

# COLLECTING INFORMATION TO DETECT AND PREVENT CONFLICT OF INTEREST

By Hiram Morales Lugo

## I. Introduction

Good afternoon. I sincerely appreciate the opportunity to share with you the experience of the Office of Government Ethics of Puerto Rico (OEGPR), in the implementation of an Ethics Code for the Public Service. Given the topic of these proceedings, I will concentrate in the examination of the mechanisms provided by the Law to prevent and detect the conflicts of interests.

Allow me to begin with a brief, but necessary reference to the jurisdiction of the Law of Government Ethics of the Commonwealth of Puerto Rico (LGEPR). The legislation was enacted in July of 1985, in order to address the problem of corruption in the public service. The Law incorporates a Code of Ethics, which is legally binding for all the public servants of the Executive Branch of Government; which includes approximately 250,000 employees. In fact, in lieu of the applicable constitutional mandate or legal duty, all three Branches of Government have designed and approved Codes of Ethics, as well as the necessary organizational and procedural architecture.

<b>Constitución del Estado Libre Asociado de Puerto Rico</b>		
Executive Branch	Legislative Branch	Judicial Branch
Office of Government Ethics	Ethical Commissions of the Senate and the House of Representatives	Supreme Court
Code of Ethics	Code of Ethics	Code of Ethics

The OGEPR interprets and applies the Ethics Code of the Executive Branch. The OEGPR has been granted administrative autonomy and fiscal independence by law. The Supreme Court has the responsibility to implement the Ethics Code of the Judicial Branch. In the Legislative Branch, such responsibility must be carried out by each one of the Ethics Commissions of the Legislative Body.

## II. THE OGEPR MECHANISMS TO DETECT THE CONFLICTS OF INTERETS

### A. Financial Reports

The Law of Government Ethics requires that specific public servants must submit financial reports to the OGEPR. These reports require a significant amount of financial information, which must be provided truthfully by the public servants. Among the officials obliged to comply with such a duty, we should point

out the following: the Governor of Puerto Rico, the Mayors, the Secretaries of the Cabinet, Executive Directors, Intermediate management in charge of finance and budget, Judges and legislators.

<b>¿Who files financial reports?</b>	
Governor	Upper management of Public Corporation
Secretaries named by the Governor with council and approval of the Legislature	Mayors
The Comptroller of Puerto Rico	Judges
	Member of the Senate and the House of Representatives

The information must be provided in a questionnaire. Such instrument must be designed and approved by the Executive Director of the OGEPR. The Law specifies that the failure to render the financial report, as well as not revealing pertinent financial information required by the Law, regulations and the auditing process, will be considered a violation. The content must be properly sworn.

The financial information requested includes the following: name and position; the name of the individuals that integrate his/her family unit; relations and interests due employment or business; financial investments and all insurance policies; all debts over \$1,000.00; all gifts received; all types of income; local and foreign bank accounts, among others.

<b>Contents of Financial Reports</b>	
<ul style="list-style-type: none"> <li>▪ Name and position</li> <li>▪ Names of all member of family unit</li> <li>▪ Business names</li> <li>▪ Occupation, profession, trade</li> </ul>	<ul style="list-style-type: none"> <li>▪ Name and address of the main business or workplace</li> <li>▪ Business interests and relationships</li> <li>▪ Name and address through which members of family unit conduct business</li> </ul>

<b>Contents of Financial Reports</b>	
<ul style="list-style-type: none"> <li>▪ Investments, Shares, Bonds in private enterprises, insurance policies , and other financial participations in business activities that exceeds \$1,000.00</li> <li>▪ State or municipal bonds over a \$1,000.00</li> </ul>	<ul style="list-style-type: none"> <li>▪ Debts over a \$1,000.00</li> <li>▪ Special debts: grace periods, lower interests, or any other treatment that may be considered special</li> <li>▪ Sales or purchase transactions on real and personal property, as well as exchanges</li> </ul>

<b>Contents of Financial Reports</b>
<ul style="list-style-type: none"> <li>▪ Gifts</li> <li>▪ Local and foreign bank accounts</li> <li>▪ Income and interests derived from real and personal property</li> </ul>

The obligation to render financial reports pursues the following:

<b>The purposes of submitting financial reports</b>
<ul style="list-style-type: none"> <li>▪ impede the illegal profit of public servants</li> <li>▪ impede conflicts of interest, particularly of the financial types</li> <li>▪ advance governmental transparency</li> </ul>

The public servants must fulfill their obligation from the time they are nominated by the Governor, or sworn in their posts, once a year during their service until they cease in their duties, at which time they will have 60 days to submit the final report.

<b>When to file a Financial Report</b>
<ul style="list-style-type: none"> <li>▪ Nominated person – 15 days before being appointed</li> <li>▪ Newly appointed – 60 days after taking possession of the position</li> <li>▪ Once every year– May the 1, as long as the person is in service</li> <li>▪ Final– 60 days after the person ceased in his/her position</li> </ul>

The legal duty to provide all the financial information rests upon the public servant, who must certify his report as complete and correct. He/she must sign and swear to the document.

However, the OGEPR has the faculty in Law to corroborate the information through the following sources, among these:

<b>Sources of information for the auditing process</b>
<ul style="list-style-type: none"><li>▪ Banks and financial institutions through a financial order</li><li>▪ The Treasury Department– relevant information may be obtained through a judicial order</li><li>▪ To summons witnesses needed in order to corroborate any commercial, financial or business transaction</li><li>▪ To obtain copies of documents in possession of other public agencies, such contracts with the government, corporate records, transactions with real property registered with the State, or any other document relevant to the case in question</li></ul>

The objectives of the Auditing process are, among others, the following:

<b>The Auditing Process of the Financial Reports</b>
<ul style="list-style-type: none"><li>▪ To compare present and previous financial reports</li><li>▪ To identify variations in assets and debts</li><li>▪ To identify substantial financial growth</li><li>▪ To identify the origin of funds</li></ul>

As we previously stated, the failure to supply substantial information required by Law, may constitute a felony, apart from the crime of perjury.

#### B. The investigation of conflicts of interest

We can now proceed to discuss a further mechanism contained in the Law, geared toward the treatment of illegal conduct in the service. I am referring to the authority that has been granted as to investigate any violation to the normative dispositions contained in the Code of Ethics, as well as violations against the obligation to reveal all pertinent financial information. The Code of Ethics includes the following:

Norms contained in the Code of Ethics
<p>For example:</p> <ul style="list-style-type: none"><li>▪ It is prohibited to use public property or public duties, as to serve the personal interest of the public servant or third parties</li><li>▪ The appointment of the relatives of the public servant is prohibited, unless exceptions are provided by law</li><li>▪ Public servants will not hold private responsibilities that may hinder or affect their public functions.</li></ul>

It's important to underscore that every citizen or public servants can present to the OGEPR a petition for an investigation, in which

a narrative of the facts that constitute a violation of the Code, must be included. The petition must be solicited as follows:

Sources for beginning an investigation at the OGEPR
<ul style="list-style-type: none"><li>➤ A sworn complaint.</li><li>➤ Communication through the Internet.</li><li>➤ Reports of the Comptroller of Puerto Rico.</li><li>➤ Audit reports of governmental agencies.</li><li>➤ Reports of investigations produced by the Legislative Body.</li></ul>

Once the OGEPR receives the information, it proceeds to conduct an investigation. The Office has the following investigative powers:

Investigative Powers of the OGEPR
<ul style="list-style-type: none"><li>➤ The faculty to call on witnesses.</li><li>➤ The faculty to require the production of documents.</li><li>➤ The faculty to require a Court, to order a a person to appear at the Office o produce documents.</li></ul>

Once the investigation is concluded, should the result verify a violation, the Office proceeds to file a complaint, which includes the facts and the constitutive elements of the violation itself. The public servant has the right to defend himself/herself, and to appear with his/her legal representation, to face the process initiated at the

OGEPR. The Adjudicative process is presided by an Official Examiner (Administrative Judge), who is in charge of examining the evidence presented by the Office and the accused. After both parties have stated their arguments and defenses, and the Official Examiner has evaluated the evidence, he/she proceeds to make a recommendation to the Executive Director of the Office. If the violation has been proved, an administrative fine of up to \$20,000 may be imposed, as well as a recommendation for dismissal from the service.

The Adjudicative Process
Investigation
Complaint
Official Examiner
Report of the Executive Director

If the public servant is sanctioned, he/she may move the decision of the Office to the Court of Appeals, so that it may be revised. Certainly, the Official Examiner may recommend the dismissal of the complaint due to the absence of the evidence needed to prove the violation in question.

Thusfar, I have discussed, rather briefly, the several mechanisms available in the Law of Government Ethics of Puerto Rico in order to detect and prevent cases related to the conflicts of interests.

Thank you very much