

MEMO #10

BROADENING AND DEEPENING ETHICS STANDARDS AND TRAINING FOR FEDERAL AND STATE OFFICIALS

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On the surface, there appears to be a great deal of attention to ethics by government administrators. Ethics laws are fairly universal at all levels of government, and presumably there are orientations and training activities that reinforce the content of these laws. In the federal, which are the focus of this memo, however, there is evidence that the scope of the ethics standards varies widely. They may represent narrow standards of conduct that specify how administrators should behave and what rules they should follow. Codes based on ethical principles, on the other hand, also identify the ethical principles to which public officials should be committed and aspire to attain. Similarly, training may emphasize observing ethics laws and complying with rules rather than understanding and learning how to implement ethical principles as public servants. The legal approach should not be dismissed because as Earl Warren said, “law floats on a sea of ethics.” It would be useful, however, to give more attention to how ethics upholds the law and extends beyond it.

In some respects, the need for this broadened approach is longstanding. There might not a particular scandal or specific changed circumstances that call for action now. Still, the increased intensity of conflict between candidates for electoral office make it important for newly appointed administrators to understand that they should advance the public interest—not just the interests of the official who appointed them to their position. The proposed changes in ethics training reflect the increased recognition that the steps taken to promote the ethical behavior of public officials in the past forty years should be expanded. Current federal and state ethics requirements focus primarily on meeting standards of conduct, not engaging in activities or relationships that could compromise the official’s integrity, and not benefitting personally from public office. The intensive vetting process that new appointees have experienced reinforces the attention to personal interests and relationships. A broader view of ethics is needed. The orientation to public service ethics that high-ranking officials receive should be expanded beyond knowledge of ethics laws and keeping officials out of trouble.

Ethics training should examine the full range of ethical responsibilities that officials have. Such training will expand the ethical awareness of officials and strengthen their capability to set a positive ethical tone for their organization and be a positive example for the staff that report to them. The goal is to have government leaders who not only avoid ethical lapses but also provide ethical leadership. This memo elaborates the scope of these ethical principles and suggests how they can be conveyed through training.

The Development of Ethical Standards in Government

The near universality of ethics codes in government may lead to the conclusion that codes have long been present and that these official codes provide an appropriate and complete set of standards that

public officials should uphold. With only a few exceptions, government-endorsed ethics statements were rare until the 1960s.

Furthermore, the overall tone of the approaches to promoting ethics led some public administration scholars to conclude that codes represented the “low road” to ethics. This approach stresses specific but narrow instructions about acceptable behavior and conveyed a negative orientation that stressed what officials should not do. There was a great upsurge in developing ethics codes in the 1970s spurred by the Watergate crisis as well as other ethical scandals in government and business. In 1978, the Congress passed the Ethics in Government Act, and a Presidential Executive Order established the Standards of Ethical Conduct for Employees of the Executive Branch. The Office of Government Ethics was given the responsibility to interpret and provide guidance on the Standards, although the exact standards varied by department. Standardization did not occur until 1988 when the Ethics in Government Act was reauthorized, and Presidential Executive Order 12674 established the 14 General Principles of Ethical Conduct. The principles were subsequently issued in the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. § 2635.101(b). These standards have strengths and limitations. A key positive provision in the Standards of Ethical Conduct is recognizing public service as a “public trust.” In the introduction to the standards, this “basic obligation of public service” is enunciated.

Public service is a public trust. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain.

Although reference is made to the Constitution and ethical principles, these are not fully developed in the Standards. There is little attention given to the responsibilities of the government official as a “trustee,” but rather a focus on the official’s qualities and conduct as a person working for the federal government. It is certainly appropriate to expect public officials to respect the public as the owners of the government’s assets and to act in their interests rather than advancing their own professional or personal interests. Still, rather than elaborating the full range of ethical responsibilities that public officials have, the Standards elaborate their personal characteristics and the kinds of conduct that should be displayed or avoided in order to be a public official.

To illustrate the difference in perspective about what is expected of ethical public officials, the Standards can be compared to the Code of Ethics of the American Society of Public Administration (ASPA). The ASPA Code has evolved since the first version in 1983 through the current version approved in 2013. It enunciates the ethical standards that members are expected to meet, but it is intended to express the standards that should apply to all professionals who serve the public. Not all public agencies will have the same interaction with the public, and not all administrators will have the full range of responsibilities covered by the Code in their position. For example, not all administrators directly interact with elected officials in making policy recommendations, although many administrators provide information that is ultimately the basis for recommendations. Still, the ASPA Code provides a benchmark that can be used by government agencies at all levels of government to examine the orientation and scope of their ethics training. A workbook and assessment guide assists individual administrators to identify what aspects of the Code relate most closely to their position and how they can strengthen the ethical commitments relevant to their responsibilities.²⁴

²⁴ http://www.aspanet.org/PUBLIC/ASPADocs/Membership/Ethics_Assessment_Guide.pdf

When examining the 14 Standards of Ethical Conduct for Employees of the Executive Branch,²⁵ most of the standards correspond with two of the ASPA principles—demonstrate personal integrity and promote ethical organizations. There are no standards that address advancing the public interest and serving the public, being transparent and engaging the public, acting as a counsel who fully informs and advises superiors and peers, and being committed to professional excellence. The standards partially match two other principles—upholding the law and advancing social equity. However, whereas the ASPA Code calls for administrators to make efforts through elected officials to strengthen the law, the Standards refer only to compliance in official activities and private life. Similarly, public officials should “adhere to all laws and regulations that provide equal opportunity” whereas as the ASPA Code calls on administrators to not only “treat all persons with fairness, justice, and equality” but also to take action to “reduce unfairness, injustice, and inequality in society.” Furthermore, expanding diversity and inclusion are part of promoting ethical organizations and advancing professional excellence applies to all subordinates as well as to oneself.

With the few exceptions just noted, the Standards of Ethical Conduct focus on the personal characteristics of the honorable trustee and on preventing the abuse of organizational resources. These are important expectations but limited in scope. When the Federal Code that elaborates and illustrates the Standards is examined, the focus is even narrower. The Office of Government Ethics has examined certain aspects of the Standards in seven subparts. Most of these subparts deal with certain aspects of personal integrity and a couple elaborate the proper use of organizational resources. It should be recognized that this compilation does not necessarily include the content of more than 2000 informal advisory opinions issued by the Office of Government Ethics.²⁶ Still, with no detailed examination of what is meant by “public service is a public trust” in this codification of the standards of ethical conduct, it is not surprising that many discussions of this potentially far-reaching standard focus narrowly on the kinds of behavior needed to secure the trust of the public without considering what it means to be a trustee for the public.

Examples of Narrow and Broad Scope of Ethics Standards

The Department of Defense has assembled an extensive *Encyclopedia of Ethical Failure* with real examples of conduct that violates of the “standards of conduct” by officials from all parts of the federal government. The categories of violations generally match those in the Standards of Conduct with additional detailed sections on bribery, endorsements, fraud, gambling, morale/welfare/recreation issues, political activity violations, and travel violations. Despite annual updates through 2015, the *Encyclopedia* provides no examples of unethical conduct in the Veterans Affairs regarding the coverup of shortcomings in patient care. Although numerous examples are provided of misconduct by VA staff members, e.g., hiring a friend, getting kickbacks, misusing credit cards, conflict of interest, exorbitant charges for a conference, etc., there is no mention of service problems in VA hospitals and manipulation of patient lists to hide the problems. Nor is there mention of the many cases of retaliation directed at staff members who filed whistleblower complaints revealing the service problems and coverup even though the Office of Special Counsel has announced settlements with some of the employees who suffered retaliation. The omissions might be explained by the fact that coverup and retaliation are improper or illegal under other federal laws and regulations. Furthermore, these kinds of conduct are not addressed explicitly by “Federal ethics statutes and regulations”—the focus of the *Encyclopedia*. It is

²⁵ <https://www.oge.gov/Web/oge.nsf/Resources/Standards+of+Ethical+Conduct+for+Employees+of+the+Executive+Branch>

²⁶ <https://www.oge.gov/>

inappropriate, however, to segment the definition of ethics and use the term to refer primarily to aspects of personal integrity.

This approach to training emphasizes what officials should not do in order to avoid be unethical and violate the law. Our objective in orienting public officials to ethics should be more than seeking to keep them from discrediting themselves and their organization. An excellent example of the broader view is the conclusion of the head of the Office of Government Ethics in its 1988 report regarding the conduct of Edwin Meese as Attorney General:

A major purpose of this memorandum is to remind and inform that simply avoiding criminal conduct is not the mark of public service. The duties imposed by noncriminal standards are far harder to discharge.

Officials should “make every effort to adhere to the high ethical standards the public has a right to expect from them and that they expect from themselves.”²⁷ Government officials should not just seek to comply with laws and regulations but also should examine for themselves, their position, and their organization what it means to adhere to “high ethical standards.”

The Recommended Approach to Training

The orientation and training of new high level officials in the federal and state governments could usefully provide this broad view of what it means to be an ethical public administrator. Expanding the scope of ethical principles that are considered in the training will deepen the understanding of and commitment to these principles. Further, it will increase the likelihood that public officials will act according to these ethical principles. Furthermore, ethical capacity is increased by identifying and working to remove obstacles to ethical conduct within the organization. This approach continues and broadens the consideration of personal integrity in public office, and also addresses other broad duties of public officials to advance the public interest, serve the public, uphold and strengthen the law, advance social equity, and promote professional excellence. It examines what is expected of public officials in their relationship to the public, to superiors, and to peers and how they can contribute to building organizations that are accountable, committed to stewardship, open, supportive, diverse, and inclusive. A recent GAO report (<http://www.gao.gov/assets/680/672291.pdf>) illustrates the kind of approach that is needed. It recommends a shift from “compliance-based” ethics training programs to “values-based” programs. The compliance-based approach focuses “primarily on ensuring adherence to rules and regulations related to financial disclosure, gift receipt, outside employment activities, and conflicts of interest, among other things.” It would emphasize the Standards of Conduct and stress following the rules contained in the Federal Code. The values-based ethics approach refers to ethics programs that “focus on upholding a set of ethical principles in order to achieve high standards of conduct.” It includes understanding the “guiding principles” in public affairs “such as values to help foster an ethical culture.” Thus, this approach helps public officials deepen their own ethical commitment and leadership to strengthen the ethical culture.

The recommended approach to ethics training promotes the advancement of ethical behavior by staff members and the strengthening of values, standards, and practices to reinforce ethics in the organization. This broad approach links ethics to consideration of the organization’s purpose, performance, and

²⁷ [https://www.oge.gov/Web/OGEnsf/Legal%20Advisories/C81CBBCD9E25EB8485257E96005FBC72/\\$FILE/da472afb087c4a379c99ca6f92a75ad01.pdf](https://www.oge.gov/Web/OGEnsf/Legal%20Advisories/C81CBBCD9E25EB8485257E96005FBC72/$FILE/da472afb087c4a379c99ca6f92a75ad01.pdf)

relationships and the engagement of staff members in achieving the mission of the organization. The training should be grounded in a more comprehensive set of ethical principles such as those found in the ASPA Code of Ethics. The purpose of the training is both to reduce unethical behavior and to promote ethical behavior by public servants.

For example, as part of the principle to inform and involve the public in the governmental process, administrators should be committed to transparency and informing the public. The federal government has the Freedom of Information Act and states have laws governing open records. The federal Standards of Ethical Conduct do not make specific reference to informing the public but of course the Freedom of Information Act would be encompassed by the comprehensive standard to be loyal to the Constitution and laws. It would be unethical to lie to the public or to withhold records that can be released when requested by a member of the public. A compliance orientation would include disclosing requested information and following the FOIA requirement to proactively post online certain categories of information, including frequently requested records. A commitment to the ethical principle to inform and involve the public would go farther. The organization would consider what information is important for the public to know that has not been requested as well as meaningful efforts to engage the public in developing proposals and assessing programs. Obviously, the scope of the commitment to informing and involving the public needs to be balanced with other needs and reflect resource constraints. Still, under the current approach to ethics, it may not even be considered as an ethical responsibility.

The recommended training stresses leadership and individual responsibility for setting and upholding ethical standards. Throughout the training, participants would complete self-assessment questions that examine how they can expand their own ethical commitment and strengthen the organization's support for ethics. The training would incorporate the organization's ethics standards and code, if any, as well as its employee development training material.

The proposed model for training for new high-level appointees has these elements:

- Overview of the organization's code, the ASPA Code to raise awareness of scope of ethical principles, and another professional code if relevant to the professions in and/or the work of the organization.
- Examination of ethical standards. The presentation of each standard will include examination of cases and identification of behaviors that fall short of the standard, on the one hand, and that advance the standard, on the other. Participants will examine how they can meet ethical standards and contribute to the organization's performance in each area.
 1. How does the work of the organization contribute to the public interest? Are the long-term interests of population as a whole being advanced?
 2. What are the services provided to the public and how well are these services being provided?
 3. What is the legal framework for the work of the organizations and how can it be strengthened?

4. What is the organization's performance regarding openness, transparency, and engaging citizens?
5. How does the organization assess and promote social equity and what more could be done?
6. Do staff members provide accurate, honest, comprehensive, and timely information and advice to superiors and peers in the organization?
7. Do staff members demonstrate integrity and act as a trustee for the public?
8. Are staff members committed to professional excellence, and is the organization committed to the development of all staff?
9. Is the organization accountable, committed to stewardship, open to new ideas and identification of problems, supportive, diverse, and inclusive?
10. Do staff members at all levels of the organization display ethical leadership and accept their individual responsibility for setting and upholding ethical standards?

Concluding Assessment

- What changes that could be made in organizational standards and practices to reinforce ethical behavior?
- What steps can participants take to display ethical leadership and promote individual responsibility throughout the organization?

Follow-up activities would include assessing how recommended steps are carried out, a survey of ethical culture in the organization, and exploration of new training activities for groups of staff in the organization to address important ethical concerns.

In conclusion, this approach to defining ethical standards will expand the scope of ethical concerns that are encompassed in efforts to promote government ethics. The comprehensive value-based training will deepen the commitment of public organizations and public officials to meet ethical standards in all aspects of their work and increase the organizational and individual capacity to uphold these standards.