



# Ethics Program Review

U.S. Department of Education

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The U.S. Office of Government Ethics (OGE) conducted a review of the U.S. Department of Education (Education) ethics program during January through June 2023. The following summarizes the results of that review.

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## Objectives, Scope, and Methodology

**Objectives:** OGE provides overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest. The Ethics in Government Act gives OGE the authority to evaluate the effectiveness of executive agency ethics programs.<sup>1</sup> OGE uses this evaluation authority largely to conduct reviews of agency ethics programs. The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

**Scope:** OGE examined the following elements of Education’s ethics program: program administration, financial disclosure, education and training, ethics counseling, agency-specific ethics rules on outside employment, conflict remedies, and enforcement. OGE’s review focused on ethics program activities that occurred in 2022.

**Methodology:** OGE examined a variety of documents provided by Education ethics officials, including Education’s response to OGE’s 2022 Annual Agency Ethics Program Questionnaire (OGE Annual Questionnaire), written procedures for administering the financial disclosure program, samples of public and confidential financial disclosure reports filed in 2022, ethics training materials, and a sample of the ethics advice and counseling provided to employees. In addition, OGE contacted agency ethics officials to clarify the information examined, follow up on issues identified during the review, and discuss ethics program operations in further detail.

<sup>1</sup> See 5 U.S.C. § 13122 and 5 C.F.R. part 2638.

## Agency Background

Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access. Education operates under the leadership of the Secretary, a presidentially appointed, Senate-confirmed (PAS) official, and is headquartered in Washington, DC. It has a workforce of approximately 4,072 employees.

## Program Administration

The Ethics Division within the Office of the General Counsel (OGC) administers Education's ethics program. An Assistant General Counsel who serves as Education's Designated Agency Ethics Official (DAEO) heads the Ethics Division. A Deputy Assistant General Counsel in the division serves as the Alternate DAEO (ADAEO). Eight full-time ethics officials, including five attorneys, two ethics program specialists, and one ethics program assistant, assist the DAEO and ADAEO in the day-to-day management of the program.

The DAEO has designated the Counsel to the Inspector General and three other Office of Inspector General (OIG) attorneys as Deputy Ethics Officials (DEOs). The OIG DEOs are responsible for administering certain ethics program elements within OIG, including collecting, reviewing, and certifying all confidential reports filed by OIG staff, providing ethics training and advice and counsel, as well as approving OIG staff requests to engage in outside activities.

## Financial Disclosure

Title I of the Ethics in Government Act requires that agencies administer public and confidential financial disclosure systems. Financial disclosure serves to prevent, identify, and resolve conflicts of interest by providing for a systematic review of the financial interests of officers and employees. The financial disclosure process also offers an opportunity for ethics officials to provide ethics-related counseling to report filers.

To evaluate Education's financial disclosure systems, OGE examined the required written procedures for administering the systems, Education's processes for notifying the DAEO when employees enter positions whose incumbents are required to file financial disclosure reports, and a sample of public and confidential financial disclosure reports required to be filed by Education employees in 2022.

### Financial Disclosure Written Procedures

Each executive branch agency must establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available financial disclosure reports filed by the agency's officers and employees.<sup>2</sup> OGE examined Education's written procedures and determined that they comply with relevant requirements.

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<sup>2</sup> See 5 U.S.C. § 13122 (d)(1).

## Notices to the DAEO

Agency human resources offices play a vital role in ensuring the effective administration of the ethics program. Without necessary information about agency employees, ethics officials cannot successfully carry out their important work. Among other things, the lead human resources official is required to notify the DAEO of all appointments to positions that require incumbents to file public or confidential financial disclosure reports no later than 15 days after the appointment. The lead human resources official must also notify the DAEO of terminations of employees in positions that require incumbents to file public financial disclosure reports no later than 15 days after termination.<sup>3</sup> These notices help to ensure the timely collection of financial disclosure reports.

According to the DAEO, Education's Office of Human Resources (OHR) provides notification to ethics officials of all appointments to positions that require incumbents to file a public or confidential financial disclosure report by providing copies of the offer letters sent to prospective employees to the Ethics Division. OHR also notifies the Ethics Division of departing public filers by email.

OGE reviewed samples of notifications OHR provided to ethics officials advising when employees entered into or terminated from positions that required incumbents to file financial disclosure reports and found that they were timely.

## Public Financial Disclosure

Within 30 days of assuming a covered public filing position, an individual must file a public financial disclosure report.<sup>4</sup> The individual must subsequently file an annual report by May 15 each year and a termination report within 30 days of departing the public filing position.<sup>5</sup> Ethics officials are required to review the reports for potential conflicts of interest and certify them within 60 days of receipt by an agency's ethics office, unless additional information is being sought from the filer or remedial action is being taken.<sup>6</sup>

To evaluate the administration of Education's public financial disclosure system, OGE examined a sample of 30 new entrant, 35 annual, and 20 termination reports that were required to be filed in 2022. Table 1 below presents the results of OGE's examination.

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<sup>3</sup> See 5 C.F.R. § 2638.105(a)(1) and (2).

<sup>4</sup> See 5 C.F.R. § 2634.201(b).

<sup>5</sup> See 5 C.F.R. § 2634.201(a) and (e).

<sup>6</sup> See 5 C.F.R. § 2634.605.

**Table 1. OGE’s Examination of Education Public Financial Disclosure Reports**

	New Entrant	Annual	Termination	Total
<b>Reports Examined</b>	30	35	20	85
<b>Filed Timely</b>	24 (80%)	31 (89%)	18 (90%)	73 (86%)
<b>Reviewed within 60 Days of Receipt</b>	27 (90%)	32 (91%)	20 (100%)	79 (93%)
<b>Certified within 60 Days of Receipt</b>	25 (83%)	32 (91%)	20 (100 %)	77 (91%)

As noted in Table 1 above, 86% of public reports were filed timely, 93% were reviewed timely, and 91% were certified timely.

### Confidential Financial Disclosure

Within 30 days of assuming a covered confidential filing position, an individual must file a confidential financial disclosure report.<sup>7</sup> The individual must also subsequently file an annual report by February 15 each year.<sup>8</sup> The reports are required to be reviewed for potential conflicts of interest and certified within 60 days of receipt by the ethics office, unless additional information is being sought from the filer or remedial action is being taken.<sup>9</sup>

To evaluate the administration of Education’s confidential financial disclosure system, OGE examined a sample of 24 new entrant and 39 annual reports that were required to be filed in 2022. Table 2 below presents the results of OGE’s examination.

**Table 2. OGE’s Examination of Education Confidential Financial Disclosure Reports**

	New Entrant	Annual	Total
<b>Reports Examined</b>	24	39	63
<b>Filed Timely</b>	12 (50%)	26 (67%)	38 (60%)
<b>Reviewed within 60 Days of Receipt</b>	24 (100%)	39 (100%)	63 (100%)
<b>Certified within 60 Days of Receipt</b>	22 (92%)	32 (82%)	54 (86%)

<sup>7</sup> See 5 C.F.R. § 2634.903(b).

<sup>8</sup> See 5 C.F.R. § 2634.903(a).

<sup>9</sup> See 5 C.F.R. § 2634.605.

Table 2 shows that while the reports OGE examined were generally reviewed and certified timely, only 60% of the reports were filed timely. Ethics officials explained that several filers submitted their annual reports late and did not request a filing extension.

### Recommendation

1. Ensure that confidential financial disclosure reports are filed timely.

## **Education and Training**

Each executive branch agency must carry out a government ethics education program to teach employees how to identify government ethics issues and obtain assistance in complying with government ethics laws and regulations. The training program is to include: briefings for certain PAS officials; notices for prospective employees and newly appointed supervisors regarding their ethics-related obligations; initial ethics training for new employees; and annual ethics training for public and confidential financial disclosure report filers and certain other employees.<sup>10</sup> An ethics education program is essential to raising awareness among employees about the ethics laws and rules that apply to them and the availability of agency ethics officials to provide ethics counseling.

### **Ethics Briefings for Certain Agency Leaders**

PAS officials, except for those in certain positions, must complete an ethics briefing to discuss their immediate ethics obligations no later than 15 days after their appointment, unless the DAEO grants an extension.<sup>11</sup> Any extension of more than 15 days requires the DAEO to make a written determination that extraordinary circumstances make it necessary to provide the briefing at a later date.<sup>12</sup>

OGE determined that two PAS officials were required to receive the briefing in 2022. OGE examined Education's training records, which documented that both PAS officials received the briefing within 15 days of their respective appointments, as required.

### **Notices to Prospective Employees**

Written offers of employment for positions covered by the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct) must include: a statement regarding the agency's commitment to government ethics; notice that the individual will be subject to the Standards of Conduct and the criminal conflict of interest statutes; instructions for obtaining additional information on applicable ethics requirements; and, where applicable, notice of the time frame for completing initial ethics training and information regarding the filing of new entrant financial disclosure reports.<sup>13</sup>

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<sup>10</sup> See 5 C.F.R. Part 2638 Subpart C.

<sup>11</sup> See 5 C.F.R. Part 2634.201 (c) (2)

<sup>12</sup> See 5 C.F.R. § 2638.305.

<sup>13</sup> See 5 C.F.R. § 2638.303.

OGE reviewed two sets of Education’s standard operating procedures (SOP) for issuing the notices to prospective employees. OGE first reviewed the “*Standard Operating Procedure: Required Notices to Prospective Employees and New Supervisors (SOP)*.” The SOP only states that the OHR is in the best position to provide this notice and that the Ethics Division will assist them by providing suggested language.

Education also provided OGE with a copy of its “Standard Operating Procedures *Personnel Requirements for Confidential Financial Disclosure Report (SOP)*” which includes written procedures for issuing the notices to prospective employees. OGE found that this SOP only described how to include the ethics-related information for prospective employees who would be confidential filers. The procedures did not include steps for providing the required information to prospective employees who would not be entering positions whose incumbents are required to file financial disclosure reports. OGE also examined the OIG’s written procedures for issuing the notices to prospective employees and found that they do include steps for providing the required ethics-related information.

OGE examined a sample of notices Education provided to prospective employees in 2022. The majority of the offer employment letters did not include the required language. In contrast, the sample of notices sent to prospective OIG employees did include the required language. After OGE reviewers explained that all prospective employees, regardless of financial disclosure filing status, are required to receive the information specified at 5 C.F.R. § 2638.303, the DAEO coordinated with OHR to ensure that the required language would be included in all prospective hire letters, both the tentative job offer and the final job offer. Additionally, the DAEO provided a sample of an offer letter issued in March 2023 that met the content requirements. As a result of these actions, OGE considers the issue resolved and makes no recommendation for improvement.

### **Notices to New Supervisors**

An agency must provide each employee upon initial appointment to a supervisory position with certain written materials within one year of the appointment. The written materials must include: contact information for the agency's ethics office and the text of 5 C.F.R. § 2638.103; a copy of, a hyperlink to, or the address of a web site containing the Principles of Ethical Conduct; and such other information as the DAEO deems necessary for new supervisors.<sup>14</sup>

Education has established written procedures for issuing the notices to new supervisors. However, the samples of notices to new supervisors that OGE reviewed did not contain the text of the regulation specifying the government ethics responsibilities of supervisors or a copy of, a hyperlink to, or the address of a web site containing the Principles of Ethical Conduct, as required. The DAEO explained that this requirement is met because the appointment letters to new supervisors contain the contact information for the agency’s ethics office. New supervisors receive “a copy of, a hyperlink to, or the address of a Web site containing the Principles of Ethical Conduct” during new employee orientation. Furthermore, the DAEO explained that all new supervisors have to attend a “new employee orientation” session.

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<sup>14</sup> See 5 C.F.R. § 2638.306.

As a result of our review, the new employee orientation training material was modified to include the exact text of 5 C.F.R. § 2638.103. Additionally, new supervisors receive the content of 5 C.F.R. § 2638.103 during supervisory training. OGE also examined an email sent to OIG new supervisors in 2022 and found that it contained the required applicable ethics materials.

### **Initial Ethics Training**

Each new employee subject to the Standards of Conduct must complete initial ethics training (IET) that meets the requirements of 5 C.F.R. § 2638.304 within 3 months of appointment, unless excluded by the DAEO. The training must be interactive and focus on government ethics laws and regulations that the DAEO deems appropriate. The training must address: financial conflicts of interest; impartiality; misuse of position; and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of, or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and instructions for contacting the agency's ethics office.<sup>15</sup> Agencies must also establish written procedures for IET that the DAEO annually reviews.

OHR's Learning Development Division schedules the live training for new employees. The training takes place each pay period. OHR informs the Ethics Division of the date of training and provides the roster for the new employee orientation. Ethics officials use the rosters and new employee certification to track completion of the IET. The agency also provides new employees with the required written materials. OGE reviewed Education's training records and determined that 94% of the employees required to receive training in 2022 received IET within 3 months of appointment. OGE also reviewed the presentation Education used to provide IET to new employees in 2022 and determined that the presentation met applicable content requirements.

### **Annual Ethics Training for Public Filers**

Generally, live training must be provided each calendar year to each employee whose pay is set at Level I or Level II of the Executive Schedule. Live training must also be provided to other employees who are required to file public financial disclosure reports pursuant to 5 C.F.R. § 2634.201(a) every other year, with interactive training provided in the intervening years. The training presentation, whether live or interactive, must focus on government ethics laws and regulations that the DAEO deems appropriate. The training, whether live or interactive, must address: financial conflicts of interest; impartiality; misuse of position; and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of, or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and instructions for contacting the agency's ethics office.<sup>16</sup>

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<sup>15</sup> See 5 C.F.R. § 2638.304.

<sup>16</sup> See 5 C.F.R. § 2638.308.



Education conducted ethics training through live video call sessions in 2022. The DAEO stated that after assessing the needs of the agency and an informal review of the types of ethics questions received in 2022, ethics officials decided to focus the 2022 annual ethics training on gifts and the Hatch Act. Employees were able to choose between the two topics. Ethics officials conducted six agency-wide sessions (three focusing on gifts and three focusing on the Hatch Act), and ten regional training sessions. Ethics officials explained that the Hatch Act-focused sessions covered the requirements for ethics training at the beginning of the training session. Specifically, ethics officials discussed the “Government in a Nutshell” handout. OGE reviewed the handout and confirmed that it met ethics training content requirements. Additionally, ethics officials provided four supervisory annual ethics training sessions. OGE reviewed the presentations and found that the “Ethics Training for Supervisors” met the content requirements. OGE reviewed the materials provided to employees during annual training sessions and determined that they met applicable content requirements.

### **Annual Ethics Training for Confidential Filers and Certain Other Employees**

Generally, interactive training is required to be provided each calendar year to employees who are required to file a confidential financial disclosure report pursuant to 5 C.F.R. § 2634.904; employees appointed by the President and employees of the Executive Office of the President; contracting officers described in 41 U.S.C. § 2101; and, other employees designated by the head of the agency. The training presentation must focus on government ethics laws and regulations that the DAEO deems appropriate. The training must address: financial conflicts of interest; impartiality; misuse of position; and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of, or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency’s supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and instructions for contacting the agency’s ethics office.<sup>17</sup>

Education provided the same ethics training content and format described in the *Annual Ethics Training for Public Filers* section for all confidential filers in 2022. OGE reviewed training records and determined that Education provided annual ethics training to 99% of public and confidential filers.

### **Ethics Counseling**

The DAEO, acting directly or through other officials, is responsible for providing advice and counseling to prospective and current employees regarding government ethics laws and regulations, and providing former employees with advice and counseling regarding post-employment restrictions applicable to them.<sup>18</sup> A robust ethics counseling program is necessary to ensure that employees receive the guidance they need to comply with the ethics rules.

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<sup>17</sup> See 5 C.F.R. § 2638.307.

<sup>18</sup> See 5 C.F.R. § 2638.104 (c)(4).

OGE reviewed a sample of the ethics-related counseling that ethics officials provided to employees. The counseling addressed a variety of issues including gift acceptance, outside activities, impartiality, and post-employment restrictions. OGE found the counseling to be consistent with applicable laws and regulations.

### Agency-Specific Ethics Rules

An agency may modify or supplement the Standards of Conduct, with the concurrence of OGE, to meet the particular needs of that agency.<sup>19</sup> A supplemental standards of conduct regulation is issued jointly by the agency and OGE and is published in title 5 of the Code of Federal Regulations.

Education has a supplemental standards of conduct regulation codified at 5 C.F.R. Part 6301. The supplemental standards require employees, other than special government employees, to obtain written approval before engaging, with or without compensation, in certain outside activities or employment. Education's procedures for implementing the supplemental standards require supervisors to approve or deny requests from employees to engage in certain outside activities or employment, and Ethics Division officials to concur or not concur with the approvals.

To evaluate employees' compliance with Education's prior approval requirement, OGE reviewed 39 outside activities reported on the public and confidential financial disclosure reports that OGE examined during the evaluation of Education's financial disclosure systems and matched them with approved requests. Based on this review, OGE determined that the reported outside activities were approved, as appropriate. Additionally, ethics officials provided ethics guidance and advice to the employees who reported outside activities.

### Conflict Remedies

The primary criminal conflict of interest law prohibits an employee from participating in an official capacity in a particular matter in which he or she has a financial interest.<sup>20</sup> Congress included two provisions that permit an agency to issue a waiver of this prohibition in individual cases. Agencies must consult with OGE, where practicable, prior to issuing such a waiver.<sup>21</sup> Education issued three waivers in 2022 and consulted with OGE prior to their issuance.

Additionally, the Ethics in Government Act expressly recognizes the need for PAS nominees 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.<sup>22</sup> This written notice is commonly known as an "ethics agreement." Both PAS officials who were appointed in 2022

<sup>19</sup> See Executive Order 12674 and 5 C.F.R. § 2635.105.

<sup>20</sup> See 18 U.S.C. § 208.

<sup>21</sup> See Executive Order 12674.

<sup>22</sup> See 5 U.S.C. § 13111.

timely submitted the required Certification of Ethics Agreement Compliance, affirming that they had taken the actions specified in their respective ethics agreements.

## **Enforcement**

Executive branch offices are required to notify OGE when they refer a potential violation of a conflict of interest law to the Department of Justice (DOJ).<sup>23</sup> Education's OIG is responsible for conducting investigations of potential violations of the criminal conflict of interest laws, making any necessary referrals to DOJ, and concurrently notifying OGE of any such referrals.

Education made one such referral to DOJ in 2022. However, OIG did not concurrently notify OGE of this referral. OIG officials stated that this was due to a misunderstanding of the process. OGE provided clarification of the notification requirements and OIG then notified OGE of the referral.

## **Special Government Employees**

A special government employee (SGE) is an officer or employee of the executive or legislative branch retained, designated, appointed, or employed to perform official duties, full-time or intermittently, for not more than 130 days in any 365-day period.

Education charts and maintains advisory committees whose members are SGEs. OGE reviewed the Perkins V Independent Advisory Panel (PVIAP) and the National Committee on Foreign Medical Education and Accreditation (NCFMEA) in order to evaluate the ethics program services rendered to SGE members. In particular, OGE examined the collection of confidential financial disclosure reports and the provision of ethics training for the SGE committee members in 2022. The following is a summary of the findings of OGE's evaluation.

### Financial Disclosure

#### **PVIAP**

Ten SGE members participated in PVIAP meetings conducted in August 2022. As noted in Table 4 below, five members filed reports after the agency-established due date. However, all members submitted their reports before attending their first committee meeting of the year. OGE notes that it is vital that agency officials have the opportunity to review financial disclosure reports filed by SGE advisory committee members prior to committee meetings to ensure that the SGEs do not have a financial interest that may conflict with any matters to be discussed during the meetings.

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<sup>23</sup> See 5 C.F.R. § 2638.206.

**Table 4. OGE’s Examination of PVIAP Confidential Financial Disclosure Reports**

<b>Reports Examined</b>	11	
<b>Filed Timely</b>	6	(55%)
<b>Certified Timely</b>	10	(91%)

## **NCFMEA**

### **Alternative Financial Disclosure**

As allowed by OGE regulation,<sup>24</sup> SGEs serving on the NCFMEA file the “Alternative Confidential Disclosure Report National Committee on Foreign Medical Education and Accreditation,” an OGE-approved alternative confidential financial disclosure form, in lieu of the OGE Form 450. The alternative form collects information regarding the relationship that a member or a member's spouse may have with any foreign government, foreign medical school, foreign government agency, or foreign accrediting agency or body that deals with medical schools or medical education and with any bank, foreign or domestic, including any stock held in any bank, foreign or domestic. This information helps ethics officials identify any potential conflicts of interests members may have and any issues related to the Emoluments Clause of the United States Constitution.

NCFMEA met in May and October 2022. As noted in Table 5 below, 9 of 10 reports were filed timely. One member filed after the agency-established due date, but before attending the committee meeting. Three reports were certified late. However, these reports were certified before the members attended their first committee meeting.

**Table 5. OGE’s Examination of NCFMEA Confidential Financial Disclosure Reports**

<b>Reports Examined</b>	10	
<b>Filed Timely</b>	9	(90%)
<b>Certified Timely</b>	7	(70%)

### **Ethics Training**

Education provided ethics training to all required PVIAP and NCFMEA members in 2022. OGE determined that this training met applicable format and content requirements.

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<sup>24</sup>See 5 C.F.R. § 2634.905

## Agency Comments

The Department of Education appreciates the time and effort that OGE put into reviewing its ethics program and acknowledges OGE's findings and recommendation. We are proud that OGE found the Department's program to be effective and robust. As to OGE's one recommendation, the agency will maintain its focus on continuous improvement to promote the highest ethical standards for our employees and ensure that the public has the utmost confidence in the integrity of our work. We look forward to continuing a productive and collaborative relationship with OGE.