as authorized. See 5 C.F.R. § 2635.704. OGE employees are hereby authorized to use OGE equipment and facilities in connection with their volunteer and pro bono activities, if the use does not interfere with the mission or operations of the Office or the employee’s official duties, and incurs negligible additional expense to the Government.

Negligible additional expense would include such things as electricity, ink, very small amounts of paper, and ordinary wear and tear. Employees wishing to use more than a small amount of paper must provide their own or pay its cost. Limited phone and facsimile calls are also permitted, subject to the same considerations. Employees may also use the OGE library and the LEXIS database to conduct legal research provided such use incurs no extra cost to the Government. If there is any question as to whether a particular use would be considered "negligible," you should contact your supervisor.

Use of E-mail and the Internet in connection with volunteer activities must be consistent with OGE’s policy on use of these technologies. That policy has been issued separately. In addition, pro bono or other volunteer work may not be assigned to or required of support staff.

IV. Use of Official Position

Any volunteer activity in which an employee participates would be in his or her personal capacity. It is therefore prohibited to indicate or represent in any way that such activity is on behalf of the Government, or in the employee’s official capacity. Employees cannot use OGE letterhead or business cards that identify them as OGE employees, nor can they identify
themselves as OGE employees in communication or correspondence undertaken in connection with their chosen volunteer activity. If an employee uses OGE’s e-mail system in connection with volunteer activities, the employee must ensure that any signature block stating the employee’s title and affiliation with OGE is removed. Incidental identification of an employee’s official position or office, such as providing the employee’s office phone number when necessary to receive a telephone call, is not prohibited.

V. Scheduling Volunteer and Pro Bono Activities

Because any volunteer or pro bono activity is the personal activity of the employee and not performed on behalf of OGE, employees are encouraged to seek volunteer opportunities that can be accomplished outside of work hours on their own personal time. An employee’s official OGE assignments must be given priority over any outside activities.

a. Alternative Work Schedules

Compressed Work Schedules\(^7\) and/or Flexible Work Schedules\(^8\) may be established for employees who wish to engage in volunteer activities during normal working hours.

b. One-Time or Limited Basis Work Schedule Adjustments

The employee may also seek to adjust his or her work schedule on a one-time or limited basis to accommodate those infrequent occasions when volunteer activities require time that would ordinarily fall within his or her official duty hours. Employees may therefore request to report for work earlier or later than the regularly scheduled time, in order to meet the needs of their volunteer activities. Requests for such temporary schedule changes must be made at least one day before the first day on which the change is requested, and if at all possible the requested changes in the schedule should occur within a single pay period. In any event, a requested change is not effective unless approved by the supervisor. Supervisors will inform the employee of their approval or disapproval of the request.

c. Annual Leave

When employees request annual leave to perform volunteer service, OGE will be as accommodating as possible in reviewing and approving such requests consistent with regulations in 5 C.F.R. part 630, subpart C, and OGE’s Annual Leave policy.

\(^7\) Under 5 U.S.C. § 6121(5) a compressed work schedule means that an employee’s basic work requirement for each pay period is scheduled by the agency for less than 10 workdays.

\(^8\) Under 5 U.S.C. § 6122, a flexible work schedule includes designated hours (core hours) and days when an employee must be present for work; and designated hours during which an employee on such a schedule may elect the time of such employee’s arrival at and departure from work, solely for such purpose or, if and to the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday.


d. Excused Absence (administrative leave)

In some circumstances, OGE may authorize administrative leave for the performance of pro bono activities that cannot be accomplished outside of business hours or by use of alternative work schedules, such as some court appearances, mediations, and client or witness interactions where access to a client or witness is circumscribed (e.g., by hospital or prison visiting hours). An employee who would like to request administrative leave for such pro bono activities must consult with his or her supervisor and OGE’s Alternate Designated Agency Ethics Official to ensure the proposed use of administrative leave meets the following criteria identified by the Office of Personnel Management (OPM).

OPM permits the use of administrative leave for such activities where:

i. the employee’s absence is directly related to the agency’s mission;

ii. the employee’s absence is officially sponsored or sanctioned by agency leadership;

iii. the employee’s absence will clearly enhance an employee’s professional development of skills in his or her current position; or

iv. the employee’s absence is brief and in the interest of the agency.

Consistent with OPM guidance, second-level supervisors may approve requests for administrative leave for pro bono activities that can only be accomplished during normal business hours. The decision to grant administrative leave is wholly discretionary. However, the decision to grant administrative leave may not be affected by a supervisor’s personal views regarding the substance of the pro bono activity. Second-level supervisors may grant up to 30 hours of administrative leave for pro bono activities to any employee in a calendar year.

VI. Special Issues for Attorneys

While attorneys are, of course, free to participate in volunteer activities in accordance with this policy just as any other OGE employee, their particular expertise gives them the opportunity to provide unique assistance to the disadvantaged in our society. There is a fine tradition in the law for providing services pro bono publico, and OGE attorneys are encouraged to follow this tradition and help meet this societal need. OGE attorneys examining pro bono opportunities should be aware of certain issues that may affect the decisions that they make regarding pro bono service. These include the following:

a. Malpractice Insurance: Before agreeing to meet with or accept a pro bono legal client, an OGE attorney should determine whether the referring pro bono program or organization has a malpractice insurance policy which covers volunteer attorneys.\(^9\) OGE does not provide malpractice coverage for pro bono work.

\(^9\) Generally, pro bono programs organized by the local bar or the more established referral programs do provide malpractice coverage. The Pro Bono Program Manager will have information regarding which programs
b. *Restrictions on Unauthorized Practice of Law*: D.C. Court of Appeals Rule 49 permits a Federal Government attorney who is a member in good standing of another state bar to accept *pro bono* cases, if the attorney is assigned or referred by an organization that provides legal services to the public without fee, provided that the attorney is supervised by an active member of the D.C. Bar. Such representation is therefore not considered to violate the D.C. Bar restrictions prohibiting the unauthorized practice of law in the District.

This policy does not create any enforceable rights.

Attachment
Attachment A: List of Volunteer and Pro Bono Resources

The following is a non-exclusive list of volunteer and pro bono resources in the area. Some of the volunteer opportunities may not be appropriate for every employee, and employees are responsible for ensuring that such volunteer activities do not violate any statutory or regulatory restrictions. In addition, OGE’s representative to the Federal Interagency Pro Bono Working Group can provide you important information about pro bono legal work.

Pro Bono Resources

- **District of Columbia Pro Bono Opportunities**
  The D.C. Bar Pro Bono Program’s Directory of Pro Bono Opportunities provides a comprehensive listing of agencies in D.C. that need volunteer lawyers, legal assistants and law students.
  http://www.dcbar.org/pro-bono/resources-and-training/directory-legal-service-providers.cfm

- **Maryland Pro Bono Opportunities**
  http://www.probono.net/dc/library/attachment.38196?print

- **Virginia Pro Bono Opportunities**
  http://www.probono.net/dc/library/attachment.39784

- **Pro Bono Opportunities in Other States**
  http://www.probono.net/

- **Pro Bono Opportunities for Non-Lawyers**
  The following directory includes pro bono opportunities for volunteers who are not attorneys.
  http://www.probono.net/dc/library/attachment.38294

Volunteer Resources

- **Serve.gov**
  United We Serve, President Obama’s Service Initiative, is an online resource for finding volunteer opportunities in your community.
  http://www.serve.gov/

- **Volunteer.gov**
  Volunteer.gov is America’s Natural and Cultural Resources Volunteer Portal.
  http://www.volunteer.gov

- **Corporation for National & Community Service**
  http://www.nationalservice.gov/