



Ethics Program Review

U.S. Department of Justice

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The United States Office of Government Ethics (OGE) conducted a review of the United States Department of Justice (DOJ) Headquarters ethics program from January to April 2022. The following summarizes the results of this 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.¹ 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 administration of the ethics program within DOJ Headquarters. This included the management of the public and confidential financial disclosure systems, ethics education and training, ensuring required notices are sent to prospective employees and new supervisors, ethics counseling, agency-specific ethics rules, resolving conflicts of interest, enforcing ethics-related restrictions and providing ethics-related services to Special Government Employees. OGE’s review focused primarily on ethics program activities that occurred in 2021. This general scope was expanded when necessary to provide context.

Methodology: OGE examined a variety of documents provided by DOJ ethics officials, including DOJ’s response to OGE’s 2021 Annual Agency Ethics Program Questionnaire, written procedures for administering the ethics program, samples of public and confidential financial disclosure reports filed in 2021, ethics training materials, and a sample of the ethics counseling provided to employees. In addition, OGE interviewed an agency ethics official to clarify the information gathered, follow up on issues identified during the review, and discuss ethics program operations in further detail.

¹ See 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

Agency Background

DOJ is the cabinet-level department of the federal executive branch tasked with enforcing the law and defending the interests of the United States according to the law. According to its website, DOJ's mission is, "to enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic, to provide federal leadership in preventing and controlling crime, to seek just punishment for those guilty of unlawful behavior, and to ensure fair and impartial administration of justice for all Americans."

DOJ operates under the leadership of the nation's chief law enforcement officer, the Attorney General, a presidentially appointed, Senate-confirmed (PAS) official. The DOJ's 115,000 employees, work across the United States and in more than 50 countries worldwide.

Program Administration

The Assistant Attorney General for Administration within the Justice Management Division (JMD) serves as DOJ's Designated Agency Ethics Official (DAEO). The Deputy Assistant Attorney General for Policy, Management and Procurement serves as the Alternate DAEO (ADAEO).

Although the DAEO has ultimate responsibility for the functions of the Departmental Ethics Office (DEO), it is led by a Director who is assisted by a Deputy Director, two attorney advisors, one ethics program specialist and an administrative staff assistant. The DEO develops policies and procedures for the overall operation of DOJ's ethics program and supervises the program department-wide. However, some program elements are administered independently within DOJ's components by the components' Deputy DAEOs (DDAEO). The DEO also provides advice and training to the Department's Senior Management Offices, the Justice Management Division, the Office of Public Affairs, the Office of the Federal Detention Trustee, the Office of Dispute Resolution, and the Office of Tribal Justice.

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.

Financial Disclosure Written Procedures

Each executive branch agency must establish written procedures for collecting, reviewing, evaluating, and where applicable, making available to the public financial disclosure reports filed by the agency's officers and employees.² OGE examined DOJ's written procedures and determined that they meet applicable requirements.

² See 5 U.S.C. app. § 402(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.³ This helps to ensure the timely collection of financial disclosure reports.

According to DEO officials, DOJ human resources (HR) does not notify DEO of all appointments to positions that require incumbents to file public or confidential financial disclosure reports. HR also does not notify DEO of terminations of employees in positions that require incumbents to file public financial disclosure reports after termination. The lack of notices from HR did not result in deficiencies in timely filing of new entrant or termination public reports. DEO has a system for managing the public reports and it appears to work. However, there were obvious deficiencies in the timely filing of confidential financial disclosure reports that could likely be corrected if HR provided the required notices.

Public Financial Disclosure

Within 30 days of assuming a covered public filing position, an individual must file a public financial disclosure report.⁴ 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.⁵ The reports are required to be reviewed for potential conflicts of interest and certified within 60 days of receipt, unless additional information is being sought from the filer or remedial action is being taken.⁶

To evaluate the administration of DOJ's Headquarters public financial disclosure system, OGE examined 148 non-PAS public reports filed by employees assigned to positions within DOJ Headquarters. This sample included 48 new entrant, 58 annual, and 42 termination reports. Table 1 below presents the results of OGE's examination.

³ See 5 C.F.R. § 2638.105(a)(1) and (2).

⁴ See 5 C.F.R. § 2634.201(b).

⁵ See 5 C.F.R. § 2634.201(a) and (e).

⁶ See 5 C.F.R. § 2634.605.

Table 1. OGE's Examination of DOJ Headquarters Public Financial Disclosure Reports

	New Entrant	Annual	Termination	Total
Reports Examined	48	58	42	148
Filed Timely	45 (94%)	56 (97%)	39 (93%)	140 (95%)
Reviewed within 60 Days	45 (94%)	50 (86%)	38 (90%)	133 (90%)
Certified within 60 Days	41 (85%)	48 (83%)	40 (95%)	129 (87%)

As noted in Table 1, OGE's review found that 140 (95%) of the public reports OGE examined were filed timely and 129 (87%) of the public reports OGE examined were certified within 60 days of submission. Ten of the public financial disclosure reports filed in 2021 that OGE examined had not been certified as of February 15, 2022. DOJ ethics officials subsequently certified eight of these public reports by April 8, 2022. Two reports remained uncertified as of the writing of this report.

Issue Resolved

OGE identified public financial disclosure reports that had not been certified timely. DOJ ethics officials completed the certification of these reports prior to the issuance of this report.

Confidential Financial Disclosure

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

To evaluate the administration of DOJ's confidential financial disclosure system for Headquarters, OGE examined a sample of 9 new entrant and 40 annual confidential reports that were required to be filed by employees assigned to positions within Headquarters in 2021. Table 2 below presents the results of OGE's examination.

⁷ See 5 C.F.R. § 2634.903(b).

⁸ See 5 C.F.R. § 2634.903(a).

⁹ See 5 C.F.R. § 2634.605.

Table 2. DOJ's Headquarters Confidential Financial Disclosure Reports

	New Entrant		Annual		Total	
Reports Examined	9		40		49	
Filed Timely	4	(44%)	39	(98%)	43	(88%)
Reviewed within 60 Days	4	(44%)	24	(60%)	28	(57%)
Certified within 60 Days	4	(44%)	30	(75%)	34	(69%)

Primary Findings from Examination of 9 New Entrant Reports:

- Only 4 reports were filed timely
- Only 4 reports were certified within 60 days of submission
- 1 report was not certified until 217 days after it had been submitted
- 2 reports filed in February 2021 had not been certified as of February 2022

Primary Findings from Examination of 40 Annual Reports:

- 39 were filed timely
- 30 were certified within 60 days of submission
- 8 reports required to be filed in 2021 had not been certified at the time of OGE's examination in February 2022. DOJ ethics officials attributed the delay in certification to DOJ's existing distribution process and the limited ability of their office to provide timely oversight and feedback, due to its size.

Recommendations

1. Ensure HR notifies the DAEO of all appointments to positions that require incumbents to file confidential financial disclosure reports no later than 15 days after the appointment.
2. Ensure that new entrant confidential financial disclosure reports are filed timely.
3. Ensure that new entrant confidential financial disclosure reports are reviewed and certified within 60 days of filing, unless further information is being sought from the filer or remedial action is being taken.
4. Ensure that annual confidential financial disclosure reports are certified within 60 days of filing, unless further information is being sought from the filer or remedial action is being taken.

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 employees; 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.¹⁰ 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 Briefing for Certain Agency Leaders

Certain PAS officials 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. 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.¹¹

According to DOJ, the DEO Director provided in-person live training to each of the 12 PAS officials appointed in 2021 who were serving within DOJ Headquarters. All of the briefings were provided within 15 days of the PAS official's date of appointment, as required. OGE reviewed the material covered in the briefings and determined that it met the applicable content requirements.

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; information on how to obtain 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.¹²

OGE determined that DOJ has established written procedures for issuing the required notice to prospective employees; however, the written procedures are not reviewed by the DAEO annually, as required. The DEO works with DOJ's JMD Human Resources Director to ensure prospective employees receive the notice. In December of each year, DEO sends an email to the JMD Human Resources Director directing all DOJ components to confirm in a return email to the DEO Director that ethics notice letters are included in the packets they send to prospective

¹⁰ See 5 C.F.R. Part 2638 Subpart C.

¹¹ See 5 C.F.R. § 2638.305.

¹² See 5 C.F.R. § 2638.303.

employees and that they are following the procedure for issuance of the ethics letters. OGE examined samples of DOJ's notices and determined that they comply with relevant requirements.

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 appointment. The written materials must include: contact information for the agency's DEO and the text of the regulation specifying the government ethics responsibilities of supervisors;¹³ 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.¹⁴

OGE determined that DOJ provides the required notice of ethical obligations to DOJ Headquarters employees upon initial appointment to a supervisory position and has established written procedures to ensure that such notices are consistently and timely provided; however, the written procedures are not reviewed by the DAEO, as required.

Initial Ethics Training

Each new employee subject to the Standards of Conduct must complete initial ethics training within three 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 DAEO.¹⁵

New DOJ Headquarters employees attend a general orientation conducted by HR on their first day on duty. The DEO Deputy Director is allotted approximately ten minutes of this orientation during to address ethics-related issues and to invite new employees to attend one of the bi-monthly initial ethics training sessions. The Deputy Director also distributes the 14 General Principles during this general orientation.

The DEO Deputy Director conducts bi-monthly New Employee Training (NET) sessions by live video conferencing. DEO also provides a copy of the presentation slides to those in attendance. OGE reviewed the presentation materials and determined that they met the relevant standards to qualify as interactive training. OGE also determined that the training met applicable content requirements.

DEO tracks and maintains the registration list for each NET session, and follows up with nonattendees for scheduling of the live virtual training. After the live virtual training, DEO sends the attendees list to LearnDOJ, an online/digital training platform to document attendance.

¹³ See 5 C.F.R. § 2638.103.

¹⁴ See 5 C.F.R. § 2638.306.

¹⁵ See 5 C.F.R. § 2638.304.

According to DEO, in 2021, 163 new DOJ Headquarters employees were required to receive initial ethics training, and 159 (98%) received it within three-months of their appointment.

Written Procedures for Initial Ethics Training

Agencies are required to establish written procedures for, among other things, initial ethics training, which the DAEO must review each year.¹⁶ Further, in agencies with 1,000 or more employees, any office that is not under the supervision of the DAEO, but has been delegated responsibility for issuing notices or conducting training, must submit the following materials to the DAEO by January 15 each year: a written summary of procedures that office has established to ensure compliance with initial ethics training requirements; and written confirmation that there is a reasonable basis for concluding that the procedures have been implemented.¹⁷

OGE reviewed DEO's written procedures for providing initial ethics training within DOJ Headquarters during calendar years 2020 and 2021 and found that they met applicable requirements. However, it appears the written procedures are not reviewed by the DAEO, as required.

Recommendation

5. Ensure the DAEO annually reviews the written procedures for administering the notices to prospective employees, the written procedures for administering notices to new supervisors and the written procedures for administering initial ethics training, as required.

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 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 and 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 DAEO.¹⁸

According to information provided to OGE by DOJ, in 2021 the DEO Director provided DOJ Headquarters public filers live annual training via video conferencing supplemented with

¹⁶ See 5 C.F.R. § 2638.304.

¹⁷ See 5 C.F.R. § 2638.310.

¹⁸ See 5 C.F.R. § 2638.308.

written materials. OGE determined that the live presentation combined with the written materials met applicable content requirements.

Annual Ethics Training for Confidential Filers

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; 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 and 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 DAEO.¹⁹

DEO's Deputy Director reported providing virtual live annual ethics training to confidential filers in 2021. The slide presentation used during the presentation, along with other written material, was sent to participants following the live presentation. If a covered employee missed live training, they were directed to take interactive online training through LearnDOJ. OGE determined that the 2021 annual ethics training presentation combined with the written materials met applicable content requirements.

In 2021, 82 public filers and 218 confidential filers within DOJ's Headquarters were required to receive annual ethics training. Table 3 below reflects the training provided and who attended.

Table 3. Annual Ethics Training for DOJ Headquarters Financial Disclosure Report Filers

	DATA ANALYSIS	Training Format	
		Live	Interactive
	Percentage of public filers who completed annual ethics training before the end of the calendar year. <i>See</i> 5 C.F.R. § 2638.308(a).		
8.6	• Executive Schedule Level I and Level II. <i>See</i> 5 C.F.R. § 2638.308(e)(1).	100%	N/A
8.7	• Other PAS and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(2).	100%	N/A
8.8	• SES and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(3).	95%	4%
	Percentage of confidential filers and certain other employees who completed annual ethics training before the end of the calendar year. <i>See</i> 5 C.F.R. § 2638.307(a)(d).		
8.9	• Employees required to file an annual confidential financial disclosure report. <i>See</i> 5 C.F.R. § 2638.307(a)(1).	98%	1%
8.10	• Employees appointed by the President. <i>See</i> 5 C.F.R. § 2638.307(a)(2).	*	N/A
8.11	• Employees of the Executive Office of the President. <i>See</i> 5 C.F.R. § 2638.307(a)(2).	N/A	N/A

¹⁹ *See* 5 C.F.R. § 2638.307.

8.12	<ul style="list-style-type: none"> Contracting officers described in 41 U.S.C. § 2101. <i>See</i> 5 C.F.R. § 2638.307(a)(3). 	*	N/A
8.13	<ul style="list-style-type: none"> Other employees designated by the head of the agency. <i>See</i> 5 C.F.R. § 2638.307(a)(4). 	N/A	N/A

*Employees in these categories are included at 8.9

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.²⁰ A robust ethics counseling program is necessary to ensure that employees receive the guidance they need to comply with the ethics rules.

OGE reviewed a sample of the ethics-related counseling that DEO ethics officials provided to DOJ Headquarters employees in 2021. The counseling addressed conflicts of interests/impartiality, gifts, authorizations to serve on legal boards as part of government time, and ethics pledge waivers. OGE found the counseling to be consistent with applicable statutes 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. 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.

DOJ has issued jointly with OGE a supplemental standards of conduct regulation.²¹ Among other things, this supplemental regulation requires employees, other than Special Government Employees, to obtain prior written approval before engaging in certain outside employment.²² Employees who wish to engage in outside employment for which advanced authorization is needed must obtain written approval from DOJ ethics officials.

To determine compliance with DOJ's supplemental regulation, OGE examined written approvals for a sample of five outside activity requests and found they had been issued in accordance with the supplemental regulation.

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.²³ Congress

²⁰ *See* 5 C.F.R. § 2638.104 (c)(4).

²¹ *See* 5 C.F.R. part 3801.

²² Employees are prohibited from engaging in outside employment that involves criminal matters, the paid practice of law, or matters in which DOJ is a party or represents a party. Only the Deputy Attorney General may waive these prohibitions.

²³ *See* 18 U.S.C. § 208.

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.²⁴ DOJ issued three such waivers in 2021. OGE was consulted before each waiver.

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.²⁵ This written notice is commonly known as an “ethics agreement.” Each of the 12 PAS officials appointed in 2021 who were serving within DOJ Headquarters certified that they had timely complied with the terms of their ethics agreements.

Enforcement

Executive branch agencies are required to notify OGE when they refer a potential violation of a criminal conflict of interest statute to the DOJ.²⁶ While OGE was notified of only one such referral throughout 2021, the completed 2021 Agency Ethics Program Questionnaire (Questionnaire) response DOJ submitted in 2022 stated that there were four referrals of potential violations of the criminal conflict of interest statutes in 2021.

OGE met with an ethics official and a representative of DOJ’s Office of the Inspector General (OIG) to discuss the discrepancy between the numbers of potential violations of the criminal conflict of interest statutes OGE was notified of and the number reported in the Questionnaire. OGE was unable to reconcile the difference. Further, there was no clarity within DOJ as to who was responsible for notifying OGE when a referral involving the potential violation of a criminal conflict of interest statute is made.

In addition to possibly facing criminal prosecution for violations of the conflict of interest laws, executive branch employees may also face disciplinary actions for violations of the Standards of Conduct. According to DOJ’s response to OGE’s 2021 Agency Ethics Program Questionnaire, 119 disciplinary actions were taken against DOJ employees in 2021 based wholly or in part upon violations of the Standards of Conducts.

Recommendation

6. Develop and implement policies and procedures for maintaining accountability of referrals involving the potential violation of the criminal conflict of interest statutes. This includes timely notification to OGE when a referral is initially made and providing the required disposition reports.

²⁴ See Executive Order 12674.

²⁵ See 5 U.S.C. app. § 110.

²⁶ See 5 C.F.R. § 2638.206.

Agency Comments

OGE invites agency comments on its ethics program review reports. DOJ's comments are below.

1. Ensure HR notifies the DAEO of all appointments to positions that require incumbents to file confidential financial disclosure reports no later than 15 days after the appointment.

DOJ Response: Recommendation accepted. DEO will continue to work with Human Resources so that the DAEO can identify employees who are appointed to positions that require filing confidential financial disclosure reports within 15 days after appointment.

2. Ensure that new entrant confidential financial disclosure reports are filed timely.

DOJ Response: Recommendation accepted. DEO will communicate with new appointees to emphasize the importance of timely filing.

3. Ensure that new entrant confidential financial disclosure reports are reviewed and certified within 60 days of filing, unless further information is being sought from the filer or remedial action is being taken.

DOJ Response: Recommendation accepted. DEO will communicate with reviewers to emphasize the importance of timely reviews.

4. Ensure that annual confidential financial disclosure reports are certified within 60 days of filing, unless further information is being sought from the filer or remedial action is being taken.

DOJ Response: Recommendation accepted. DEO will communicate with reviewers to emphasize the importance of timely reviews.

5. Ensure the DAEO annually reviews the written procedures for administering the notices to prospective employees, the written procedures for administering notices to new supervisors and the written procedures for administering initial ethics training, as required.

DOJ Response: Recommendation accepted. DEO will work with the DAEO to review the notices and procedures.

6. Develop and implement policies and procedures for maintaining accountability of referrals involving the potential violation of the criminal conflict of interest statutes. This includes timely notification to OGE when a referral is initially made and providing the required disposition reports.

DOJ Response: Recommendation accepted. DEO will work with the DAEO and OIG to implement a policy for DOJ, including timely notification to OGE.