

United States Office of Government Ethics

Compliance Division

Ethics Program Review

U.S. Department of Veterans Affairs

Report No. 14-15
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Findings and Recommendations

The United States Office of Government Ethics (OGE) conducted a review of the ethics program of the U.S. Department of Veterans Affairs (VA). Program reviews entail an analysis of an agency's implementation of the basic statutory and regulatory elements for ethics programs in the executive branch, as well as unique elements of a program specific to the agency's mission. In the course of a program review, OGE's Compliance Division examines program elements such as ethics program structure and staffing, public financial disclosure, confidential financial disclosure, ethics training, ethics counseling, and mechanisms to address employees' employment or involvement with entities outside the government.

OGE initially conducted its review of VA's ethics program in June 2013 but has continued to work with VA to address recommendations regarding specific program elements since that time. OGE found that VA's ethics officials are knowledgeable and dedicated to the mission of the ethics program. In August 2014, however, OGE's Director and OGE's General Counsel met with VA's newly appointed Secretary to discuss the primary recommendation resulting from OGE's review, which is that VA should review the staffing level of its ethics program. Specifically, OGE raised a concern that VA's complement of ethics staff is small relative to the size of VA's workforce and relative to the per capita staffing levels of the other cabinet agencies' ethics offices. OGE recommended that VA consider either increasing the size of its ethics program, leveraging existing human capital by having personnel in other offices take on additional responsibilities associated with the ethics program, or exploring other efficiencies that could increase the capacity of VA's ethics program.

In the course of this program review, OGE identified this staffing issue and several other issues that OGE recommends VA address. With regard to some of these issues, VA has addressed OGE's concerns as a result of this program review. The following list identifies OGE's concerns, OGE's recommendations, and some model practices of VA's ethics program.

- Until recently, the staff assigned to VA's ethics program was comprised of approximately 200 attorneys in VA's 23 Offices of Regional Counsel who performed ethics duties on a part-time basis. VA later assessed the part-time commitments of these attorneys and determined that their ethics work amounted to the equivalent of 21 full-time positions, which the government measures in terms of "Full-Time Equivalents" (FTE). In 2012, VA consolidated the ethics work in an Ethics Specialty Team (EST) supervised by VA's Central Office. Since its establishment, the EST has developed some program controls, documented a number of its procedures, and clarified the delegation of certain ethics responsibilities. The staffing level of the EST, however, is now only 18.33 FTE, with 14 attorneys and 4 paralegals performing ethics duties on a full-time basis and an Assistant General Counsel performing ethics duties on a part-time basis. In OGE's opinion, VA's current staffing level seems small relative to its workforce of 342,291 employees¹ and relative to the per capita

¹ This number is based on data provided to OGE by VA in 2014 for calendar year 2013.

staffing levels of the other cabinet agencies. OGE is concerned that this ratio of 1 ethics official for every 18,674 employees may be too small for VA to have confidence in its ability to ensure that its workforce is capable of consistently complying fully with the complex framework of government ethics rules applicable to federal agencies.

Recommendation 1 (open)

OGE recommends that VA consider either increasing the size of its ethics program, leveraging existing human capital by having personnel in other offices take on certain responsibilities associated with the ethics program, or exploring other efficiencies that could increase the capacity of VA's ethics program.

Model Practice

The EST has implemented some program controls, documented a number of its procedures, and clarified the delegation of certain ethics responsibilities. Establishment of standardized procedures in this manner can serve as the foundation for consistent and sustainable administration of an agency's ethics program.

- VA's written procedures for public financial disclosure did not document VA's process for making public financial disclosure reports publicly available. As a result of this program review, VA has addressed this issue.

Recommendation 2 (closed)

OGE recommends that VA amend its written procedures to document VA's process for making public financial disclosure reports publicly available.

- VA personnel are not timely filing public financial disclosure reports. OGE sampled VA's public reports and found that VA's public filers filed 38 percent of the sampled new entrant reports, 15 percent of annual reports, and 17 percent of termination reports after the applicable filing deadlines. VA employees who file untimely reports perform their official duties without obtaining a conflict of interest review by ethics specialists.

Recommendation 3 (open)

OGE recommends that VA ensure that its public filers file their reports before the deadline. As part of one possible approach to implementing this recommendation, OGE suggests that VA leadership specifically instruct VA's Human Resources offices to assist the EST in its effort to establish effective procedures for Human Resources offices to timely

notify the EST regarding new appointments to, and departures from, public filing positions. In addition, OGE suggests that VA's leadership communicate clearly to all public filers the importance of timely, accurate, and complete disclosure of financial interests.

- Departing public filers sometimes meet only with Human Resources officials, rather than with ethics officials, when they depart public filing positions. This process has created difficulties in VA's collection of termination financial disclosure reports. In addition, these departing filers do not have the benefit of counseling by professional ethics officials, who are trained to interpret and advise employees on applicable post-employment restrictions including the restrictions contained in 18 U.S.C. § 207.

Recommendation 4 (open)

OGE recommends that VA advise departing public filers that counseling regarding post-employment restrictions is available to both current and former VA employees. As part of one possible approach to implementing this recommendation, OGE suggests that VA revise its out-processing procedures to include a requirement that departing public filers receive written notice regarding the availability of this counseling. Alternatively, as a model practice, VA may want to go further by revising its out-processing procedures to require that ethics officials counsel all departing public filers regarding post-employment restrictions.

- VA's ethics personnel acknowledged the natural limits of their access to information regarding the current official activities of public financial disclosure filers. They necessarily rely primarily on generic position descriptions for the positions these filers hold and on VA's vendor lists. They do call filers to discuss conflicts of interest when they are able to identify them during reviews of public financial disclosure reports. However, in most instances they cannot know the specific official activities of these public filers.

Recommendation 5 (open)

OGE recommends that VA increase its capacity to perform conflict of interest reviews of public financial disclosure reports. As part of one possible approach to implementing this recommendation, OGE suggests that VA require supervisors of public filers to conduct initial reviews of their financial disclosure reports, in order to identify any assets or outside positions that may conflict with the filers' specific official activities. These supervisors could then contact the EST whenever they identify potential conflicts of interest. In addition, a supervisor's certification would be required on each public report in addition to the EST's certification.

- At the time of this program review, VA had not destroyed certain public financial disclosure reports that VA retained beyond the retention period. VA's procedure for routine destruction did not establish a schedule for routine destructions. As a result of this program review, VA has addressed this issue.

Recommendation 6 (closed)

OGE recommends that VA complete the destruction of public financial disclosure reports that no longer meet the retention requirements at 5 C.F.R. § 2634.603 and update the EST's procedure for routine destruction.

- VA personnel are not timely filing confidential financial disclosure reports. OGE sampled VA's confidential reports and found that 100 percent of the sampled new entrant reports and 10 percent of the sampled annual reports were filed after the filing deadline. VA employees who file untimely reports performed their official duties without obtaining a conflict of interest review by ethics specialists.

Recommendation 7 (open)

OGE recommends that VA ensure that employees required to file confidential financial disclosure reports file their reports before the deadline. As part of one possible approach to implementing this recommendation, OGE suggests that VA leadership specifically instruct VA's Human Resources offices to assist the EST in its effort to establish procedures for the Human Resources offices to provide the EST with timely notification regarding new appointments to confidential filing positions. OGE also suggests that VA's leadership communicate clearly to all confidential filers the importance of timely, accurate, and complete disclosure of financial interests.

- VA's ethics personnel acknowledged the natural limits of their access to information regarding the current official activities of confidential financial disclosure filers. They necessarily rely primarily on generic position descriptions for the positions these filers hold and on VA's vendor lists. They do call filers to discuss conflicts of interest when they are able to identify them during reviews of confidential financial disclosure reports. However, in most instances they cannot know the specific official activities of these confidential filers.

Recommendation 8 (open)

OGE recommends that VA increase its capacity to perform conflict of interest reviews of confidential financial disclosure reports. As part of one possible approach to implementing this recommendation, OGE suggests that VA require supervisors of confidential filers to conduct initial reviews of their financial disclosure reports, in order to identify any assets or

outside positions that may conflict with the filers' specific official activities. These supervisors could then contact the EST whenever they identify potential conflicts of interest. In addition, a supervisor's certification would be required on each confidential report in addition to the EST's certification.

- At the time of this report, VA had not destroyed certain confidential financial disclosure reports that VA retained beyond the retention period. VA's procedure for routine destruction did not establish a schedule for routine destructions. As a result of this program review, the EST has updated its procedures and has begun destroying expired reports.

Recommendation 9 (closed as to updating the EST's procedures and open as to completing the destruction of expired reports)

OGE recommends that VA complete the destruction of confidential financial disclosure reports that no longer meet the retention requirements at 5 C.F.R. § 2634.604 and update the EST's procedure for routine destruction.

Recommendation 10 (open)

OGE recommends that VA confirm that all 23 of its Offices of Regional Counsel have completed their destruction of confidential financial disclosure reports that no longer meet the retention requirements at 5 C.F.R. § 2634.604, and, if they continue to maintain reports in their offices, that they have updated their procedures for conducting routine destructions.

- At the time of this program review, VA lacked an effective mechanism for ensuring that newly hired VA employees received the initial ethics orientations mandated by government-wide regulation. In addition, with regard to the new employees who did receive ethics orientations, VA's ethics office lacked control over the content of the orientations, and in many cases VA's ethics office even lacked knowledge of the content. As a result, VA could not establish that VA employees received the mandatory training or that its training accurately covered the required material. VA has now launched its automated Talent Management System that provides new employee ethics orientations created by the EST to new employees.

Recommendation 11 (closed)

OGE recommends that VA ensure that it is able to effectively track new employee ethics orientations. In addition, OGE recommends that VA establish a continuing requirement that the content of all new employee ethics orientations be approved by VA's ethics office.

- VA has expanded the reach of its annual ethics training beyond the requirements of the regulation by mandating that all employees must complete automated annual ethics training. At the same time, VA's records reflect that approximately 9 percent of VA's confidential filers did not complete their required annual ethics training in calendar year 2013. In addition, VA indicates that several of its public filers did not complete their annual ethics training. OGE is concerned that the EST's staffing structure could potentially limit VA's capacity to continue providing its financial disclosure filers with either in-person training or live training with direct access to ethics officials.

Model Practice

VA's mandate that its entire workforce complete annual ethics training every year is a model practice.

Recommendation 12 (open)

OGE recommends that VA ensure that all public and confidential financial disclosure filers complete the required ethics training each year. Ideally, OGE suggests that VA continue to provide live training to public filers to the greatest extent possible.

Recommendation 13 (open)

OGE recommends that VA ensure that all confidential financial disclosure filers complete the required ethics training each year. OGE also recommends that VA ensure that its tracking of this training is accurate.

- VA's ethics office was unable to locate a copy of its agency ethics training plan for 2012. However, VA has subsequently produced copies of its ethics training plans for 2013 and 2014, and OGE has determined that the content of these training plans satisfies the regulatory requirements. OGE notes that VA's 2014 training plan was completed in December 2013, but was slightly revised in August 2014 to meet regulatory requirements. VA has also established procedures for retaining its training plans and for updating annual ethics training materials each year.

Recommendation 14 (closed as to the creation of a training plan each year, open as the creation of a training plan at the beginning of each year)

OGE recommends that VA create a training plan at the beginning of each year and retain a copy of that training plan.

- VA did not comply with the deadline for notifying OGE of compliance with an ethics agreement by a Senate-confirmed Presidential appointee (PAS appointee). VA has addressed this issue by updating its procedures to include the notification

requirement, as well as requirements for ethics agreement documentation, compliance deadlines, responsibilities of individual ethics officials, and two deadline reminders.

Recommendation 15 (closed)

OGE recommends that VA update its ethics procedures to address notification of OGE regarding PAS appointees' compliance with their ethics agreements.

- VA has issued blanket exemptions from financial disclosure for the special government employees who serve as members on 19 its 24 advisory committees and, as a result, does not review their financial interests for conflicts of interest. The EST reviews reports filed by those special government employees who are not exempted from filing. VA has not consistently completed conflict of interest reviews prior to the first meeting of the advisory committees each year. In addition, the EST has not reviewed meeting agendas for each committee meeting to identify and resolve conflicts of interest in advance of the meetings, but has agreed to add the review of agendas to its procedures.

Recommendation 16 (open)

OGE recommends that VA review its blanket exemptions for special government employees and determine whether some or all of these officials should be designated as financial disclosure filers. OGE recommends that VA document its determination in writing, with a discussion of the factors that VA considered in making its determination, and provide OGE with a copy of the written determination.

Recommendation 17 (closed as to the establishment of safeguards for the retention of reports, open as to the establishment of safeguards for the collection of reports)

OGE recommends that VA establish safeguards to ensure that special government employees file all required financial disclosure reports. OGE also recommends that VA establish safeguards to ensure that it retains the financial disclosure reports of special government employees for the regulatory retention period.

Recommendation 18 (open)

OGE recommends that VA complete its review of each financial disclosure report filed by a special government employee and resolve any conflicts of interest prior to the filer's first advisory committee meeting each year.

Recommendation 19 (open)

OGE recommends that VA increase its capacity to perform conflict of interest reviews of special government employees' financial disclosure reports. OGE recommends that conflict of interest reviews include a review of advisory committee meeting agendas. As part of one possible approach to implementing this recommendation, OGE also suggests that VA require the Designated Federal Officers to conduct initial reviews of special government employees' financial disclosure reports, in order to identify any assets or outside positions that may conflict with the filers' specific official activities. These Designated Federal Officers could then contact the EST whenever they identify potential conflicts of interest. In addition, a Designated Federal Officer's certification would be required on each confidential report in addition to the EST's certification.

- VA provides initial ethics orientations for all of its special government employees. The EST drafted the material for these orientations but relies on the Designated Federal Officers of VA's advisory committees to deliver the material to the special government employees. At the time of the program review, OGE determined that VA's initial ethics orientation materials for special government employees satisfied most but not all of the regulatory requirements of 5 C.F.R. § 2638.703(a). As a result of this program review, VA updated these materials to comply with the regulation and provided initial ethics orientations to all special government employees who had not previously received them. VA requires only the 12 percent of its special government employees who file financial disclosure reports to receive annual ethics training. The EST delivers the annual ethics training, generally through in-person presentations. The EST states that it provides annual ethics training to other special government employees upon request.

Recommendation 20 (closed)

OGE recommends that VA update its initial ethics orientation materials for special government employees to comply with the requirements of 5 C.F.R. § 2638.703(a).

Recommendation 21 (open)

OGE recommends that VA provide annual ethics training to all of its special government employees.

- VA's Office of Travel Policy and VA's Financial Services Center missed several deadlines for submitting VA's travel reports to OGE. VA appears to have corrected the procedural issues that caused these delays.

Recommendation 22 (closed)

OGE recommends that VA ensure that it complies with applicable deadlines for submitting its travel reports to OGE

In the course of this program review, OGE also identified factors that support VA's ethics program. For example, VA's ethics staff has developed and continues to refine several program controls including standard operating procedures, guidelines, templates, and delegated responsibilities in order to ensure consistency of operations throughout the ethics program. VA is also undertaking to leverage technology to address some challenges that are inherent in a large, diverse agency by using an electronic financial disclosure system, electronic ethics training and tracking, virtual meeting spaces, video conferencing, and a database to archive ethics records. For its part, the ethics staff in VA's newly constituted full-time ethics office has developed considerable expertise with regard to the ethics rules applicable to federal agencies and has demonstrated a strong commitment to the ethics program. Moreover, VA's new Secretary has expressed strong support for building and sustaining an ethical culture and has indicated that he expects VA's managers to take responsibility for integrating ethics into every aspect of the agency's operations. In the course of this program review, VA made a number of enhancements to its ethics program and consulted with OGE's program reviewers regarding progress in this regard. Finally, as noted above, OGE identified two model practices of OGE's ethics program that other agencies may want to consider adopting.

Model Practice

As a result of the work of VA's dedicated ethics staff, VA has established some program controls, documented a number of its procedures, and clarified the delegation of certain ethics responsibilities. Establishment of standardized procedures in this manner can serve as the foundation for consistent and sustainable administration of an agency's ethics program. VA continues to establish and refine procedures covering a wide range of subject matters.

The following report discusses OGE's findings in more detail. Considering the nature and extent of the recommendations this report makes, OGE will conduct another review of VA's ethics program in calendar year 2015.

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II. Objectives, Scope, and Methodology

OGE provides overall leadership and oversight of the executive branch ethics program which is designed to prevent and resolve conflicts of interest. OGE's carries out these oversight responsibilities through onsite monitoring of agency ethics programs to ensure agencies are held accountable for compliance with applicable ethics requirements established by statutes, rules, regulations, and Executive Orders. OGE's oversight activities are also designed to mitigate program vulnerabilities, identify trends, and disseminate model practices as well as to advance OGE's overarching goals of uniformity, continuity and transparency. OGE has authority to evaluate the effectiveness of executive agency ethics programs pursuant to title IV of the Ethics in Government Act and 5 C.F.R. part 2638.

To assess VA's ethics program, OGE examined a variety of documents including the Agency Ethics Program Questionnaires for 2012 and 2013, samples of public and confidential financial disclosure reports filed in 2012, initial and annual ethics training, and ethics advice rendered to employees. Members of OGE's Compliance Division met with VA's Central Office ethics personnel to discuss the information initially gathered, clarify issues identified during the review, and discuss ethics program operations in further detail. They also conducted follow-up interviews of VA's ethics personnel. In addition, OGE's Director and General Counsel met with VA's new Secretary, who expressed strong support for fostering commitment to ethics on the part of VA's leaders and staff.

III. Program Administration

The Department of Veterans Affairs Act of 1988 (Pub. L. 100-527) established the former Veterans Administration as a Cabinet-level Department administered by a Presidentially-appointed, Senate-confirmed Secretary. VA is responsible for administering benefits and services that provide financial and other forms of assistance to veterans, their families, and their survivors. VA's approximately 342,000 employees serve in an extensive network of 151 Medical Centers, 827 Outpatient Clinics, 56 Regional Offices, 300 Vet Centers, and 131 National Cemeteries spanning the United States, the U.S. territories, and the Philippines. VA's Central Office is located in Washington, DC.

The agency's ethics program is supervised by the Office of General Counsel in VA's Central Office. The Designated Agency Ethics Official (DAEO) is an Assistant General Counsel who has a variety of administrative law duties and is not a full-time ethics official. The Alternate DAEO (Alternate DAEO) is a supervisory attorney in Waco, Texas.

Before 2012, the staff assigned to VA's ethics program was comprised of approximately 200 attorneys in VA's 23 Offices of Regional Counsel, who performed ethics duties on a part-time basis. VA's Offices of Regional Counsel and local Human Resources offices shared responsibility for certain ethics program elements including education and training, advice and counsel, and confidential financial disclosure for VA employees outside of VA's Central Office. VA later assessed the part-time commitments of these attorneys and determined that their ethics work amounted to the equivalent of 21 full-time positions, which the government measures in terms of "full-time equivalents" (FTE). In April 2012, VA's then General Counsel launched a pilot program to consolidate its ethics program under the supervision of VA's Central Office. Under this pilot program, VA established its Ethics Specialty Team (EST).

The decision to pilot a full-time ethics program under the supervision of VA's Central Office was partly based on findings by VA that its regional attorneys, who performed ethics duties only part-time, lacked expertise in the applicable legal requirements for government ethics and that they performed ethics duties only a small fraction of their time. Among other goals, VA sought through centralization of the ethics program to increase the level of expertise of its ethics staff and to increase the uniformity of ethics advice across VA.

In creating the EST, VA initially reduced its ethics staff to 12 attorneys and 4 paralegals performing ethics duties on a full-time basis under the supervision of an Associate General Counsel who performed ethics duties approximately one-third of the time. Although the new EST is organizationally supervised by VA's Central Office, its employees continued to be stationed throughout the country in offices in California, the District of Columbia, Florida, Georgia, New Hampshire, New York, Mississippi, North Carolina, Ohio, Pennsylvania, Tennessee, and Texas. The pilot ended in April 2013, but VA extended the pilot into the summer, after which the EST prepared a report regarding the success of the pilot. Late in 2013, based on the EST's report, VA made the EST a permanent organization. VA has now added another 2 attorneys, for a total of 14 attorneys and 4 paralegals performing ethics duties on a full-time basis and an Associate General Counsel who continues to perform ethics duties approximately one-third of the time. Thus, the staffing level of the EST is now 18.33 FTE.

Table 1 below outlines the ethics responsibilities for various program elements prior to and following the implementation of the EST pilot structure.

Table 1 Ethics Responsibilities		
	Pre-EST	EST Pilot
Public Financial Disclosure	Ethics staff in VA's Central Office	Ethics Specialty Team
Confidential Financial Disclosure	Ethics staff in Offices of Regional Counsel and VA's Central Office	Ethics Specialty Team
Initial Ethics Orientation	Human Resources staff	Ethics Specialty Team (through TMS)*
Annual Ethics Training	Ethics staff in Offices of Regional Counsel and VA's Central Office	Ethics Specialty Team (in-person and through TMS)
Ethics Advice and Counsel	Ethics staff in Offices of Regional Counsel and VA's Central Office	Ethics Specialty Team

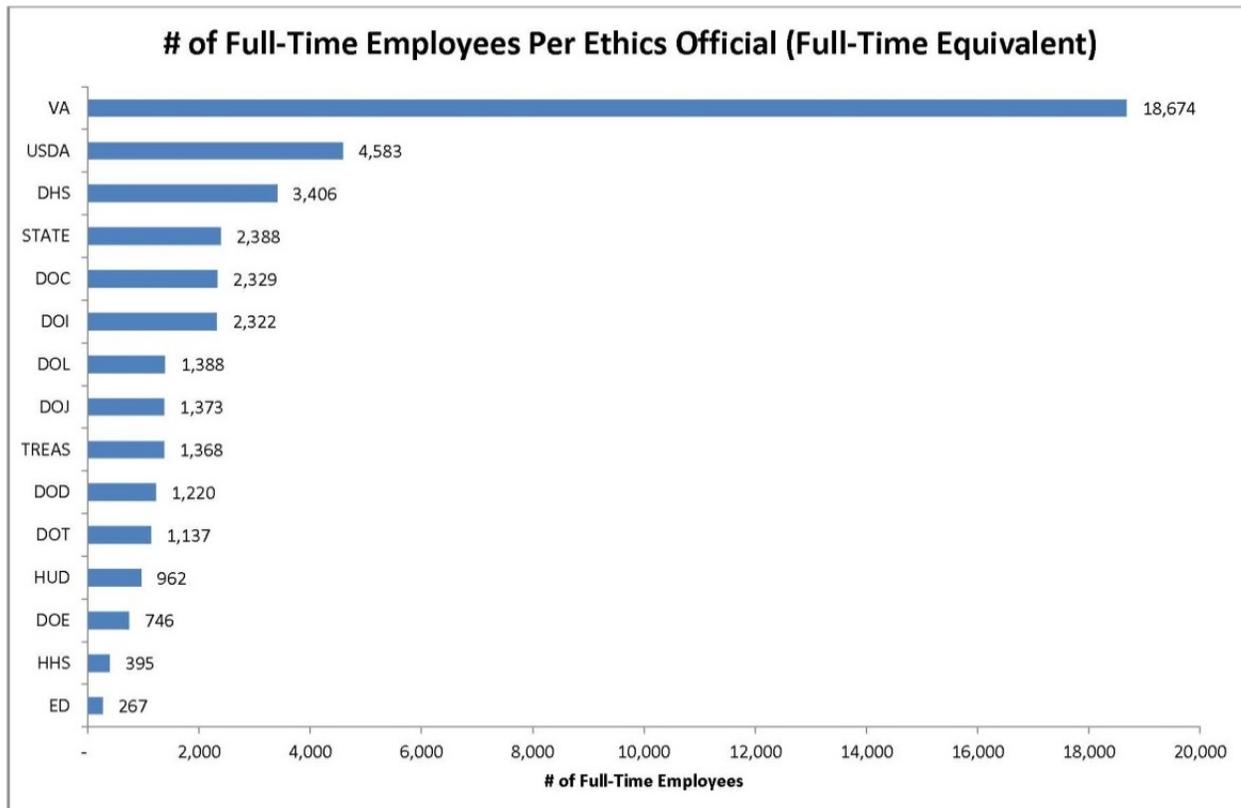
* VA's automated Talent Management System for training

As previously noted, although ethics responsibilities have been consolidated under the supervision of VA's Central Office, the EST remains a virtual work unit with 50 percent of the EST staff working outside of VA's Central Office. VA leverages technology to provide the EST staff with a variety of collaborative tools including instant messaging, computer-based video teleconferencing, and virtual meeting spaces. VA also uses its automated Talent Management System (TMS) for providing and tracking online training, its GC Laws database for primary record-keeping, the Army's Financial Disclosure Management system for electronic collection, review, and tracking of public and confidential financial disclosure, and an internal website to provide ethics services to all VA employees.

In OGE's opinion, VA's current staffing level seems small relative to its workforce of 342,291 employees. As depicted in the chart below, this ratio is also disproportionate to the per capita staffing level of the other cabinet agencies' ethics offices.² Despite the potential for increased efficiency and control over the ethics program provided by the EST model, OGE is concerned that this ratio of 1 ethics official for every 18,674 employees may be too small for VA

² OGE compiled this chart based on data supplied by cabinet agencies in early 2014 in response to OGE's Agency Ethics Program Questionnaire for calendar year 2013 regarding their total workforce and ethics office staffing levels. With regard to the staffing level of the ethics office, each agency provided separately the number of full-time ethics officials and the number of part-time ethics officials. OGE's Desk Officers then contacted each agency for an informal estimate as to the average amount of time the agency's part-time ethics officials devoted to ethics-related duties on a weekly basis, in order to calculate the FTE value of part-time ethics officials.

to have confidence in its ability to ensure that its workforce is capable of consistently complying fully with the complex framework of government ethics rules applicable to federal agencies.



Each executive branch agency is subject to a regulatory mandate that it must “make available to the ethics program sufficient resources (including investigative, audit, legal, and administrative staff as necessary) to enable the agency to administer its program in a positive and effective manner.” 5 C.F.R. §2638.202(a). With additional resources either directly in the ethics office or indirectly through the support of other offices, the EST might be able to increase its capacity in a number of ways. Most importantly, the VA personnel who review financial disclosure reports might be able to obtain specific information about the official activities of financial disclosure filers, which would enhance their ability to evaluate filers’ financial interests for conflicts of interest with their official activities. Increasing the resources directly or indirectly available to the EST might also strengthen the ethics program in other ways, such as: increasing VA’s capacity to counsel departing VA employees nationwide about the conflict of interest rules applicable to them while they are negotiating for employment and about the post-employment restrictions that will be applicable to them after they have left the government; increasing VA’s capacity to track which new hires are required to file financial disclosure reports and to review their financial interests for conflicts close to the time of hiring; increasing VA’s capacity to counsel personnel involved in research or on dual appointments with the VA and outside entities regarding the complex rules related to compensation from outside sources, conflicts of interest with outside employers, and conflicts of interest with intellectual property; increasing VA’s capacity to counsel medical personnel who work part-time or on a temporary

basis with the VA while completing their medical training;³ increasing the impact of ethics training by providing live training to employees in key positions that pose higher risks of ethics issues, such as positions involving supervision, procurement, loan guarantee, research, cooperative agreements with outside entities, etc.; increasing VA's capacity to train and counsel advisory committee members and to collect financial disclosure reports from them; increasing VA's ability to identify and respond to violations of the ethics rules; increasing, through additional training, the workforce's awareness of the ethics rules; increasing VA's ability to respond to a higher volume of requests for ethics advice that could reasonably be expected to result from increasing the workforce's awareness of the ethics rules; and increasing the ability of the ethics office to support management's broader effort, beyond only compliance with the ethics rules, to promote an ethical culture throughout the agency.

At the same time, the administration of VA's ethics program is supported by several positive factors. In VA's favor is that VA's leadership is generally supportive of government ethics. Both VA's new Secretary, Hon. Robert A. McDonald, and VA's former Secretary, Hon. Eric K. Shinseki, expressed their support for ethics. In 2009, VA's former Secretary issued a letter to all VA employees communicating his expectations for adherence to the standards of ethical conduct. *See Appendix.* The letter emphasized leadership support of ethics throughout VA and promoted communication between employees and ethics officials. More recently, VA's new Secretary issued a statement to VA's employees emphasizing that VA's strategic plan is grounded in the strong institutional values of Integrity, Commitment, Advocacy, Respect, and Ethics (which form the acronym, "I CARE").⁴ In addition, VA's DAEO reported that the Chief of Staff has supported the ethics program by personally addressing situations of ethics non-compliance and expanding ethics training to all personnel. The DAEO also indicated that VA Medical Center Directors and other VA supervisory personnel have encouraged staff to complete ethics training and file financial disclosure reports in a timely fashion. Furthermore, in a meeting on August 11, 2014, with OGE's Director and OGE's General Counsel, VA's Secretary expressed strong support for building and sustaining an ethical culture, adding that he expects VA's managers to be responsible for integrating ethics into every aspect of the agency's operations. VA's Secretary also committed to taking into consideration OGE's concerns regarding the level of resources available to VA's ethics office. During this meeting, OGE's Director and OGE's General Counsel noted that VA could address the resources issue in a variety of direct or indirect ways.

VA has also implemented program controls to maintain consistency throughout its ethics program. For example, VA Handbook 5025 controls the assignment of government ethics responsibilities. In addition, the EST, which is still relatively new, indicates that VA's processes, procedures, and practices for ethics are continually evolving. The EST has established standard operating procedures, guidelines, and templates to manage financial

³ VA's extensive engagement with outside entities and the potential for conflicts of interest requiring the support of trained ethics officials is highlighted by the following statistics that the VA has published: "Over 65% of all US-trained physicians and nearly 70% of VA physicians have had VA training prior to employment. 50% of US psychologists and 70% of VA psychologists have had VA training prior to employment." http://www.va.gov/oa/oa_mission.asp (site last viewed Aug. 13, 2014).

⁴ Available at <http://www.blogs.va.gov/VAntage/14906/secretary-mcdonald-issues-message-to-va-employees/> (site last viewed Aug. 13, 2014).

disclosure, advice and counsel, training requests, 18 U.S.C. § 208(b) waivers, and widely-attended gathering attendance. The EST is currently evaluating some quality assurance mechanisms, including the practice of performing site visits to Offices of Regional Counsel, which were conducted prior to the establishment of EST. During this program review, other program control options under consideration by the EST included formally pairing EST attorneys together for review of ethics counseling, standardizing an oversight system that reviews the work of EST personnel, and expanding the EST's use of its SharePoint site to post items of particular ethics interest.

Recommendation 1 (open)

OGE recommends that VA consider increasing the size of its ethics program, leveraging existing human capital by having personnel in other offices take on certain responsibilities associated with the ethics program, or exploring other efficiencies that could increase the capacity of VA's ethics program.

Model Practice

The EST has implemented some program controls, documented a number of its procedures, and clarified the delegation of certain ethics responsibilities. Establishment of standardized procedures in this manner can serve as the foundation for consistent and sustainable administration of an agency's ethics program.

IV. Financial Disclosure

Title I of the Ethics in Government Act requires that agencies promote public confidence in the integrity of the federal government's operations by demonstrating through public financial disclosures that agency officials are able to carry out their duties without compromising the public trust through conflicts of interest. Accordingly, high-level agency officials disclose their personal financial interests publicly using the OGE Form 278. Title I also authorizes OGE to establish a confidential financial disclosure system, in which less senior executive branch personnel in certain positions designated by the agency are required to file confidential financial disclosure reports using the OGE Form 450. Both public and confidential financial disclosure serves to prevent, identify, and resolve conflicts of interest by providing for a systematic review of the financial interests and official activities of officers and employees. The financial disclosure reports assist agencies in administering their ethics programs and also assist in providing counseling to employees. *See* 5 C.F.R. part 2634.

A. Written Procedures

The Ethics in Government Act, at 5 U.S.C. app. IV, § 402(d)(1), requires OGE to ensure that each executive branch agency has established written procedures for collecting, reviewing, evaluating and, where applicable, making publicly available financial disclosure reports filed by the agency's officers and employees. Consistent with this requirement, the EST developed

written procedures for its financial disclosure program that include most of the required elements. These written procedures contain detailed instructions for tracking the ethics training of financial disclosure filers, reminding filers of deadlines for submission of financial disclosure reports, and escalating cases of delinquent filers to higher levels of management. The procedures also include a calendar of key financial disclosure dates, sample emails for use in various filing circumstances, and condensed instructions for VA's electronic financial disclosure system. At the time of OGE's program review, the one missing element was that the procedures did not document VA's process for making public financial disclosure reports publicly available. During the course of this program review, VA corrected this deficiency by documenting its existing process.

Recommendation 2 (closed)

OGE recommends that VA amend its written procedures to document VA's process for making public financial disclosure reports publicly available.

B. Public Financial Disclosure

With regard to the public financial disclosure reports due in May 2013 covering calendar year 2012, VA reported that it had 573 public financial disclosure filers. VA uses the Department of the Army's Financial Disclosure Management system for the electronic submission, retention, and tracking of public financial disclosure reports.⁵ The EST also uses an internal spreadsheet to track the following data for each public filer: filing status, date due, date of receipt, date of initial report review completion, date of report certification, name of certifying official, and date(s) of ethics training.

1. Identification of Filers and Collection of Reports

a. New Entrant Filers

Employees entering positions that require public financial disclosure are identified by one of three separate offices within VA: the Corporate Senior Executive Management Office, the Veterans Health Administration Workforce Management and Consulting Office, and the Board of Veterans' Appeals. Each of these three offices has designated a liaison to coordinate with the EST. The EST indicates that it has notified these liaisons of the public filing criteria found at 5 C.F.R. § 2634.202. These liaisons are responsible for notifying the EST whenever a new or transferring employee may qualify for designation as a public financial disclosure filer. VA's procedure provides that, upon notification, the EST will make the final determination as to the employee's filing status, enter the new filer into the Financial Disclosure Management system, and contact the filer to collect a financial disclosure report.

OGE reviewed a sample of 40 new entrant public financial disclosure reports submitted in 2012. New entrant public filers are required to submit their financial disclosure reports within 30 days of assuming public filing positions. *See* 5 C.F.R. § 2634.201(b). OGE found that 38

⁵ Filers who leave VA do not have access to the Financial Disclosure Management system and, instead, submit their termination reports in paper format.

percent of the sampled reports were submitted after the filing deadline, which meant that the employees were operating in their positions without undergoing conflicts of interest reviews for inordinate periods of time. VA attributed this gap to situations in which the liaisons failed to notify the EST of new public filers in a timely manner.

The EST has undertaken to address the issues with identification and notification of new entrant filers that seems to be the primary cause of these delays. The EST has prepared a draft ethics handbook and directive addressing the issue of filers submitting late new entrant reports. However, VA reports that the draft has been pending approval by VA leadership for an extended period of time and it is not clear when or if these documents will be approved. As a predicate to approval, this handbook is in the concurrence process at VA, which requires that all VA services review and concur in the handbook.

b. Annual Filers

Public financial disclosure filers must also file reports annually by May 15. *See* 5 C.F.R. § 2634.201(a). The electronic Financial Disclosure Management system used by VA can provide filing reminders to employees prior to the annual due date. EST's procedures also require ethics officials to send reminders manually to public filers who have not submitted reports within 15 days of the deadline for annual reports. EST's procedures require ethics officials to contact public filers who miss the deadline both by email and by phone. EST's procedures also require ethics officials to notify Under Secretaries and Assistant Secretaries of cases in which non-compliance with the annual filing requirement extends 30 days beyond the deadline. Moreover, the EST has referred cases of extreme filing delinquency to VA's Chief of Staff.

OGE reviewed a sample of 40 annual public financial disclosure reports submitted in 2012. OGE found that 15 percent of the sampled reports were submitted after the filing deadline.

c. Termination Filers

A public filer who leaves a filing position must file a termination financial disclosure report within 30 days of leaving the position. The EST indicates that departing filers generally cooperate with termination filing requirements when EST's ethics officials contact them to collect their termination reports. However, the EST depends on liaisons in the Corporate Senior Executive Management Office, the Veterans Health Administration Workforce Management and Consulting Office, and the Board of Veterans' Appeals, who are required to notify the EST when public filers are preparing to leave filing positions. In practice, the liaisons are often unaware that a public filer within their area of responsibility is preparing to leave a filing position. As a result, the liaisons have had difficulty providing EST sufficient notice of a departure to enable EST to contact the departing filer and collect a termination report.

Local Human Resources offices are responsible for out-processing some of VA's departing filers. The EST notes that the failure of these offices to consistently provide the EST with timely notification of departures is impeding its collection of termination reports. OGE

notes also that these departing filers do not meet with professional ethics officials for advice on applicable post-employment restrictions, including the criminal provisions of 18 U.S.C. § 207.

OGE reviewed a sample of 30 termination public financial disclosure reports submitted in 2012 and found that 17 percent of the sampled reports were submitted after the deadline. OGE found that another 17 percent of the sampled reports were certified after the certification deadline. VA ethics officials indicated that the agency is creating a national clearance checklist which should provide uniform procedures across all Human Resources offices for departing employees and improve timely filing of termination financial disclosure reports.

Recommendation 3 (open)

OGE recommends that VA ensure that its public filers file their reports before the deadline. As part of one possible approach to implementing this recommendation, OGE suggests that VA leadership specifically instruct VA's Human Resources offices to assist the EST in its effort to establish effective procedures for Human Resources offices to timely notify the EST regarding new appointments to, and departures from, public filing positions. In addition, OGE suggests that VA's leadership communicate clearly to all public filers the importance of timely, accurate, and complete disclosure of financial interests.

Recommendation 4 (open)

OGE recommends that VA advise departing public filers that counseling regarding post-employment restrictions is available to both current and former VA employees. As part of one possible approach to implementing this recommendation, OGE suggests that VA revise its out-processing procedures to include a requirement that departing public filers receive written notice regarding the availability of this counseling. Alternatively, as a model practice, VA may want to go further by revising its out-processing procedures to require that ethics officials counsel all departing public filers regarding post-employment restrictions.

2. Review and Certification of Reports

A government-wide regulation requires agency ethics officials to review public financial disclosure reports within 60 days after the date of filing, subject to an exception for incomplete reports. *See* 5 C.F.R. § 2634.605(a). OGE found that 100 percent of the sampled new entrant reports were certified by the certification deadline. OGE also found that 98 percent of annual reports and 83 percent of termination reports were certified by the certification deadline. Audit trails in the electronic filing system reflected that VA's ethics officials sought clarifications of entries from filers before certifying the reports.

In order to evaluate VA's use of these public financial disclosure reports for conducting conflicts of interest analyses, OGE asked VA's ethics officials about their access to information regarding the official activities of public filers. VA's ethics officials indicated that they have

access to the position descriptions for the positions these filers occupy, though OGE notes that position descriptions tend to be generic and can be out of date or inaccurate. They also indicated that they have access to VA's vendor list. Whenever an asset or an outside position appears to pose a potential conflict with the general nature of the filer's position, the EST's ethics officials call the filer to discuss the potential conflict.

At the same time, the EST acknowledged that its ethics officials cannot necessarily know the actual official activities of individual filers. To a significant degree, they must rely on prospective warnings to filers and annual ethics training to enable filers to self-regulate for conflicts of interest. For instance, they acknowledged that they cannot necessarily know the extent to which filers are meeting with pharmaceutical representatives.⁶ They cannot necessarily know the types of procurement matters in which filers are participating. They cannot necessarily know the specific activities or transactions in which filers are engaging related to the loan guarantee program and the management of foreclosed real estate in VA's possession. They similarly acknowledged that they cannot know specifically what financial interests pose conflicts of interest for a particular filer who oversees a facility within VA's Cemetery Service or who supports VA's involvement in the Strategic National Stockpile. They cannot know the specific projects assigned to filers who work in VA's information technology offices, particularly with regard to companies seeking to do business with VA that are not currently on VA's list of vendors.

While the EST has limited access to this information, OGE notes that the supervisors of VA's public filers have direct knowledge of the official activities of these filers. Therefore, VA could enhance the effectiveness of conflict of interest analyses by involving supervisors in the review of public financial disclosure reports. OGE notes that the U.S. Department of Defense has long used this approach and that, as a result, the Army's Financial Disclosure Management system, which VA uses, is designed to accommodate supervisory certifications in addition to ethics office certifications.

Recommendation 5(open)

OGE recommends that VA increase its capacity to perform conflict of interest reviews of public financial disclosure reports. As part of one possible approach to implementing this recommendation, OGE suggests that VA require supervisors of public filers to conduct initial reviews of their financial disclosure reports, in order to identify any assets or outside positions that may conflict with the filers' specific official activities. These supervisors could then contact the EST whenever they identify potential conflicts of interest. In addition, a supervisor's certification would be required on each public report in addition to the EST's certification.

⁶ The EST noted that a recent VA regulation requires pharmaceutical representatives to make appointments in advance of meetings and bars them from appearing at a medical center without an appointment. However, the EST is not notified when or with whom such appointments are scheduled.

3. Report and Related Documentation Management

OGE's program reviewers examined VA's document management with regard to its public reports. OGE identified some areas for improvement. OGE notes, however, that the EST is still relatively new and that some of the identified issues may have stemmed from the process of transitioning to a new organizational structure.

One issue involved the tracking of extension requests. An agency may, for good cause shown, grant to a public filer an extension of up to 45 days for filing a financial disclosure report. The agency may grant written approval of a second extension of up to 45 days for good cause upon written request from an employee. Agencies are required to maintain such records as part of the employee's official report file. *See* 5 C.F.R. § 2634.201(f). EST procedures require all extension documentation be entered into VA's GC Laws database. OGE's sample of public financial disclosures contained two requests for extensions over 45 days. However, VA could not produce documentation for either extension request. VA explained that the extensions were documented and granted via email but were not properly recorded in GC Laws. The email records were unavailable because the ethics official managing extension requests departed VA prior to this program review. Subsequently, all extension requests for 2013 were recorded in the GC Laws database.

Another issue involved the tracking of late filing fees. Public financial disclosure filers who submit reports more than 30 days after the applicable filing deadline are subject to late filing fees. An agency's DAEO may waive a late filing fee upon a written determination, maintained in the employee's official financial disclosure file, that the delay in filing was caused by extraordinary circumstances. *See* 5 C.F.R. § 2634.704. In 2012, VA assessed four late filing fees and granted two fee waivers. VA was unable to locate documentation for one of these two waivers. As with the filing extensions, VA noted that the missing waiver documentation was granted via email and not properly recorded in the GC Laws database by the ethics official who no longer works for the EST. The EST has advised the staff member who is currently responsible for extensions of the waiver procedures.

Another issue involved the routine destruction of public financial disclosure reports after expiration of the retention period. Agencies are required to retain public financial disclosure reports for six years and then destroy them, except for any reports needed for ongoing investigations. *See* 5 C.F.R. § 2634.603. VA maintains all public financial disclosure reports at VA's Central Office. VA's public financial disclosure reports have been maintained electronically in the Army's Financial Disclosure Management system since 2009. The Financial Disclosure Management system can identify and purge reports automatically as they reach the end of the retention period. VA maintains physical reports created prior to VA's adoption of the Financial Disclosure Management system in a locked file cabinet accessible to EST personnel. VA indicated that reports are occasionally reviewed by EST personnel to ensure destruction of reports upon expiration of the retention period. VA acknowledged, however, that it had not established a schedule for reviewing reports for routine destruction. OGE's review of a sample of 30 reports showed that VA retained 2 reports beyond the retention period. The EST followed up with an examination of VA's public financial disclosure files during the course of this program review and indicated that it is now in the process of identifying and destroying

reports that have reached or exceeded the end of the retention period. The EST has also updated its financial disclosure procedures to assign responsibility for an annual retention check of financial disclosure reports.

Recommendation 6 (closed)

OGE recommends that VA complete the destruction of public financial disclosure reports that no longer meet the retention requirements at 5 C.F.R. § 2634.603 and update the EST's procedure for routine destruction.

C. Confidential Financial Disclosure

With regard to the confidential financial disclosure reports due in February 2013 covering calendar year 2012, VA reported that it had 8,668 confidential financial disclosure filers. As with its public financial disclosure reports, VA uses the Army's Financial Disclosure Management system for the electronic submission, retention, and tracking of public financial disclosure reports. Confidential financial disclosure reports submitted in 2012 were primarily reviewed and certified by the approximately 200 attorneys in Offices of Regional Counsel who previously had ethics responsibilities. The EST reviewed and certified reports only from filers assigned to VA's Central Office, as well as any pending reports not yet certified by an Office of Regional Counsel when the EST pilot commenced. VA has now consolidated the confidential financial disclosure program in the EST.

1. Identification of Filers and Collection of Reports

a. New Entrant Filers

New entrant confidential filers must generally submit their financial disclosure reports within 30 days of appointment to confidential filing positions. *See* 5 C.F.R. § 2634.903(b). The EST maintains a master filing list of positions, identified by title and grade, that the DAEO has designated as confidential financial disclosure filing positions. VA has also developed a form allowing employees, including supervisors and Human Resources representatives, to notify the DAEO of positions to consider for addition to the master filing list. Local Human Resources offices identify individual employees who are entering positions subject to confidential financial disclosure based on the EST's master list. VA's more than 400 local Human Resources offices have designated staff members to serve as points of contact for the EST. These points of contact are responsible for identifying new employees entering confidential filing positions and for notifying the EST.

In practice, however, these Human Resources points of contacts have been inconsistent in notifying the EST of new hires entering confidential filing positions. To address the challenge of ensuring that these Human Resources points of contact follow through on the requirement to notify the EST of new filers, the EST began a labor-intensive outreach effort in April 2012. The EST's staff has undertaken to contact each of these Human Resources points of contact every month to ask whether they have reported all new filers. EST staff also ask the points of contact

whether the Financial Disclosure Management system accurately reflects each new filer's information.

OGE reviewed a sample of 30 new entrant confidential financial disclosure reports submitted in 2012. OGE determined that all 30 of these new entrant filers failed to file their reports by the filing deadline. As a result, all of these new entrant confidential filers functioned in their positions without undergoing conflicts of interest reviews.

b. Annual Filers

Confidential financial disclosure filers must also file reports annually. *See* 5 C.F.R. § 2634.903(a). At VA, annual confidential financial disclosure reports are submitted, reviewed, and certified using the Army's Financial Disclosure Management system. According to VA's written procedures for financial disclosure, the EST personnel use the Financial Disclosure Management system to identify filers who have not yet completed their reports and to provide three filing reminders before the annual filing deadline passes. The procedures also describe a series of escalation measures and contact points to address situations involving delinquent filers.

OGE reviewed a sample of 30 annual confidential financial disclosure reports submitted in 2012 to assess timeliness of filing and adequacy of conflict of interest review. OGE found that 10 percent of the sampled reports were submitted after the annual filing deadline. OGE also found that 10 percent of the sampled reports were certified after the certification deadline had expired.

Recommendation 7 (open)

OGE recommends that VA ensure that employees required to file confidential financial disclosure reports file their reports before the deadline. As part of one possible approach to implementing this recommendation, OGE suggests that VA leadership specifically instruct VA's Human Resources offices to assist the EST in its effort to establish procedures for the Human Resources offices to provide the EST with timely notification regarding new appointments to confidential filing positions. OGE also suggests that VA's leadership communicate clearly to all confidential filers the importance of timely, accurate, and complete disclosure of financial interests.

2. Review and Certification of Reports

As noted above, VA has a high volume of confidential financial disclosure filers. The EST estimates that, on average, its staff spends approximately 15 to 20 minutes reviewing each of these confidential financial disclosure reports. In order to evaluate VA's use of these confidential financial disclosure reports for conducting conflicts of interest analyses, OGE asked VA's ethics officials about their access to information regarding the official activities of financial disclosure filers. VA's ethics officials indicated that they have access to the position descriptions for the positions these filers occupy, as well as VA's vendor list. Whenever an asset or an outside position appears to pose a potential conflict with the general nature of a filer's

positions, the EST's ethics officials call the filer to discuss the potential conflict. However, as discussed in detail above in the section regarding public financial disclosure filers, the EST acknowledged that its ethics officials cannot necessarily know the actual official activities of these filers. Accordingly, OGE has the same recommendation with regard to the review of confidential financial disclosure reports that it has with regard to the public filers.

Recommendation 8(open)

OGE recommends that VA increase its capacity to perform conflict of interest reviews of confidential financial disclosure reports. As part of one possible approach to implementing this recommendation, OGE suggests that VA require supervisors of confidential filers to conduct initial reviews of their financial disclosure reports, in order to identify any assets or outside positions that may conflict with the filers' specific official activities. These supervisors could then contact the EST whenever they identify potential conflicts of interest. In addition, a supervisor's certification would be required on each confidential report in addition to the EST's certification.

3. Report and Related Documentation Management

OGE's program reviewers examined VA's document management with regard to its confidential reports. OGE identified some areas for improvement. OGE notes, however, that the EST is still relatively new and that some of the identified issues may have stemmed from the process of transitioning to a new organizational structure.

One issue involved the routine destruction of confidential financial disclosure reports after expiration of the retention period. Agencies are required to retain confidential financial disclosure report for six years and then destroy them, except for any reports needed for ongoing investigations. *See* 5 C.F.R. § 2634.604. VA has maintained its confidential reports in the Army's Financial Disclosure Management system since 2009. The Financial Disclosure Management system can identify and purge reports automatically as they reach the end of the retention period. VA maintains physical reports created prior to adoption of the Financial Disclosure Management system at VA's Central Office and at the various Offices of Regional Counsel, depending on the location of each filer's duty station at the time of filing. VA indicated that EST personnel occasionally review reports at VA's Central Office to ensure their destruction upon expiration of the retention period. The Offices of Regional Counsel are responsible for the security and retention of the reports in their possession.

OGE reviewed a sample of 25 confidential financial disclosure report files to assess compliance with retention requirements. Although 23 of these files contained only reports which were filed less than six years ago, two of the files contained reports filed more than six years ago. The retention of these reports beyond six years exceeded the regulatory limits for retention. During the course of OGE's program review, the EST examined its confidential financial disclosure files and directed the Offices of Regional Counsel to do the same. VA indicated that it is now in the process of identifying and destroying confidential reports that have reached or exceeded the end of the retention period. The EST has also updated its financial

disclosure procedures to assign responsibility for an annual retention check of financial disclosure reports.

Recommendation 9 (closed as to updating the EST's procedures and open as to completing the destruction of expired reports)

OGE recommends that VA complete the destruction of confidential financial disclosure reports that no longer meet the retention requirements at 5 C.F.R. § 2634.604 and update the EST's procedure for routine destruction.

Recommendation 10 (open)

OGE recommends that VA confirm that all 23 of its Offices of Regional Counsel have completed their destruction of confidential financial disclosure reports that no longer meet the retention requirements at 5 C.F.R. § 2634.604, and, if they continue to maintain reports in their offices, that they have updated their procedures for conducting routine destructions.

V. Education and Training

A. Initial Ethics Orientation

Government-wide regulations provide that, within 90 days of beginning work for an agency, all new employees must receive an initial ethics orientation consisting of, at a minimum, ethics official contact information along with the following material: (1) copies of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and any agency supplemental Standards to keep or review; or (2) summaries of the Standards, any agency supplemental Standards, and the Principles of Ethical Conduct (the Principals) to keep. Employees must receive one hour of official duty time to review the material. *See* 5 C.F.R. § 2638.703. Ideally, an agency will also provide its new employees with training in the application of the authorities.

In 2012, VA appointed approximately 38,000 new employees. VA's local Human Resources offices provided initial ethics orientation to new employees as part of the on-boarding process. For its part, the EST provided VA's Human Resources leadership with training material that satisfied the regulatory requirements. However, VA's local Human Recourse offices did not consult with VA's ethics office regarding the materials ultimately selected for initial ethics orientation and did not provide the EST with information that would enable it to track new employees' completion of these ethics orientations. As a result, VA does not have consolidated records regarding the content or completion of the training.

The EST contacted each of VA's local Human Resources offices to obtain data regarding initial ethics orientations in order to complete OGE's Agency Ethics Program Questionnaire for calendar year 2012. VA reported that 37,456 of its 38,044 new employees (98 percent) received initial ethics orientation in 2012. However, during OGE's program review, the EST did not

provide OGE with the materials used for the training of employees outside VA's Central Office. The EST did not know why the local Human Resources offices appear not to have provided initial ethics orientations to 588 new employees.

In mid-2013, VA integrated the EST's initial ethics orientation materials into its automated Talent Management System, and OGE's program reviewers determined that the content of these materials satisfies the regulatory requirements. Initial ethics orientation training is now assigned automatically to new employees when Human Resources personnel enter new employees' information into VA's Personnel and Accounting Integrated Data system. Once assigned, the Talent Management System sends email reminders to an employee and the employee's supervisor as the orientation deadline approaches. The system sends daily reminders if the deadline passes without the employee completing the orientation. The training itself requires a two-step certification process: The employee must certify both that the employee has watched the ethics training presentation and that the employee has reviewed the list of the EST contacts in order to receive credit. The Talent Management System instructs employees to send any questions about the training to a general email account for ethics, which the EST monitors. The EST reports that some employees have followed through on this instruction by emailing questions to the ethics mailbox.

Recommendation 11 (closed)

OGE recommends that VA ensure that it is able to effectively track new employee ethics orientations. In addition, OGE recommends that VA establish a continuing requirement that the content of all new employee ethics orientations be approved by VA's ethics office.

B. Annual Ethics Training

Government-wide regulations provide that all covered employees must receive annual ethics training addressing the following: (1) the Principles; (2) the Standards; (3) any agency supplemental Standards; (4) the federal criminal conflict of interest statutes; and (5) the names, titles, office addresses and telephone numbers of the DAEO and other agency ethics officials. Training length and delivery method requirements vary by an employee's financial disclosure filing status. *See* 5 C.F.R. § 2638.704 and 705.

In 2012, the EST provided VA's Central Office employees with annual ethics training, including in-person training for public financial disclosure filers. VA's 23 Offices of Regional Counsel provided training for covered employees outside VA's Central Office. The EST made training material available to the Offices of Regional Counsel for annual ethics training, but the responsibility to select training materials and provide training remained with individual Regional Counsels. The Regional Counsels did not notify the EST of the training materials they ultimately selected. The EST tracked completed annual training at VA's Central Office, and the Offices of Regional Counsel tracked annual training outside VA's Central Office.

To provide annual ethics training data for OGE's Agency Ethics Program Questionnaire for calendar year 2012, the EST contacted each Regional Counsel to determine how many covered employees outside VA's Central Office received annual ethics training. The data that VA provided revealed that 923 of 9,038 covered employees (10 percent) failed to receive annual ethics training in 2012. With regard to the subset of public filers, all but one of VA's public filers completed the required annual training. OGE's program reviewers determined that the annual ethics training material the EST provided to employees in VA's Central Office met the applicable content requirements, but VA did not produce copies of the training materials provided to employees outside VA's Central Office.

In 2013, VA integrated annual ethics training in its automated Talent Management System. The EST continued to provide live training to public financial disclosure filers in VA's Central Office, but public financial disclosure filers outside VA's Central Office and confidential financial disclosure filers completed their annual training through the automated Talent Management System. OGE is concerned that the EST's staffing structure could potentially limit VA's capacity to continue providing its financial disclosure filers with either in-person training or live training with direct access to ethics officials.

In response to OGE's Agency Ethics Program Questionnaire for calendar year 2013, the EST reported that 529 of its 534 public financial disclosure filers completed the required annual training in 2013. The EST indicated in its response to the questionnaire that it would report the 5 noncompliant public filers to VA's Chief of Staff and recommend appropriate administrative action. Data that the EST provided in response to the questionnaire also indicated that more than 10 percent of its confidential filers (882 out of its 8,417) failed to complete their annual training in 2013. The EST noted, however, that its records may not be accurate due to technical difficulties with VA's automated Talent Management System.⁷

In February 2013, the VA Chief of Staff mandated that VA provide annual ethics training to all of its employees, extending this requirement to employees not covered by the government-wide regulation on annual ethics training. VA started to carry out this mandate in June 2013 when its Talent Management System came online. The EST stated that its records indicate a substantial majority of VA's workforce has completed at least one annual ethics training in the automated Talent Management system since June 2014.⁸

⁷ The EST later provided OGE's program reviewers with an update indicating that its records now reflect that slightly less than 9 percent of its confidential filers (622 out of 7,055) failed to complete their annual training in 2013. However, the EST indicates that this update number is also unreliable.

⁸ Specifically, the EST reported that VA's Talent Management System tracked the completion of annual ethics training by 297,402 of 337,785 employees who were active in this automated system as of 12/31/13 (88 percent). The EST indicates that a few factors tend to explain why not all employees have completed the training. First, because the Talent Management System did not begin operating until mid-June, 2013, some employees probably completed annual ethics training for calendar year 2013 before the automated training was available. Second, due to technical problems in the early days of its operation, the Talent Management System did not recognize some employee's training as complete, though they had in fact completed the training. Third, VA employs a number of personnel, such as groundkeepers, who do not have regular computer interaction. Some of these employees may have received training outside of the automated Talent Management System and, as a result, their training would not have been tracked. As the automated Talent Management System matures, VA anticipates that the accuracy of its tracking of annual ethics training will increase.

Model Practice

VA's mandate that its entire workforce complete annual ethics training every year is a model practice.

Recommendation 12 (open)

OGE recommends that VA ensure that all public and confidential financial disclosure filers complete the required ethics training each year. Ideally, OGE suggests that VA continue to provide training to public filers in person to the greatest extent possible.

Recommendation 13 (open)

OGE recommends that VA ensure that all confidential financial disclosure filers complete the required ethics training each year. OGE also recommends that VA ensure that its tracking of this training is accurate.

C. Annual Ethics Training Plan

OGE regulations under 5 C.F.R. § 2638.706 require agencies to develop, at the beginning of each year, a written plan for annual ethics training. The plan must include a brief description of the agency's planned annual ethics training and estimates of the number of employees who will receive verbal and written ethics training. OGE requested a copy of VA's annual ethics training plan for 2012, but VA was unable to locate a copy of that plan. In lieu of the 2012 plan, VA provided OGE with its plans for 2013 and 2014. These plans satisfied the regulatory requirements for content, but the 2014 plan did not satisfy the regulatory requirement as to the timing of its development. VA did not finalize the 2014 plan until June 2014, rather than at the beginning of the calendar year as required. OGE reminds VA to ensure annual ethics training plans are completed at the beginning of each calendar year.

Recommendation 14 (closed as to the creation of a training plan each year, open as to the creation of a training plan at the beginning of each year)

OGE recommends that VA create a training plan at the beginning of each year and retain a copy of that training plan.

VI. Advice and Counsel

An agency's DAEO is required to ensure that an advice and counseling program for agency employees concerning ethics, including matters related to the Standards and post-employment, is developed and conducted. *See* 5 C.F.R. § 2638.203. The DAEO may delegate to one or more Deputy Ethics Officials the responsibility for developing and conducting the counseling program. *See* 5 C.F.R. § 2638.204.

Prior to the establishment of the EST, approximately 200 attorneys from the 23 Offices of Regional Counsel and VA's Central Office provided ethics advice and counsel to VA employees. VA has explained that this former structure presented challenges with regard to the consistency of ethics guidance, dissemination of current ethics information, and the level of expertise of part-time ethics officials.

Under the new EST model, attorneys in the 23 Offices of Regional Counsel now channel requests for ethics guidance directly to the EST through an ethics email inbox. Members of the EST's staff also have authority to respond to ethics inquiries from any VA employee, and they are encouraged to consult with the DAEO or Alternate DAEO on issues of heightened significance or sensitivity to the agency. The EST further collaborates during weekly EST staff conference calls to discuss current ethics issues, share job aides, and ensure a consistent approach to ethics subject matter. The EST's attorneys provide ethics guidance primarily by email and are required to memorialize ethics inquiries in VA's GC Laws database. All EST personnel have access to the GC Laws database, which electronically stores material that can be searched using plain-language terms. VA also noted that data from the GC Laws database indicated that average ethics inquiry completion time across the agency fell from 20 hours to 2 hours after ethics advice and counsel responsibility moved to the EST.

OGE reviewed 18 samples of advice and counsel provided by VA covering April 2012 through June 2013. The samples of advice and counsel covered a broad range of ethics topics including financial conflicts of interest, representation, post-government employment, impartiality, gifts, public and confidential financial disclosure, and outside activities. General ethics guidance in the sample was primarily provided through email. Post-employment guidance in the sample was provided by formal letter. The sampled advice and counsel appeared to provide a level of analysis consistent with the type of questions asked. OGE noted the use of standardized language, tailored to the circumstances of each inquiry, which summarized the applicable ethics-related laws and regulations. The DAEO emphasized to OGE's program reviewers the benefit of professionalizing the ethics function by moving from a part-time collateral duty staff reporting under various organizations to a consolidated, full-time staff reporting under one organization.

VII. Conflict Remedies

As part of a program review, OGE examines an agency's documented efforts to prevent or resolve conflicts of interest. During this review, OGE's program reviewers requested information regarding compliance with ethics agreements by nominees for Presidentially-appointed, Senate-confirmed positions (PAS). They also reviewed data regarding VA's tracking of conflict of interest remedies.

The Ethics in Government Act expressly recognizes the need for PAS nominee to address actual or apparent conflicts of interest by requiring written notice of the specific actions to be taken in order to alleviate the conflict of interest. The actions to be taken by PAS nominees are documented in ethics agreements signed during the nomination process. After a PAS nominee has been confirmed by the Senate and appointed to a position at VA, an EST attorney follows-up to ensure compliance with the terms of the ethics agreement. The EST attorney notifies OGE of compliance efforts when the individual, who has now become a PAS appointee, satisfies the terms of the ethics agreement. VA has further formalized the requirement that EST attorneys compare PAS appointees' ethics agreements and annual financial disclosure reports to ensure continued compliance with the terms of ethics agreements.

In 2012, the President appointed only one PAS appointee at VA. Although the PAS appointee complied with the terms of the ethics agreement, VA did not submit evidence of compliance to OGE until several months after the notification deadline. According to VA, the appointee delayed signing the formal recusal instrument while alternative compliance mechanisms were explored. During the course of the review, the EST updated its ethics agreement procedures regarding notification to OGE, ethics agreement documentation, compliance deadline reminders and individual EST member responsibilities.

The criminal conflict of interest law at 18 U.S.C. § 208 prohibits an employee from participating in an official capacity in a particular matter in which he or she has a financial interest. Congress included two provisions that permit an agency to issue a waiver of the prohibition in individual cases. Under Executive order 12674, agencies must consult with OGE prior to issuing a waiver under section 208. VA issued no waivers for public or confidential financial disclosure filers based on information found on their annual reports in 2012. VA properly consulted with OGE in 2012 regarding a waiver that it subsequently issued in 2013. The EST provided OGE with a copy of VA's standard operating procedures covering section 208 waivers which include individual responsibilities, documentation requirements, consultation with OGE, and a mentoring process. The EST also uses a template to assist the ethics attorney gathering information for the waiver determination. VA has not tracked other conflict remedies such as directed divestitures of conflicting financial interests, resignations from outside positions, or recusals from official government activities.

Recommendation 15 (closed)

OGE recommends that VA update its ethics procedures to address notification of OGE regarding PAS appointees' compliance with their ethics agreements.

VIII. Enforcement

As part of a program review, OGE examines an agency's documented efforts to enforce the ethics laws and regulations applicable to executive branch employees. The EST reported that VA referred eight potential violations of the criminal conflict of interest statutes to its Office of Inspector General in 2012. The Office of Inspector General referred one of these eight potential violations to the U.S. Department of Justice. VA properly notified OGE of this referral to the U.S. Department of Justice. The EST also reported that VA took 28 disciplinary actions based wholly or in part upon alleged violations of the Standards of Conduct for Employees of the Executive Branch (5 C.F.R. part 2635), none of which alleged violations of the criminal conflicts of interest statutes (18 U.S.C. §§ 201, 203, 205, 207, 208, and 209).

OGE's program reviewers also asked the EST about VA's procedures for enforcement. When the EST learns of an apparent violation of the criminal conflict of interest statutes, the EST's staff consults with the Alternate DAEO and refers the apparent violation to VA's Office of Inspector General for possible investigation. The EST emphasized that attorneys in the Offices of Regional Counsel are aware of their responsibility to notify the EST of apparent criminal violations. If the Office of Inspector General refers an apparent violation to the U.S. Department of Justice for possible prosecution, the Office of Inspector General provides the EST with the necessary information for notifying OGE of the status and disposition of that referral, consistent with 5 C.F.R. § 2638.603. During the course of this program review, the Office of Inspector General indicated to OGE's program reviewers that it would also begin providing referral and disposition information directly to OGE.

For non-criminal violations of the Standards of Ethical Conduct for Executive Branch Employees, the authority for taking disciplinary action rests with the responsible VA program office. The procedures of the VA's Human Resources offices include a table of penalties that provides guidance on possible disciplinary actions. The EST reports to OGE the total number of disciplinary actions taken annually at VA and maintains information on specific disciplinary actions occurring within its program office.

IX. Special Government Employees

Special government employees are officers or employees of the executive branch retained, designated, appointed or employed to perform their duties, full-time or intermittently, for not more than 130 days in any 365-day period. VA reported that it employs 425 special government employees. All of VA's special government employees serve on advisory committees under the Federal Advisory Committee Act.

VA has 24 Federal Advisory Committee Act advisory committees. The members of these advisory committees are designated either as special government employees, who are covered by ethics laws and regulations applicable to federal employees, or as representatives, who are not covered by such laws and regulations. Each advisory committee is supported by a Designated Federal Officer, who among other duties designates each member as either a special government employee or a representative.

At the start of each year, the EST contacts each advisory committee's Designated Federal Officer to obtain a list of special government employees serving on the advisory committee. The EST maintains a spreadsheet to track the ethics training and financial disclosures of these special government employees. The EST does not review the agenda for each committee meeting to identify and resolve conflicts of interest in advance of the meetings.

A. Financial Disclosure

All special government employees are required to file financial disclosure reports, with the determination as to whether a special government employee files a public report or a confidential report depending on the level of salary received. In individual cases, a special government employee required to file a confidential report may be excluded from filing under 5 C.F.R. § 2634.904(b) when the agency head or designee determines that the duties of the individual's position make the possibility of real or apparent conflicts of interest remote. VA has exercised this exclusion authority liberally, with all special government employees on 19 of its 24 advisory committees covered by a blanket exclusion. As a result, 374 of VA's 425 special government employees (88 percent) do not file financial disclosure reports. Because these individuals do not file financial disclosure reports, VA does not analyze their financial holdings to identify conflicts of interest.

OGE requested a sample of 17 financial disclosure reports of special government employees that were submitted in 2012. However, VA ethics officials were unable to locate about half of the requested reports, 8 out of the 17 requested (47 percent). VA noted that internal records show the missing reports were submitted and certified, but appear to have been filed improperly. During the review, VA updated its financial disclosure procedures to address the handling and storage requirements for special government employee's financial disclosure reports.

OGE compared the available sample of 9 financial disclosure reports to the dates of the advisory committee meetings and found that VA failed to review 3 of these reports (33 percent) prior to the first committee meeting of the year. The special government employees who filed these three reports all worked for the same advisory committee, and the EST reported that the Designated Federal Officer for that advisory committee did not notify the EST of the advisory committee's first meeting. In response, the EST contacted VA's Federal Advisory Committee Act coordinator and reiterated that the financial disclosure reports of the committee's special government employees must be collected and reviewed before the first meeting each year. OGE also learned that the EST has not reviewed meeting agendas for each committee meeting to identify and resolve conflicts of interest in advance of the meetings. EST has agreed to add the review of advisory committee meeting agendas to its procedures.

Recommendation 16 (open)

OGE recommends that VA review its blanket exemptions for special government employees and determine whether some or all of these officials should be designated as financial disclosure filers. OGE recommends that VA document its

determination in writing, with a discussion of the factors that VA considered in making its determination, and provide OGE with a copy of the written determination.

Recommendation 17 (closed as to the establishment of safeguards for the retention of reports, open as to the establishment of safeguards for the collection of reports)

OGE recommends that VA establish safeguards to ensure that special government employees file all required financial disclosure reports. OGE also recommends that VA establish safeguards to ensure that it retains the financial disclosure reports of special government employees for the regulatory retention period.

Recommendation 18 (open)

OGE recommends that VA complete its review of each financial disclosure report filed by a special government employee and resolve any conflicts of interest prior to the filer's first advisory committee meeting each year.

Recommendation 19 (open)

OGE recommends that VA increase its capacity to perform conflict of interest reviews of special government employees' financial disclosure reports. OGE recommends that conflict of interest reviews include a review of advisory committee meeting agendas. As part of one possible approach to implementing this recommendation, OGE also suggests that VA require the Designated Federal Officers to conduct initial reviews of special government employees' financial disclosure reports, in order to identify any assets or outside positions that may conflict with the filers' specific official activities. These Designated Federal Officers could then contact the EST whenever they identify potential conflicts of interest. In addition, a Designated Federal Officer's certification would be required on each confidential report in addition to the EST's certification.

B. Education and Training

1. Initial Ethics Orientation

OGE asked the EST about its initial ethics orientation for special government employees. VA provides all of its special government employees with written ethics orientation materials, which the EST drafted. The Designated Federal Officials deliver these materials to the special government employees. OGE's review of these materials revealed that they included plain language summaries of the criminal conflict of interest statutes, the Standards, and examples specific to special government employees. OGE found that these materials did not include the Principles of Ethical Conduct, as required by 5 C.F.R. § 2638.703(a). Subsequently, the EST revised this orientation material to include the Principles of Ethical Conduct and provided the revised material to OGE.

2. Annual Ethics Training

OGE also asked about annual ethics training for special government employees. VA requires only the 12 percent of its special government employees who are required to file financial disclosure reports to receive annual ethics training. VA does not require annual ethics training for the remaining 88 percent of its special government employees. The EST indicated that it has been willing to provide annual ethics training to other special government employees upon request but did not provide OGE's program reviewers with data or documentation demonstrating the extent to which such voluntary training has occurred.

The EST provides live, in-person annual ethics training to those special government employees who do file financial disclosure reports. OGE reviewed the annual training material and determined that it satisfied the content requirements at 5 C.F.R. § 2638.704(b). The EST's policy is to schedule the training each year before the start of each advisory committee's first annual meeting. The EST records attendance at its training sessions on sign-in sheets and documents completed training in a spreadsheet. The tracking spreadsheet indicated that two special government employees who participated in committee meetings did not attend the in-person training but received written training instead, pursuant to 5 C.F.R. § 2638.705(d).

Recommendation 20 (closed)

OGE recommends that VA update its initial ethics orientation materials for special government employees to comply with the requirements of 5 C.F.R. § 2638.703(a).

Recommendation 21 (open)

OGE recommends that VA provide annual ethics training to all of its special government employees.

X. 1353 Travel Acceptances

Federal agencies may accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under the authority of the General Services Administration regulation at 41 C.F.R. chapter 304, implementing 31 U.S.C. § 1353. Semiannual reports of payments accepted under 31 U.S.C. § 1353 must be submitted to OGE by May 31 and November 30 each year.

In 2012, the VA's Financial Services Center replaced VA's Office of Travel Policy as the office responsible for collecting data and submitting semiannual reports to OGE. The Financial Services Center established a "Reports Section" for handling these and other reports, added the reports to its internal log to prompt data collection, and instituted monthly 1353 data collection for high-volume offices. The Financial Services Center has developed standard operating procedures for the reporting process, created an internal data collection system to improve

consistency and timeliness, and is working to automate elements of the data collection process through integration with the E-Gov Travel Services system.

Before the Financial Services Center assumed responsibility for this reporting requirement, VA failed to meet the deadlines for submitting reports to OGE in November 2011, May 2012, and November 2012. In each case, VA missed the deadline by more than a month. After the Financial Services Center assumed responsibility, VA missed the deadline in May 2013 but only by 6 days. The Financial Services Center explained that this brief delay occurred because, in addition to the May 2013 report, it had to compile the November 2012 that VA's Office of Travel Policy had not filed. However, the Financial Services Center then missed the deadline for submitting the November 2013 report to OGE by more than two months. The Financial Services Center explained that this delay was caused, in part, by the government shutdown in October 2013. The Financial Services Center submitted the next report to OGE before the May 2014 deadline.

Recommendation 22 (closed)

OGE recommends that VA ensure that it complies with applicable deadlines for submitting its travel reports to OGE

XI. Agency Comments

Comments provided by the Department of Veterans Affairs are attached in their entirety.

Appendix

VAU.S. Department
of Veterans AffairsOffice of the General Counsel
Washington DC 20420

SEP 16 2014

Mr. Walter M. Shaub, Jr.
Director
U.S. Office of Government Ethics
1201 New York Avenue, N.W.
Suite 500
Washington, DC 20005

In Reply Refer To:

Dear Mr. Shaub:

The Department of Veterans Affairs Office of General Counsel (OGC) received the most recent draft report of the Office of Government Ethics (OGE) review of the OGC Ethics Program on August 21, 2014, with subsequent revisions made in accordance with our discussions with Doug Chapman, and provides the following response. First, OGC would like to express its appreciation for the professionalism shown by the audit team on their site visits and in subsequent meetings and conversations regarding the proposed findings and report. Second, OGC draws your attention to the fact that in your recent meeting with the Secretary of Veterans Affairs, Robert A. McDonald, the Secretary emphasized the importance he places on ethics throughout VA. Ethics is *central* to VA's Core Values: Integrity, Commitment, Advocacy, Respect and Excellence ("I CARE").

As you know, the OGC Ethics Program has undergone an extensive reorganization in the last two and a half years. The newly formed Ethics Specialty Team (EST) has been a permanent team since October 2013, continually adjusting and improving its case management policies and protocols. The goal of the reorganization was to provide VA employees with timely and consistent government ethics advice and administer this program in a more efficient manner. OGC based the EST staffing on a detailed analysis of OGC's GCLAWS time and case-tracking databases combined with a similarly detailed analysis of staffing and caseloads of VA Regional Counsel Offices and OGC's Staff Group III, as Regional Counsel and Staff Group III attorneys performed ethics program functions prior to the advent of the EST. There are 14 experienced ethics attorneys on the EST, all of whom volunteered to serve on the Team, and who are ably supported by four paralegals. Your office and OGC have discussed thoroughly the staffing levels. VA does not share OGE concerns that VA ethics staff is small relative to the size of VA's workforce and the per capita staffing levels of other cabinet agencies, as the EST has delivered on its goal of providing timely and consistent ethics advice. As you have noted, the EST has some issues with timely review of financial disclosure reports and welcomes your input in helping us to resolve them.

OGE recommended that VA consider, among other alternatives, leveraging existing human capital by having personnel in other offices take on additional

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Mr. Walter M. Shaub, Jr.

responsibilities associated with the ethics program. A number of such efforts are already underway. For example, our draft VA Financial Disclosure Handbook, which would place some responsibilities squarely on other VA offices, is now in VA-wide concurrence. In addition, local Regional Counsel and VA Central Office attorneys who are outside the EST continue responding to simple, recurring ethics questions. The EST will provide periodic, special training of all OGC attorneys on spotting ethics issues. The Veterans Health Administration's National Center for Ethics in Health Care handles health-care ethics.

In addition, a VA Institutional Research Board (IRB) must approve any VA research project. This review requires all researchers on a project to disclose their financial interests to the IRB using an alternate Form 450. An IRB review focuses on research conflicts that may arise when, for instance, a researcher on a project funded through a grant from a pharmaceutical manufacturer also owns stock in that company, or conducts research that may have a direct and predictable effect on the value of the researcher's invention. Such a conflict would negatively affect the credibility of the research, in addition to being a potential violation of the conflict of interest laws. Thus, two entities, the IRB and the EST, manage research conflicts. An IRB may withhold approval of research studies until conflicts are resolved. Often, such conflicts are resolved without the need for referral to the EST, such as when the researcher divests the conflicting interest in order to conduct the research. The IRBs consult regularly with the EST to resolve these issues. The number of these consultations is increasing, which increases the EST interaction with OGE. We note that OGC developed the research conflict of interest disclosure form in conjunction with OGE, and OGE approved the form. All of these efforts help; but we believe we would lose part of the value of the EST if we returned to a system where consistency cannot be guaranteed because too many voices are giving the message.

The EST manages its duties as VA's government ethics officials in the same way OGE manages its duties as the ethics watchdog for the entire federal government with a relatively small staff—leveraging technology, plus the EST has locations across the country. The EST trains over 342,000 employees through VA's Talent Management System (TMS), and manages training and consultations by telephone, e-mail, video conferencing and in-person sessions. In calendar year 2014, the EST has trained and is training VA's public filers and reviewed over 8600 confidential financial disclosure reports and approximately 550 public filer reports. The EST is updating the current ethics training program in TMS, and next year, the EST anticipates an entirely new TMS training program.

As with any organization, the EST is maturing into a more effectively functioning organization and expects efficiencies will continue to improve. The limiting factors are familiar to any governmental organization. VA's focus is patient care and veterans

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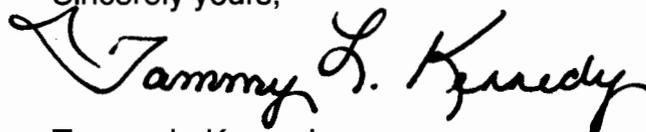
Mr. Walter M. Shaub, Jr.

benefits, and while ethics is an integral part of Government service, as noted by Secretary McDonald in your meeting with him, activities that *directly* benefit Veterans are VA's primary mission. The EST is a direct result of the need to do more with less, and OGC believes that it has succeeded, with advice that is more accurate and consistent. We believe the EST is a viable way to achieve real efficiencies in this age of limited resources.

We will respond to your specific recommendations within the time provided to us by OGE. Please include these comments with the publication of your final report.

Please direct any questions to Mark T. Jaynes, (254) 297-5307.

Sincerely yours,

A handwritten signature in cursive script that reads "Tammy L. Kennedy". The signature is written in black ink and is positioned above the typed name and title.

Tammy L. Kennedy
Acting General Counsel