

**United States Office of Government Ethics**

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Program Review Division

Post-Election Readiness Review



Department of State

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## EXECUTIVE SUMMARY

The United States Office of Government Ethics (OGE) conducted a review of the nominee financial disclosure process at the Department of State (State). The primary purpose of this review was to assess the readiness of the ethics program to manage the anticipated increased workload associated with the turnover of Presidentially appointed, Senate-confirmed (PAS) officials in a post-election period.

### What We Found

In general, State's ethics office has an extremely limited capacity to respond to the increased demands on its ethics program during the post-election period. Additionally, the structure of the ethics program does not allow for its effective administration. While improvements have been made, more are needed. OGE is concerned about the lack of compliance with statutory and regulatory requirements in the areas of financial disclosure, annual training, and ethics agreements.

### What We Recommend

OGE makes three recommendations:

- 1) Revisit the ethics program staffing model to support the post-election period and address persistent backlogs for reviewing and certifying financial disclosure reports.
- 2) Develop an action plan to ensure that covered employees complete annual ethics training by the end of each calendar year.
- 3) Reassess and document the ethics agreement process and consider ways to formalize tracking of compliance. Also, develop a plan to address the increased volume of ethics agreements during the post-election period and consider strategies to assign a higher priority to this aspect of PAS processing.

## INTRODUCTION

Every four years, the United States government faces the possibility of transitioning into a new Presidential Administration. Whenever an Administration changes, the new President will have the opportunity to fill approximately 1,000 of the most senior executive branch leadership positions with the advice and consent of the Senate. When a sitting Administration achieves a second term of office, the turnover of senior positions may be lessened; however, some senior officials may still conclude their service, resulting in a transition of responsibilities to new officials. Whether from a full transfer of power or attrition, leadership vacancies must be addressed quickly and effectively.

As required by statute, the federal ethics community performs a large and fundamental role in this process. The law requires that OGE review the financial interests of all prospective

nominees to Senate-confirmed positions for possible conflicts of interest with their prospective duties. OGE does this in concert with the White House and senior career agency ethics officials who are familiar with their agencies' missions and activities. Ethics officials review every prospective nominee's financial interests and business relationships and generate a public financial disclosure report (OGE Form 278). Where potential conflicts of interest are identified, ethics officials develop remedies typically documented in an ethics agreement so that the President's appointees can carry out their duties with integrity. The detailed work necessary to finalize the required ethics documentation for Senate review can take several weeks.

During this process, the ethics office also serves as a senior official's first regular contact point when entering government service. Agency ethics officials help establish the foundation of ethical government service and educate incoming officials on ways to prevent conflicts of interest. The ethics office is thus responsible for two critical functions not usually addressed by any other office within an agency: preparing a prospective nominee's public financial disclosure report and educating a PAS official on ethical public service.

## **OBJECTIVE, SCOPE, AND METHODOLOGY**

As a part of OGE's ongoing monitoring activities, OGE conducted a review of the nominee financial disclosure process at State. The purpose of this review is to (1) assess the ethics program's readiness to handle the anticipated increase in financial disclosure filings associated with the senior official turnover found in a post-election year, (2) evaluate the potential impact of the post-election workload on daily ethics operations, (3) determine the current capacity and future planning related to the nominee financial disclosure process, and (4) identify potential challenges that could impair the ability of ethics officials to conduct timely, accurate, and consistent conflict of interest reviews. OGE has the authority to evaluate the effectiveness of executive agency ethics programs under Title IV of the Ethics in Government Act and 5 CFR part 2638.

To meet these objectives, OGE performed the following actions from November 2011 through May 2012:

- OGE developed a post-election readiness questionnaire to obtain the agency's perspective on how it would address post-election issues including post-employment counseling, PAS financial disclosure, ethics training, and the post-election period's impact on daily operations.
- OGE reviewed agency documentation including the post-election readiness questionnaire responses, standard operating procedures, and training materials in order to assess the agency's preparedness to handle the increased post-election period workload. OGE reviewed the agency's 2009-2011 Agency Ethics Program Questionnaires, an annual survey of general ethics program information, to determine if the agency is currently meeting ethics program requirements prior to the upcoming post-election period.

- OGE identified the number of prospective PAS nominee financial disclosure reports it received for the agency during the previous post-election period, from January 2009 through June 2010. In order to understand the time frames involved in processing a prospective nominee, OGE determined when each report was received, how many reports were received each month, and calculated how long it took the agency and OGE to complete each report's review, how long it took each confirmed official to comply with the terms of his or her ethics agreement, and how long it took the agency to notify OGE that a confirmed official was in compliance with an ethics agreement.
- OGE interviewed agency ethics officials to follow-up on post-election readiness questionnaire responses and to obtain additional information about the agency's financial disclosure process, post-employment advice and counseling, planning related to the upcoming post-election period, and daily ethics operations.
- OGE reviewed a random sample of 57 of the agency's PAS financial disclosure reports submitted to OGE during the previous post-election period of January 2009 through June 2010 and 23 reports submitted during a typical calendar year (2011). OGE evaluated the timeliness of submission, review, and certification of the reports; assessed the quality of both technical and conflict of interest review; and compared post-election with non-post-election period performance.

## **AGENCY BACKGROUND**

The Department of State is the lead United States foreign affairs agency within the executive branch and the lead institution for the conduct of American diplomacy. According to its 2011 Agency Financial Report, State operates more than 270 embassies, consulates, and other posts worldwide staffed by Locally Employed Staff and more than 13,500 Foreign Service Officers. In each Embassy, the Chief of Mission (usually an Ambassador) is responsible for executing U.S. foreign policy goals and managing all U.S. Government functions in the host country. The President appoints each Ambassador who is then confirmed by the Senate. Although State's headquarters is located in Washington D.C., almost half of its 24,000 employees work overseas at consulates, embassies, missions, and other posts.

State has approximately 1,760 public financial disclosure report filers including 244 PAS officials. State has the largest number of PAS officials in the executive branch, representing approximately one quarter of all PAS officials. The composition of the PAS officials is as follows:

- 175 Chiefs of Mission (approximately 50 of these are non-career employees)
- 41 Assistant Secretaries and above or equivalent (domestically)
- 7 Ambassadors-at-Large
- 6 Officials with ambassadorial ranks
- 5 Other PAS
- 4 U.S. Mission to the United Nation Ambassadors
- 3 U.S. Mission public delegates

- 2 International organization representatives with rank of Ambassador
- 1 U.S. Representative to the Commission on the Status of Women

Additionally, State has approximately 3,700 confidential financial disclosure filers. State also has the highest number of employees and public financial disclosure filers per ethics official among the 15 Cabinet-level agencies in the Executive Branch, with a ratio of one ethics official for every 1,846 employees. Every year, State ethics officials review over 5,000<sup>1</sup> annual public and confidential reports.

## PROGRAM STRUCTURE

The ethics program at State is centralized at headquarters in the Office of the Legal Adviser (OLA). OLA furnishes advice on all legal issues, domestic and international, arising in the course of State's work. The office is organized into sections that roughly correspond with State's various bureaus, including regional offices that focus on specific areas of the world and functional offices that deal with specific subject matters. Accordingly, OLA is divided into 23 sections, including the OLA's Office of Ethics and Financial Disclosures (Ethics office). (*See Appendix A.*) Attorneys typically rotate assignments within the office every two or three years to broaden their experience and take on new challenges.

A Deputy Legal Adviser serves as the Designated Agency Ethics Official (DAEO). The Assistant Legal Adviser for Ethics and Financial Disclosure serves as the Alternate DAEO (ADAEO), managing the day-to-day functions of the ethics program. At the time of the review, the DAEO and ADAEO had served in their roles for approximately one year, and like other attorneys in OLA, have rotational assignments. The ADAEO is assisted by several full-time ethics officials: the Chief of Financial Disclosure; five attorney advisors, including two attorneys whose three-year rotation with the ethics office started in August 2011; five paralegals; and an ethics program assistant. (*See Appendix B.*) The staff attorneys provide advice, render ethics opinions, conduct ethics training, and review financial disclosure reports. The Chief of Financial Disclosure and the paralegals review financial disclosure reports. One paralegal who serves as the Nominee Program Specialist is solely responsible for tracking compliance with ethics agreements. Table 1 shows the current PAS official to reviewer ratio.

PAS Officials	244
Full-Time Reviewing Officials	11
Part-Time Reviewing Officials	2
PAS Officials per Reviewer	18.7

<sup>1</sup> According to State's 2011 Agency Ethics Program Questionnaire, a total of 1,848 public reports and 2,239 confidential reports were required to be filed by State employees in 2011. State provided revised totals reflected in the report comments.

While State has not designated anyone outside of headquarters as ethics officials, Management Counselors at each diplomatic post provide limited advice on widely attended gatherings and payments for travel accepted under the authority of 31 U.S.C. § 1353. Additionally, according to ethics officials, Management Counselors at posts and Executive Directors in bureaus in Washington, D.C. assist with some ethics-related duties such as tracking initial ethics orientation and annual training, collecting financial disclosure reports, and performing an intermediate review of public financial disclosure reports. However, the level and consistency of their involvement in carrying out these ethics-related duties varies. The Management Counselors and Executive Directors are not appointed, approved, or supervised by ethics officials. Further, these Management Counselors rotate to new positions approximately every two to three years. Although Management Counselors in the field and Executive Directors in bureaus in Washington, D.C. provide some assistance to the ethics office, the lack of a formalized role and defined oversight mechanism has resulted in uneven support of the ethics program.

### Staff Augmentation

The ethics office anticipates drawing personnel resources from different sources. In 2011, the ethics office identified 19 additional rotational attorneys from different offices within OLA to assist with the review of annual and termination public financial disclosure reports. These attorneys received basic financial disclosure review training from OGE in December 2011 and were each assigned ten public financial disclosure reports to review. However, limited formal financial disclosure training and hands-on practice may only provide these attorneys with the proficiency necessary to review minimally complex financial disclosure reports. Moreover, the availability of the additional attorneys on either a full- or part-time basis is not guaranteed. Additionally, the ethics office has enlisted the part-time paralegal services of two former State employees to assist with daily ethics operations.

## **DEPARTING OFFICIALS**

The first challenge to affect an ethics office in any post-election period is the increased number of departing senior officials. When an Administration changes, most incumbent officials will depart at the conclusion of the outgoing Administration's term and prior to the nomination and confirmation of their successors. When an Administration remains for a second term, some incumbent officials will still depart, also leaving leadership vacancies prior to their successors' confirmations.

In order for the ethics office to manage effectively the departure of officials, it must do the following:

- Identify departing officials
- Counsel officials on the negotiation and recusal requirements under the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act)
- Counsel on specific post-government employment activities prohibited by 18 U.S.C. § 207
- Obtain a departing official's final public financial disclosure report

- Review and certify termination financial disclosure reports with 60 days of receipt.

The ethics office must successfully manage this concentrated increase in ethics counseling and financial disclosure review, while also beginning to address its responsibilities regarding each departing official's potential successor.

### IDENTIFICATION OF DEPARTING OFFICIALS

Ethics officials use a variety of sources to identify departing officials such as (1) direct notification from the PAS official, (2) alerts from the post or bureau, and (3) reports from the media. The ethics office has also enlisted the assistance of the Bureau of Human Resources (HR) to identify and track departing PAS officials. Each month HR advises the ethics office of both incoming and departing PAS officials. The Chief of Financial Disclosure uses the information provided by HR to generate a report of all incoming and departing employees and to track financial disclosure reports.

### POST-EMPLOYMENT COUNSELING

An ethics office's responsibility to departing senior officials is two-fold: help ensure current officials do not violate conflict of interest laws while they seek future employment and prepare these officials for the statutory limitations that exist on certain activities once they leave government service.

Given State's centralized ethics program structure and current resources, providing post-employment counseling to all departing PAS officials is administratively impractical. Therefore, in-person post-employment counseling is provided upon request. According to ethics officials, between 25 and 50 percent of departing PAS officials request in-person counseling. Ethics officials noted that all PAS officials receive a packet of post-employment information during initial ethics orientation at the beginning of their career at State. Ethics officials also noted that PAS officials have access to post-employment ethics resources and general advice through an internal website and ethics email inbox.

Although all PAS officials have received some manner of post-employment counseling, providing counseling material at the outset of an official's multi-year term may have limited value if that material is not revisited prior to an official's departure. OGE suggests the ethics office utilize Management Counselors at posts to provide departing PAS officials with post-employment training materials.

### TERMINATION FINANCIAL DISCLOSURE

Outgoing senior officials must complete a final public financial disclosure report within 30 days of completing their government service. Ethics officials then must review and certify this termination report to be free from conflicts of interest within 60 days of receipt. The termination report also discloses a departing official's future employment arrangements, allowing ethics officials to tailor any necessary follow-up post-employment counseling and to verify a departing official's government actions complied with federal conflict of interest laws.



The Chief of Financial Disclosure uses the HR report to track officials required to file termination reports. However, because the HR report is run monthly there is a potential delay in identifying departing officials. Should a PAS official depart government service shortly after the report is generated, the ethics office may be unaware of the filer's departure for over 30 days, thus exceeding the deadline to file a termination report.

In order to aid in the timely collection, review, and certification of termination financial disclosure reports, the ethics office has enlisted the assistance of the White House Liaison Human Resources (WHLHR) office. The WHLHR staff provides some posts with a checklist of departure procedures which includes the requirement to submit a termination financial disclosure report. The checklist is another tool to assist ethics officials in collecting termination reports by reminding PAS officials of their responsibility to file the report. However, ethics officials were not sure how consistently the checklist was used at the posts. Since the checklist only goes to select posts where its use may be inconsistently applied, it has limited effectiveness.

In the event a PAS official fails to submit a termination report, the Chief of Financial Disclosure has access to the PAS official's forwarding address and sends a certified letter to that official requesting the report. Once the termination reports are received, ethics officials are required to review and certify them within 60 days. According to the ethics officials, processing the financial disclosure reports from incoming PAS officials are the top priority. Because termination reports are treated as another activity in the daily operations of the ethics program, termination reports are not usually reviewed and certified within the required timeframe. The review team examined a sample of 52 termination reports submitted during the last post-election period and found that 45 reports were certified beyond the 60-day deadline. The majority of these reports were certified more than six months late. To assist with the increase of termination reports during the post-election period, the ethics office hopes to leverage the 19 additional attorneys that may be available to them from other OLA sections.

## **INCOMING OFFICIALS**

While the processing of outgoing officials continues, ethics offices concurrently devote resources to processing prospective PAS nominees and incoming officials. The nominee process describes the collective actions required by the ethics office to process a prospective PAS nominee through Senate confirmation. The White House Office of Presidential Personnel will identify potential candidates for nomination to Executive branch positions. In the event of a change in administration, the transition team typically works directly with OGE but may contact the agency as well. Upon notification of a potential nominee, State begins to work with that individual to prepare a public financial disclosure report for ethics certification and eventual Senate review.

Coordinating with prospective nominees and their representatives on the statutorily required information for the report is both a time-critical and time-intensive process, often taking several weeks before a complete report is compiled. In rare cases, there can be multiple candidates under consideration for a PAS position and nominations can also be withdrawn. Both scenarios can result in an agency reviewing more candidates than the number of positions to be filled. The financial interests and relationships identified in the report must then be thoroughly reviewed and

certified by the ethics office as being free from potential conflicts of interest. If a prospective nominee is confirmed, the ethics office is also responsible for that official's formal introduction to executive branch ethics laws and regulations and for verifying that the PAS official completed the actions required to alleviate any potential conflicts of interest.

## NOMINEE PROCESS OVERVIEW

The nominee process takes place concurrently with the ethics office's other full-time responsibilities: reviewing 5,000 financial disclosure reports from throughout the agency, providing ethics advice and counsel, presenting initial and annual ethics training to 3,500 covered employees, and performing the other duties and responsibilities that fall under the purview of the ethics office. In a post-election period, limited resources must be allocated as efficiently as possible to ensure senior positions are rapidly filled and that daily ethics operations continue to function effectively. Because State's inflow of prospective nominees spikes early in the post-election period, the first six months following an election is particularly resource intensive.

State has developed detailed written procedures for the management of the nominee process. Written procedures for the administration of the financial disclosure system are required by Section 402(d)(1) of the Ethics in Government Act. Written procedures ensure consistency in the collection, review, and certification of financial disclosure reports and are also an essential element for a good succession plan. State's procedures cover the responsibilities of the ethics office and other offices for reviewing and processing prospective nominee public financial disclosure reports. The procedures indicate that several offices assist the ethics office in the nominee process including the Bureau of Human Resources/Career Development and Assignments/Senior Level/Presidential Appointments Section (Office of Presidential Affairs/Appointments), the Bureau of Economic and Business Affairs, the relevant regional Bureaus in D.C., and the diplomatic post in-country.

The ethics office receives the prospective PAS nominee's Senate questionnaire and the first draft of his or her public financial disclosure from the Office of Presidential Affairs/Appointments. The ethics office then forwards that draft report to OGE as part of the review process. Subsequently, the ADAEO, the Chief of Financial Disclosure, and the Nominee Program Specialist coordinate to assign each prospective nominee's draft financial disclosure report to one of five attorney-paralegal teams who will be responsible for reviewing the report and resolving any potential conflicts of interest to the White House and OGE's satisfaction. A thorough and accurate financial disclosure review is a time-intensive process. Extensive research is required to properly document the complex financial instruments that prospective PAS nominees often hold. Thus, the State attorney-paralegal team may be required to contact the prospective nominee or his or her representative to ensure that the public financial disclosure is technically accurate. Additionally, ethics officials may need to discuss a prospective nominee's financial interests with the nominee's financial advisors, attorneys, or investment fund managers. The paralegal on the team performs most of the technical review of the report; the attorney reviews the report primarily to identify potential conflicts of interest.

Once the technical review is complete, the conflicts of interest analysis is performed. To perform the conflicts of interest analysis, the attorney-paralegal team reviews what is internally referred to as an “issue paper.” The issue paper is an internal report prepared at the diplomatic post that discusses (1) the major economic issues in the country and (2) issues that could come before the State officials located in that country, including parties that may seek to do business in the country and matters of general applicability. The issue paper is updated by the post when a PAS position is vacant or during special periods of heightened turnover such as the summer rotation—when officials at post change assignments—or a post-election period. The attorney-paralegal team may also contact the post’s Economics Officer, the country desk officer, the Deputy Chief of Mission, and even the incumbent PAS Ambassador regarding on-going and expected business at post to address a prospective PAS nominee’s potential conflicts and discuss possible remedies.

### ETHICS AGREEMENTS

The final element of a prospective nominee’s processing is frequently the ethics agreement. An ethics agreement is broadly defined as “any oral or written promise by a reporting individual to undertake specific actions in order to alleviate an actual or apparent conflict of interest.” *See 5 CFR 2634.802(a)*. In the case of prospective PAS nominees, any such promise must be reduced to writing, summarizing the actions to which the nominee has agreed to take upon Senate confirmation. Among the most common conflict of interest remedies that are reflected in an ethics agreement are recusals, divestitures, and resignations. The confirmed official must complete those actions which he or she has agreed to undertake within 90 days of Senate confirmation. The ethics office has three business days from the compliance deadline to submit evidence to OGE that the confirmed PAS official has complied with the terms of the ethics agreement.

Throughout the review process, the attorney-paralegal team works closely with OGE to ensure that the prospective PAS nominee’s final report is technically complete and free of conflicts of interest. The attorney-paralegal team may then prepare an ethics agreement, if necessary, to remedy any actual or apparent conflicts that arise. The ethics agreement formally documents any steps the prospective nominee must take, after Senate confirmation, to address any remaining potential conflicts of interest. Once the ethics attorney reviews the ethics agreement and the ADAEO has reviewed the completed public financial disclosure report, both documents are forwarded to OGE for final approval. Should a prospective official be formally nominated to a position by the President and confirmed by the Senate, the completed report and ethics agreement are provided to the Nominee Program Specialist who tracks ethics agreement compliance.

State’s written procedures for the nomination process include limited procedures for managing ethics agreement compliance. One paralegal, who serves as the Nominee Program Specialist, is solely responsible for tracking compliance with ethics agreements and making the subsequent notification to OGE. Reminding PAS officials of their ethics agreement compliance responsibilities is a highly manual process at State. Although compliance information exists in a database, it does not functionally provide reminders of deadlines. Therefore, the Nominee Program Specialist keeps the PAS officials’ files containing the ethics agreements on her desk as

a reminder to notify PAS officials of their duty to comply with the ethics agreements they have entered into upon confirmation. The Specialist sends a reminder to the PAS officials via email 30 days after the confirmation date. The attorney who processed the nominee report reviews and approves the content of this email. The initial follow-up at 30 days takes into account the time it takes a PAS official to travel overseas and become situated at a new post.

### INITIAL ETHICS ORIENTATION

Once a nominee is confirmed by the Senate, the ethics office becomes responsible for that official's initial ethics orientation (IEO). Prospective nominees begin the introduction to ethics in the Federal Government through interactions with the ethics program when completing their financial disclosure report. It is particularly important that incoming senior officials continue their education on executive branch ethics given their central role in defining an agency's ethical culture.

Within 90 days from the time any employee begins work for an agency, the ethics office must provide that new employee with ethics official contact information as well as one hour to review the standards of conduct, principles of ethical conduct, and any agency supplemental standards, as appropriate. Ethics offices typically provide initial ethics orientations to PAS officials and their key staff through formal, in-person briefings.

The DAEO and ADAEO provide IEO to Ambassadors during the Ambassadorial Seminars held at the Foreign Service Institute (FSI). Ambassadors are required to complete this seminar before they can assume their positions at their posts. The ethics office provides Ambassadors with written materials that include the standards of conduct, the criminal conflict of interest statutes, and ethics officials' contact information. Ethics officials also ensure that Ambassadors are familiar with the internal ethics office website. Other PAS officials receive online IEO training at FSI, although they may opt to receive in-person training upon request. FSI tracks IEO for all PAS officials in a database, which the ethics office can access. If these PAS officials fail to complete training, they will receive automated email reminders to complete their training.

### **STRAINED PROGRAM OPERATIONS**

Historically, State ethics officials have had challenges with the volume of filers and the level of work to be performed in the program. The organizational placement of the ethics office within the agency contributed to the challenges that the ethics office faces. Until December 2011, the ethics office was located under the Office of the Assistant Legal Adviser for Employment Law, one of 22 sections under OLA.

Recently, ethics officials directed their efforts to providing increased visibility to the ethics office. To that end, effective January 2012, the ethics office was elevated within the agency directly under OLA. Additionally, the ADAEO's position was raised to the Senior Executive Service level.

The periodic rotation of ethics officials, including the DAEO and ADAEO, and the inconsistent assistance from Management Counselors and Executive Directors who have no specific training in performing ethics duties and over whom the ethics program has little to no control or authority make it difficult to ensure stability, continuity, and expertise within the ethics program. This structure appears to be at least partially responsible for an ethics program that is not fully compliant with all statutory and regulatory requirements in the areas of financial disclosure, annual training, and ethics agreements.

## FINANCIAL DISCLOSURE

Many variables contribute to the length of time it takes agencies to complete reviews of prospective nominees' financial disclosure reports. However, State's average time was more than twice that of the Department of the Treasury (Treasury) and nearly twice that of the Department of Justice (DOJ).

The attorney-paralegal team system, where the technical review and conflicts analysis of one prospective nominee's form is assigned to a pair of reviewers, is unique to State. DOJ and Treasury typically assign one reviewer per report to be solely responsible for the complete financial disclosure process from technical review to conflicts resolution. Considering that the five teams expect to process between 150 and 200 reports in the event of a full administration change, this system may not be the most efficient and effective way to manage the ethics office's limited personnel resources. Although there is a delineation of roles between technical and conflicts review, when using review teams for each report the potential exists for two extremes: (1) duplication of effort resulting in a redundant, inefficient review or (2) reviewer overreliance on each other, resulting in a less robust review.

As previously mentioned, State reviews over 5,000 annual financial disclosure reports. This means that during the last post-election period, including new entrant and termination reports, there were approximately 417 reports per ethics official. This responsibility is in addition to providing ethics advice and counsel, presenting initial and annual training, and performing the other day-to-day duties that fall under the purview of the ethics office. (*See Appendix C.*) Given the high priority of prospective PAS nominee report reviews, resources for non-PAS financial disclosure reviews and other elements of the ethics program were extremely limited during the last post-election period. As a result, as of January 2012, State still carried a backlog of over 800 public and confidential financial disclosure reports for the 2010 filing period that had not been reviewed or certified since their receipt in 2011. Ethics officials noted that State's priority is to address the backlog of approximately 150 public reports and acknowledged that there has been little work at this point to address the confidential reports. Additionally, the ADAEO did not expect ethics officials to be able to review or certify all of the annual public reports for the 2011 filing period that were due May 2012 by the required certification deadline in July 2012.

Ethics officials acknowledged that each year since the 1990s, State typically carried a backlog of reports that were not certified by the established deadline. Also, while ethics officials explained that Management Counselors assist with the collection of public financial disclosure reports and Executive Directors remind filers of their responsibility to file, their current involvement in the

process does not appear to contribute to the timely review and certification of financial disclosure reports.

ANNUAL TRAINING

Annual training presents a challenge for the ethics office. In 2011, ethics officials failed to provide mandatory annual ethics training to more than 70 percent of the incumbent PAS officials and over 50 percent of other required employees. Annual ethics training is a vital component of an agency’s ethics program, intended to assist employees in carrying out their official responsibilities in a manner consistent with ethics-related statutes and regulations. Additionally, annual training helps to prevent conflict of interest violations and maintain the public’s positive perceptions of the agency and the executive branch.

Ethics officials indicate that considerable resources have been invested in a computer-based annual training program that will be available to employees worldwide from home or office computers. As part of this effort, the training content was updated for the first time in a number of years. Ethics officials are hopeful that the new material will be of interest to more employees and result in improved compliance. In order to better manage the completion of annual ethics training, the new training module will require each employee to register with the FSI training system. The ethics office will receive a list of all employees who have completed the training each month and will import that information into their database. This training will become a part of the employee’s official training record. However, the mechanism to track and monitor training—reliance on Management Counselors at posts and Executive Directors in Washington, D.C.—will not change. As previously discussed, this approach is not proactive and does not allow State to address an employee’s failure to complete training in a timely manner. OGE recommends State develop an action plan to ensure that covered employees complete annual ethics training by the end of each calendar year.

ETHICS AGREEMENT COMPLIANCE

During the previous post-election period from January 2009 through June 2010, State PAS officials completed the actions required by their ethics agreements by the 90-day compliance deadline in 56 percent of cases. During this same time period, State ethics officials notified OGE of PAS officials’ compliance by the 93-day notification deadline in 42 percent of cases. (See Table 2.) In 2011 State continued to experience challenges in providing evidence of ethics agreement compliance to OGE.

Table 2 Department of State	
Meeting Ethics Agreement Deadlines (Jan 2009 – Jun 2010)	
PAS Officials Complying with Ethics Agreements (within 90 days)	56%
Notifications of Compliance Received by OGE (within 93 days)	42%

Gathering compliance information from PAS officials has been a challenge for ethics officials. Ethics officials explained that many PAS officials fail to contact them to notify them of the action they took to comply with their ethics agreements such as resigning from outside positions and divesting conflicting assets. The Nominee Program Specialist expressed frustration with the lack of communication with the posts. Additionally, ethics officials do not have a documented escalation process for when PAS officials fail to respond after repeated requests for ethics agreement compliance information. In these cases, the ADAEO tries to obtain the compliance information from the PAS official, and, if unsuccessful, then escalates it to the DAEO and perhaps to the executive office in Washington, D.C. that supports the official. However, no timeframes have been established for when or how these steps will be taken. Also, the Nominee Program Specialist must often contact the PAS officials with multiple requests to obtain complete compliance information which further delays notification to OGE.

The Nominee Program Specialist also has other responsibilities that compete with the time-consuming ethics agreement compliance process. The Nominee Program Specialist is the first person to review any prospective PAS nominee report, can assist the ADAEO in determining PAS report assignments for the ethics staff, and also reviews prospective nominee reports for Career Foreign Service members.

During the course of the review, the ADAEO met with OGE's Office of Agency Programs management to discuss State's compliance with ethics agreements. During the meeting, the ADAEO said that establishing screening arrangements for PAS officials at posts has been a challenge. The ADAEO explained that they have encountered problems selecting employees to serve as gatekeepers to screen matters from the PAS officials because employees at posts often do not want to assume that responsibility. OGE discussed with ethics officials a variety of alternatives they could use to establish screening arrangements with PAS officials and demonstrate compliance to OGE. Ethics officials have not yet instituted new ethics agreement procedures. The ADAEO is, however, currently considering ways to improve the ethics agreement compliance and notification process, such as shortening the internal deadline to comply with ethics agreements from 90 days to 30 days.

OGE recommends State reassess and document its ethics agreement process and consider ways to formalize compliance tracking. Also, State should develop a plan to address the increased volume of ethics agreements during a post-election period and consider strategies to assign a higher priority to this aspect of PAS processing.

### STOCK ACT

All executive branch agencies face additional requirements under the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act), which was signed by the President on April 4, 2012. The STOCK Act establishes new requirements for executive branch ethics programs, ethics officials, and the thousands of employees who currently file public financial disclosure reports pursuant to the Ethics in Government Act. Three of the provisions of the STOCK Act could further strain State's ethics program: (1) The Stock Act provides that a covered employee may not directly negotiate or have any agreement of future employment or compensation unless the employee, within three business days after commencement of such

negotiation or agreement, files with his or her supervising ethics office a notification statement. The requirements under section 17 of the STOCK Act apply to negotiations that commenced on or after April 4, 2012, and to agreements of future employment reached on or after April 4, 2012. At the time of the review, ethics officials had already notified public filers of the negotiation notice requirement and set up a separate email inbox to receive the notifications. (2) The STOCK Act also requires the prompt reporting of financial transactions. Public filers are required to file a report of a transaction no later than 30 days after receiving notification of any transaction required to be reported under section 102(a)(5)(B), but in no case later than 45 days after such transaction. (3) Ethics officials will be required to sign and post these reports by September 2012 and, thereafter, transaction reports must be posted within 30 days of receipt by the ethics office. State could have a large volume of reports to post and could find the new requirements an added strain on its limited resources.

## CONCLUSION

Considering the substantial post-election workload that the ethics office faces and its current structure and resources, the State ethics office may not have sufficient capacity to process the volume of incoming PAS officials without some negative impact on its daily ethics operations.

State has attempted to establish contingency plans to access additional staff should the time-sensitive workload of the nomination process exceed reviewer capacity. However, more is needed to mitigate the challenges that could prevent State from effectively managing the increased workload of the upcoming post-election period. Therefore, OGE makes the following recommendations:

- 1) Revisit the ethics program staffing model to support the post-election period. State's ethics office has extremely limited capacity to respond to the increased demands on its program during a post-election period. State should assess the effectiveness of its team model for processing prospective PAS reports and consider possible alternatives. In addition, it should also consider whether some operational ethics activities can be supported to a greater extent and more formally by Management Counselors at posts and Executive Directors in bureaus in Washington, D.C.
- 2) Develop an action plan to ensure that covered employees complete annual ethics training by the end of each calendar year.
- 3) Reassess and document the ethics agreement process and consider ways to formalize tracking of compliance. State should also develop a plan to address the increased volume of ethics agreements during the post-election period and consider strategies to assign a higher priority to this aspect of PAS processing.



## AGENCY COMMENTS

The Department of State provided the following response to a draft version of the report. OGE comments to specific points have been included below. State did not respond directly to the recommendations in the report.

*Response provided via email on July 20, 2012:*

Thank you for the draft Post-Election Readiness Review for the Department of State. We have listed our comments in two categories, “substantive comments” and “technical comments” for your consideration.

### Substantive Comments

As a global comment, the most resource intensive aspect of review and certification of public financial disclosure forms is the technical aspect, usually well beyond what is required to make a clear “free from conflicts” determination. Any flexibility that may be shown from OGE regarding technical review requirements would greatly assist State Department’s review capacity.

OGE Comments: The technical reporting requirements on the OGE Form 278 are in place to help ensure the information required by the Ethics in Government Act is reported on every public financial disclosure.

Please also note that the Department anticipates that the Army electronic financial disclosure system, Financial Disclosure Management (FDM), will be operational for State Department filers by the end of the year. This will free up staff resources and make our process more efficient.

p.7: Staff Augmentation from additional rotational attorneys: It should be noted that these attorneys were put to immediate work reviewing annual 278 filings, i.e. they were not just trained and then not given a chance to utilize their skills. Each attorney was assigned ten 278 files to review.

OGE Comment: Report has been updated to reflect this additional information.

p.13: The impact of the periodic rotation of ethics officials seems overstated. Typically management counselors and executive directors rotate within the management cone and so carry ethics knowledge to the next assignment. The DAEO position is a Deputy Legal Adviser position, which historically does not rotate frequently as evidenced by the fact that the DAEO’s predecessor held that position for years. The ADAEO has typically been held on a multiple year basis. Moreover, there has been no apparent impact of a rotational system in terms of reduced efficiencies or lack of compliance with statutory or regulatory requirements. Indeed the opposite can be proven in some cases as new staff with a new set of eyes can sometimes address systemic issues more easily.

p.13: It is interesting to learn about DOJ and Treasury review times and it would be helpful to understand their staffing resources as a comparison.

p.14: It is inaccurate that “the ADAEO does not expect ethics officials to be able to review or certify any of the annual” 2011 forms. The comment was likely made that we would likely not be able to certify ALL CY 2011 forms in this timeframe, not “any.”

OGE Comment: Report has been updated to reflect this additional information.

p.15: It is not accurate to say that “ethics officials have not yet established new ethics agreements processes and procedures” and ask that this sentence be deleted. During our meeting with OGE Office of Agency Programs Management we were educated on the range of options available for ethics agreements and we are using these options to the extent possible.

OGE Comment: The language of the report has been updated to better reflect previous correspondence from State indicating no new procedure had been instituted.

p. 8: The statement “Identifying departing PAS officials who are geographically dispersed is a challenge for State Ethics Officials” is a little misleading. Various methods are used to identify departing PAS officials such as those described in the report. We are also considering having HR reports run bi-weekly rather than monthly. This would capture departing officials earlier and allow for more receipt of timely filed reports.

OGE Comment: This assessment has been removed from the report.

p. 15: We don’t agree with the statement that we do not have a “defined escalation process” in place for PAS officials and ethics agreement. Although we don’t have a specific timeline, we do involve the ADAEO very early in the process, who in turns talks to the DAEO. The DAEO personally intervenes on cases of continued non-compliance by filers and indeed has done so with many filers in the past year.

OGE Comment: This statement has been clarified to reflect that the escalation process was not “documented” rather than “defined.”

P. 15: We don’t believe the Nominee Program Specialist indicated that “she has several other competing responsibilities that typically take priority over the time-consuming ethics agreement process.” The Nominee Program Specialist is the first person to review any nominee report and that is the top priority but she is also responsible for other aspects of program. The Nominee Program Specialist does not assist the ALA for Ethics in assigning PAS reports to the attorney-paralegal team, the Program Manager either assigns the reports to the paralegal independently or with after discussion with the ALA for Ethics and the Nominee Program Specialist. The Nominee Program Specialist only reviews Career Foreign Service Public Financial Disclosure Reports in conjunction with the filer being nominated for a Senate Confirmed Position.

OGE Comment: Report has been updated to reflect this additional information.

## Technical Comments

p.3: It is not clear that there are “statutory” requirements in the areas of financial disclosure, annual training and ethics agreements. Are these all statutory? Perhaps “statutory and regulatory?”

OGE Comment: Added “regulatory” to more accurately reflect these requirements.

p.5-6: We have recently reviewed our filer numbers and currently have approximately **1760** public financial disclosure report filers including 244 PAS officials and **3700** confidential filers.

OGE Comment: Numbers have been updated throughout the report based on the more recent review of financial disclosure filer figures. The ratio of ethics officials to filers was also revised.

p. 6: The “Senior Ethics Counsel” position no longer exists and is now “Assistant Legal Adviser for Ethics and Financial Disclosure,” a Senior Executive Service position. In that same paragraph, Ms. Youel Page has been in her position since February 2011 and Mr. Visek has been in his position on an Acting basis since May 2011 and formal basis since August 2011.

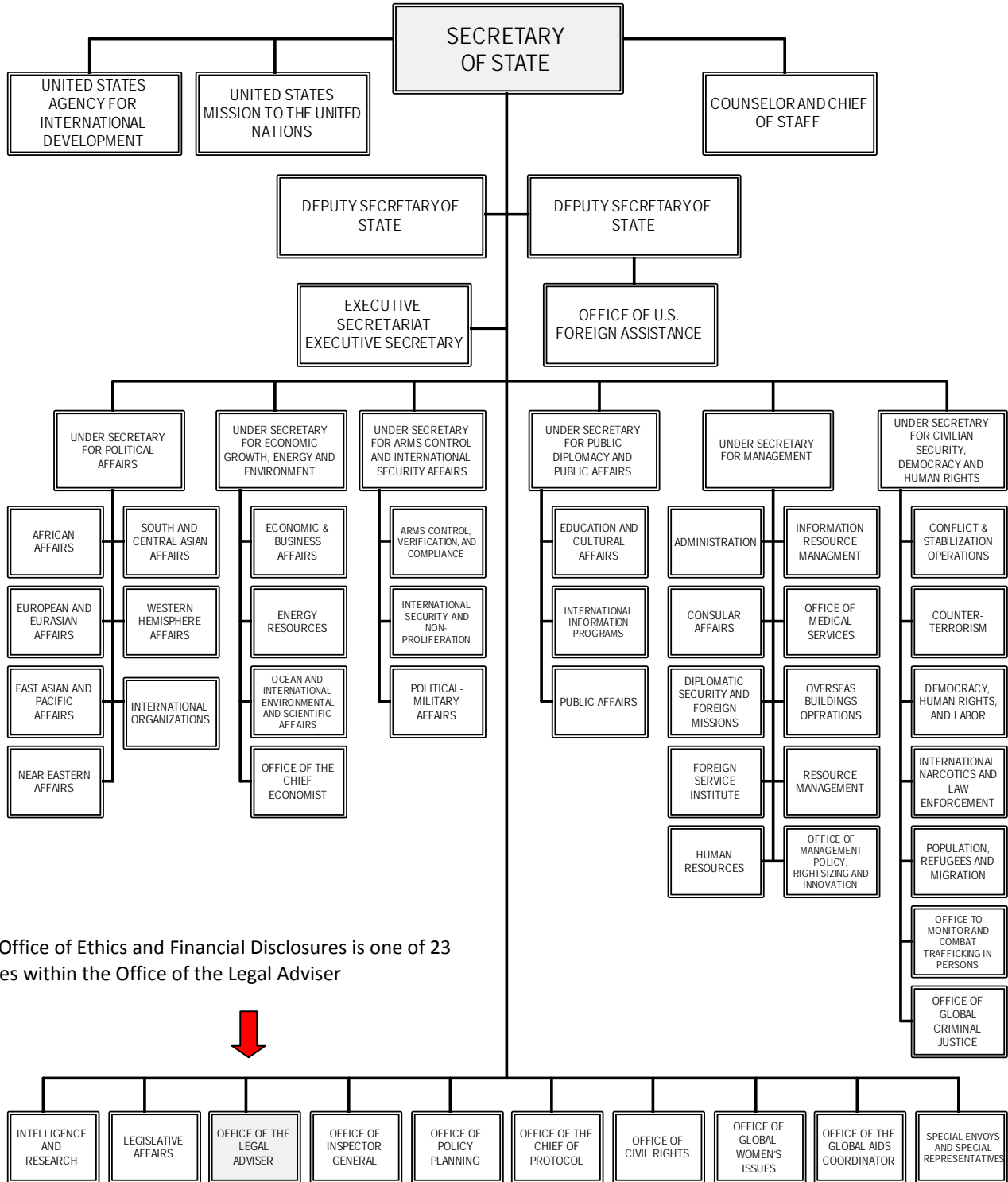
OGE Comment: Report has been updated to reflect the appropriate position title and lengths of service for the DAEO and ADAEO.

p.7: We would not define the support from Management Counselors and Executive Directors as “haphazard and of limited effectiveness,” rather perhaps “uneven support” 2 FAM 714 4-1 through 4-3 describes the management official responsibilities.

OGE Comment: This assessment has been changed to reflect State’s suggested language.

**APPENDIX A**

**Department of State Organizational Chart**

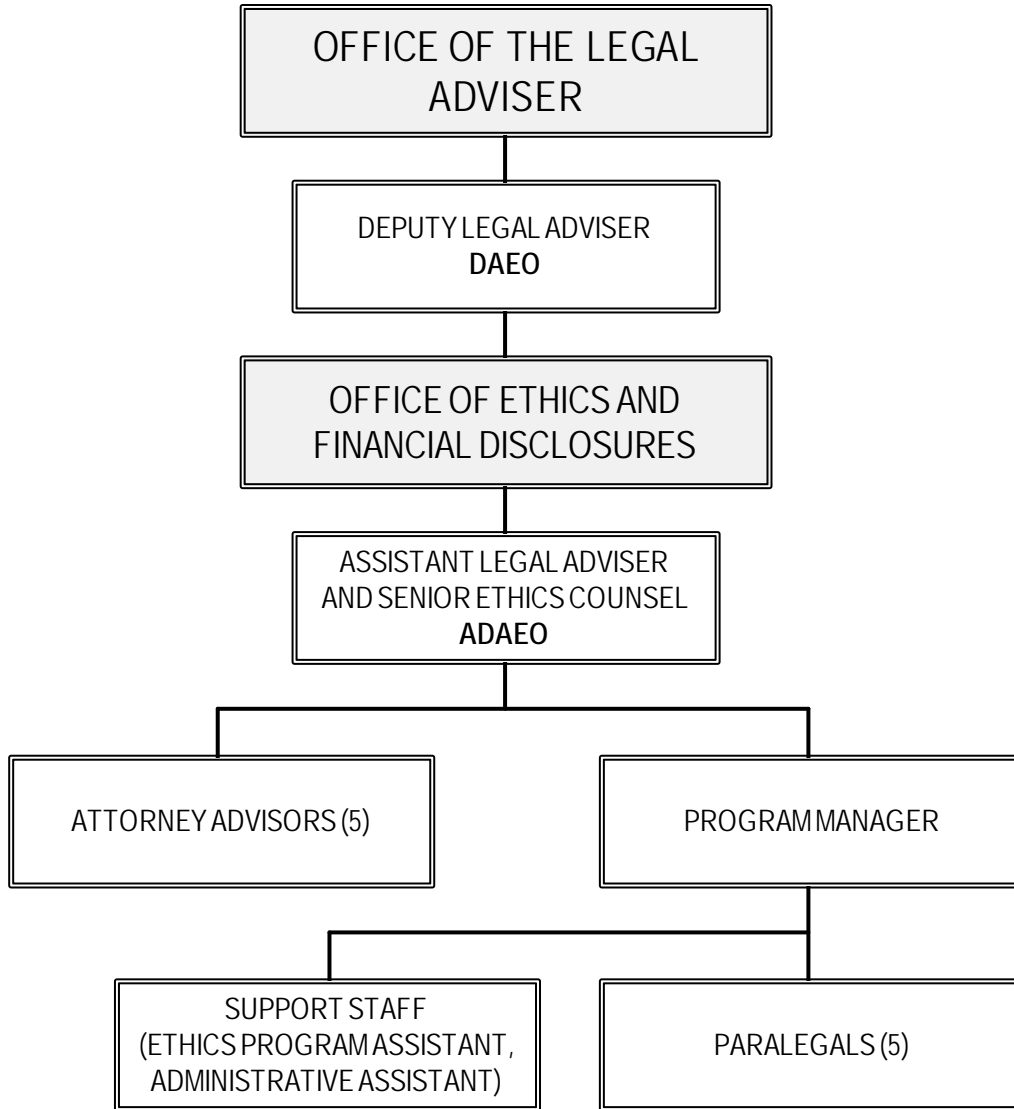


The Office of Ethics and Financial Disclosures is one of 23 offices within the Office of the Legal Adviser



**APPENDIX B**

Department of State Ethics Office



**APPENDIX C**

Proposed Ethics Personnel Responsibilities for the 2013 Post-Election Period

- PAS Nominee Financial Disclosure Review
- All Other Financial Disclosure Review
- Ethics Agreement Compliance Monitoring
- Ethics Advice and Counsel
- Ethics Education and Training
- Other Duties and Responsibilities

