

**United States Office of Government Ethics**

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Compliance Division

# Ethics Program Review

Office of Management and Budget

## Results in Brief

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The United States Office of Government Ethics (OGE) conducted a review of the Office of Management and Budget (OMB) ethics program during the period August – October, 2014. OGE found OMB's two ethics officials, the Designated Agency Ethics Official (DAEO) and the Alternate DAEO (ADAEO), to be committed to the ethics program. However, the fact that they were appointed to be ethics officials as a collateral duty and did not have sufficient time to devote to those duties compromised their ability to keep OMB's ethics program in full compliance with applicable ethics laws and regulations.

OGE's review identified financial disclosure, education and training, and the implementation of agency-specific ethics rules as areas where improvement is needed. OGE believes that the inability of the DAEO and ADAEO to dedicate more time to the ethics program contributed to the deficiencies identified in the review. During the course of the review, the DAEO and ADAEO both departed the agency, leaving OMB with no formally designated ethics officials.

### Highlights

- Ethics officials have developed detailed procedures addressing a number of ethics program functions. These procedures include specific actions, responsibilities, and points of contact related to financial disclosure, education and training, gift acceptance, speaking engagements, ethics compliance and enforcement, and acceptance of travel payments under 31 U.S.C. § 1353. Because most of these procedures remain in draft format, their full value as internal controls is still unrealized.

### Concerns

- OMB had only two ethics officials, the DAEO and ADAEO, who served in those roles as a collateral duty. Neither ethics official was able to devote more than 50 percent of their time to administering the ethics program, creating vulnerability within the financial disclosure program (discussed below). Both the DAEO and ADAEO left the agency during the course of the review, leaving OMB with no ethics officials.
- Fifty percent of the public financial disclosure reports OGE sampled were not reviewed and certified as free from conflicts of interest until an average of 244 days after submission, well beyond the 60-day standard. These delays may have exposed OMB employees to potential conflicts of interest.

- OMB did not provide annual ethics training to employees who joined the agency after agency-wide ethics training was conducted in August 2013. Variations in annual ethics training content presented by the DAEO and ADAEO also led to incomplete coverage of the content required under 5 C.F.R. § 2638.704(b). Initial ethics training, provided to new OMB employees by the Office of Administration for the Executive Office of the President, did not fully meet the requirements set forth in 5 C.F.R. § 2638.702.
- Outside employment approvals were inappropriately executed. OMB's supplemental regulations at 5 C.F.R. part 8701 require employees seeking to engage in outside employment to obtain written approval from a division or office head, the DAEO, and the OMB General Counsel. However, outside employment approvals were signed by the ADAEO on behalf of the OMB General Counsel without documented delegation of that authority.
- With the departure of both of OMB's ethics officials during the course of this review, OMB leadership must rebuild an ethics program responsible for providing ethics services to over 100 financial disclosure filers, answering an estimated 600 requests for ethics counsel each year, and conducting training for over 400 covered employees.

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## **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 Program Review Branch (PRB) carries out OGE's 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. PRB'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 OMB's ethics program, OGE examined a variety of ethics-related material, including the 2013 Agency Ethics Program Questionnaire, samples of the public and confidential financial disclosure reports filed in 2013, and a sample of the ethics advice and counsel rendered to employees. Members of OGE's Program Review Branch met with OMB's ethics officials to discuss the information initially gathered, clarify issues identified during the review, and discuss ethics program operations in further detail.

## **Program Administration**

OMB is the largest component of the Executive Office of the President (EOP) and oversees executive agencies and departments across the federal government in implementing the commitments and priorities of the President. OMB employs over 400 federal workers and is headquartered in Washington, D.C. with no regional offices.

OMB's ethics program is located within OMB's Office of General Counsel (OGC). At the time of OGE's review, the DAEO and ADAEO positions were held by two Assistant General Counsels, who served under the supervision of the General Counsel, Senior Counsel, and two Deputy General Counsels. The DAEO and ADAEO were OMB's only ethics officials. During the course of the review the ADAEO retired from government service and the DAEO accepted a position with another agency, leaving OMB with no ethics officials.

The DAEO and ADAEO performed their respective ethics responsibilities as collateral duties, typically spending less than 50 percent of their time administering the ethics program. The DAEO also functioned as OGC Regulations Lead, Statutory Office Support, and Oversight Support, while the ADAEO served as OGC FOIA Lead and GAO support. In their capacity as ethics officials, the DAEO and ADAEO generally divided ethics responsibilities, including financial disclosure, training, and counseling, between politically appointed and career staff

employees; the DAEO typically managed ethics matters for OMB's politically appointed employees and the ADAEO managed matters for OMB's career staff.

OGE is concerned that this combination of multiple, non-ethics responsibilities and the current staffing level of the ethics program, if continued with a new DAEO and ADAEO, may expose OMB to unnecessary ethics vulnerabilities. The former DAEO and ADAEO expressed their own concerns over the ethics program's ongoing staffing problems, the absence of overflow staffing, and no meaningful surge capacity. Ethics officials further noted that their responsibilities outside of ethics, seasonal increases in ethics and non-ethics work, unpredictable emergency projects, and extraordinary outside actions frequently caused bottlenecks resulting in delays to the ethics program or competing agency priorities. OGE found that significant delays in financial disclosure certification, a crucial element of conflict of interest prevention, were directly linked to ethics officials' other responsibilities for FOIA and GAO support. OGE found further delays in the timely submission of ethics material to OGE including the Ethics Pledge survey (submitted late three consecutive years) and the Annual Ethics Program Questionnaire (submitted late two consecutive years). Delays extended to OMB's submission of annual financial disclosure reports to OGE for the most senior of OMB officials, with timely submission of only one report due in 2013 (of five total) and two reports due in 2014 (of six total). The DAEO noted that OMB is currently seeking additional staff with specialized ethics training to further assist the ethics program. With the departure of the DAEO, the retirement of OMB's ADAEO, the additional, non-ethics responsibilities held by both ethics officials, and the delays identified during this review, OGE makes the following recommendation:

#### Recommendation 1

- Ensure the ethics program is sufficiently staffed to provide for the effective administration of the provisions of the Ethics in Government Act, Executive Order 12674, and the regulations promulgated thereunder. Consider reducing the non-ethics portfolios of the DAEO and ADAEO and/or expanding ethics responsibilities to other members of the OGC staff as additional Deputy Ethics Officials under 5 C.F.R. § 2638.204.

OMB's ethics officials developed several policies and procedures to support program operations including procedures for ethics training, gift acceptance, speaking engagements, ethics compliance and enforcement, and acceptance of travel payments under 31 U.S.C. § 1353. OGE found the procedures clear and detailed with established parties responsible for particular program actions. However, with the exception of the procedures for speaking engagements, these procedures remain in draft or pre-decisional format. The DAEO explained that approvals from the Deputy General Counsel level and the General Counsel are necessary to formalize

ethics program procedures, but the process can be slow and subject to delays. The DAEO further expressed the importance of formalized procedures for helping ensure consistent compliance with various ethics program processes.

### Recommendation 2

- Take appropriate steps to assess and formalize the written procedures for OMB's various ethics program operations. This process should include addressing any revisions necessary to reflect the changes to the ethics program staff which occurred during this review and any changes in ethics program responsibilities.

## **Financial Disclosure**

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the federal government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level federal officials publicly disclose their personal financial interests 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 designated positions may be required to complete the OGE Form 450. 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 reports assist agencies in administering their ethics programs and also assist in providing counseling to employees. *See* 5 C.F.R. part 2634.

### **Written Procedures**

Section 402(d)(1) of the Ethics in Government Act requires that each executive branch agency establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available financial disclosure reports filed by the agency's officers and employees.

OMB's procedures are currently in draft form. While they reflect OMB's general process for administering its financial disclosure program, they have not been formally adopted by OMB leadership. As previously recommended, OMB should formalize these procedures with the inclusions noted below.

OGE's review of OMB's draft written procedures for public financial disclosure found that collection, review, evaluation, and public availability were addressed for the OGE Form 278, but review, evaluation, and public availability were not addressed for the OGE Form 278-T (Periodic Transaction Report). Additionally, OMB did not have written procedures in place for

confidential financial disclosure reports. Ethics officials indicated to OGE that OMB has historically had very few confidential filers; therefore, specific procedures had not been recorded.

### Recommendation 3

- Update written procedures for public financial disclosure to include procedures for review, evaluation, and public availability of the OGE Form 278-T (Periodic Transaction Report). Establish written procedures for collection, review, and evaluation of the OGE Form 450 (Confidential Financial Disclosure Report).

### **Public Financial Disclosure**

At the time of the review OMB had 102 public financial disclosure filers. The DAEO maintains a tracking spreadsheet of all filers, generated from employment data reports produced by OMB's Management and Operations Division (MOD) personnel database. The ethics office receives notification by email or phone from MOD of new employees, departing employees, and employees who are promoted into positions which may require financial disclosure filing. Additionally, all new employees are expected to meet with OMB ethics personnel as part of their onboarding.

When ethics officials confirm an employee has entered into or departed a public filing position, that employee is notified by email of the requirement to complete a financial disclosure report. OMB OGC also regularly consults with prospective employees about filing public financial disclosure reports, should their position require it, before they accept offers of employment. For incumbent career staff filers who must submit financial disclosure reports annually, the ADAEO sends filing reminders by email. Reminder emails begin in March and occur every two weeks until April when the reminders are sent weekly. In May, reminders are emailed daily to filers who have not yet submitted their annual financial disclosure reports. For politically appointed OMB leadership, a Deputy General Counsel sends reminders on behalf of the DAEO who also provides in-person reminders to political appointees in the course of his duties. Completed financial disclosure reports are received primarily by email. The DAEO is responsible for collection and review of financial disclosure reports from OMB's political appointees. The ADAEO is responsible for OMB's career staff financial disclosure reports. OMB OGC maintains a spreadsheet of all filers, due dates, report receipt dates, review status, extensions, and late filing fee collections.

When administratively feasible, the DAEO and ADAEO will both review financial disclosure reports for technical completeness and to resolve any potential conflicts of interest. Otherwise,

the DAEO and ADAEO will individually review reports from political appointees and career staff, respectively. The DAEO's conflict review is supported by daily interaction with political appointees and a functional knowledge of their job duties and responsibilities. For career staff conflict reviews, the ADAEO expressed a familiarity with the major responsibilities of each position resulting from his long-time ethics responsibilities with OMB.

To evaluate the effectiveness of OMB's public financial disclosure process, OGE reviewed a sample of 9 new entrant reports, 40 annual reports, and 10 termination reports that were filed in 2013. Table 1 presents the results of OGE's review.

**Table 1. Review of OMB's Public Financial Disclosure Reports**

	New Entrant		Annual		Termination	
<b>278 Reports Sampled</b>	9		40		10	
<b>Filed Timely</b>	5	(56%)	37	(93%)	9	(90%)
<b>Certified Timely</b>	8	(89%)	20	(50%)	9	(90%)

Financial disclosure filers must submit their reports by established filing deadlines determined by their filing status – new entrant, annual, or termination. OMB's reports were generally filed timely with the exception of new entrant filers. Two new entrant reports were filed late, one report did not contain a start date which prevented OGE from determining timeliness (although requested, a start date was not provided by the agency), and one report requested for the sample could not be located by OMB. OMB assessed one late filing fee and waived the other as the filer had not been made aware of the filing requirements. Based on OGE's review of filing timeliness, OGE makes the following recommendations:

#### Recommendation 4

- Ensure new entrant public financial disclosure reports are submitted by the applicable filing deadlines.

#### Recommendation 5

- Locate the outstanding new entrant public financial disclosure report.

Agency ethics officials have 60 days from receipt of financial disclosure reports to complete their review and certify the reports are free from conflicts of interest. Regarding certification timeliness, OMB was significantly late when certifying annual financial disclosure reports.



OMB's 20 late-certified annual reports (50 percent) were certified by ethics officials, on average, 244 days after submission – well beyond the established 60-day deadline. Late certification allowed OMB filers to perform their official duties without conflict of interest reviews and may have increased their exposure to potential conflicts of interest. OMB ethics officials directly attributed this significant delay to non-ethics responsibilities taking precedence over ethics duties.

Termination reports were certified timely in 90 percent of the sample; however, OMB was unable to locate one report requested by OGE; therefore, certification timeliness for that report could not be established. Based on OGE's review of certification timeliness, OGE makes the following recommendations:

#### Recommendation 6

- Ensure annual public financial disclosure reports are reviewed and certified by ethics officials by the established deadline.

#### Recommendation 7

- Locate the outstanding termination financial disclosure report.

OGE also noted a number of technical deficiencies in financial disclosure reports submitted by OMB personnel and certified by ethics officials. Although some deficiencies were minor including the over-reporting of non-reportable assets, missing income amounts, and failing to identify Excepted Investment Funds, other errors were more significant. OMB ethics officials certified one report that was missing an entire Schedule, one report that failed to identify assets in sufficient detail to allow a conflicts of interest analysis, and multiple reports with blank sections that lacked positive confirmation that any omissions were intentional. Errors of this nature can dramatically increase the agency's exposure to potential conflicts of interest. OGE also reiterates its concern that ethics officials' non-ethics duties appear to be impacting their ability to successfully meet their ethics obligations. Moving forward, it is absolutely imperative that OMB dedicate sufficient resources to the ethics program to overcome the experience vacuum left with the departure of the DAEO and ADAEO.

### **Confidential Financial Disclosure**

At the time of the review OMB reported having no confidential financial disclosure filers. According to the DAEO, OMB had no positions in 2013 which, following the guidance of 5 C.F.R. § 2634.904, were responsible for decisions or exercised significant judgment without

substantial supervision and review. More than one-fifth of the entire OMB staff filed public financial disclosure reports as members of the Senior Executive Service. The DAEO also noted that OMB is primarily a policy-level agency which reviews issues at a macro level and has little impact on non-federal entities. The ADAEO explained that four Contracting Officer's Technical Representatives (COTR) were designated as confidential financial disclosure filers beginning in 2014. However, a review of material provided by OMB showed that at least one of the COTRs had received his COTR certification in 2013. After the retirement of the ADAEO, the DAEO was unable to confirm whether or not the COTRs began work in 2013 or were merely certified in 2013 and not yet performing in a position which required confidential financial disclosure. With respect to the uncertainty regarding the COTRs' filing status and OMB's overall lack of confidential financial disclosure filers, OGE makes the following recommendations:

#### Recommendation 8

- Determine if the COTRs should have filed confidential financial disclosure reports in 2013 and, if so, perform a conflicts of interest analysis based on their duties and responsibilities from the date they became confidential filers until their first certified report.

#### Recommendation 9

- Assess the duties and responsibilities of OMB employees' positions as they relate to 5 C.F.R. § 2634.904 to determine if additional employees should be designated as confidential financial disclosure filers. Ideally, ethics officials should consult with supervisory personnel for the most current information on employees' duties and responsibilities. OGE notes that positions relating contracting and procurement should receive additional scrutiny.

### **Financial Disclosure Handling and Storage**

Storage of financial disclosure reports was determined by the ethics official with primary responsibility for a particular filer. The DAEO maintained all political appointees' financial disclosure records in a file cabinet in a securable area. The ADAEO maintained current career staff financial disclosure reports in file cabinets, also in a securable area. Career staff reports from previous years were maintained in a lockable storage room within the OGC office space. OGE noted that the storage room was generally disorganized, file boxes were haphazardly labeled, and the financial disclosure reports were co-located with other OGC materials. The DAEO informed OGE that OMB's revised document management plan calls for all financial disclosure reports to be consolidated into secure storage in the DAEO's office. For purposes of

improved document tracking, handling, and overall security, OGE recommends OMB execute the revised document management plan. OGE's review of the financial disclosure reports found no reports kept beyond the six-year retention period. However, because of the generally disorganized nature of the primary financial disclosure storage area, OGE further recommends OMB perform a check to confirm no outstanding financial disclosure reports have been retained beyond the retention period.

#### Recommendation 10

- Complete the consolidation of financial disclosure reports to secure storage in the DAEO's office as part of OMB's document management plan. Consider implementing a sign-out or tracking system to maintain better physical control over financial disclosure reports.

#### Recommendation 11

- As part of the consolidation of financial disclosure reports, perform a check to confirm no outstanding financial disclosure reports have been retained beyond the retention period.

### **Education and Training**

#### **Initial Ethics Orientation**

OGE regulation requires that all new agency employees receive ethics official contact information along with the following material within 90 days of beginning work for an agency: (1) the Standards of Ethical Conduct for Employees of the Executive Branch (the 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 Principles) to keep. Employees must receive one hour of official duty time to review the material. *See* 5 C.F.R. § 2638.703.

During 2013, initial ethics orientation was provided to all OMB employees by the Office of Administration (OA) for the EOP, which provided ethics training material to new employees in all components of the Executive Office of the President on their first day of work. For all new public financial disclosure filers, OMB also provided an additional one-hour of one-on-one ethics training. Ethics officials noted that this additional ethics orientation is dependent on receiving timely notification of new public filers from MOD, which they consider an ongoing area of concern. Ethics officials also noted that conducting one-on-one training sessions is

extremely time-consuming for the small ethics staff when taking into account their other, non-ethics responsibilities.

OGE reviewed the content provided by OA during initial ethics orientation and found it provided the full text of the Standards, but did not include OMB's supplemental Standards or contact information for OMB ethics officials. The additional one-on-one initial ethics training provided by OMB to public filers covered the Standards and ethics official contact information, but also did not include OMB's supplemental Standards. Based on the review of OMB's initial ethics orientation materials, OGE makes the following recommendation:

#### Recommendation 12

- Ensure that OMB employees receive, within 90 days from beginning work for the agency, the appropriate ethics materials, contact information, and time to review the material as set forth in 5 C.F.R. § 2638.703. If OA continues to provide initial ethics orientation for OMB, ethics officials may wish to provide OA with content that is specific to OMB, including OMB's supplemental Standards and contact information for OMB ethics officials.

### **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 contain a brief description of the agency's annual training and include estimates of the number of employees who will receive verbal and written training. OMB's annual ethics training plan was completed at the beginning of the calendar year, contained a brief description of annual training, and estimated the number of employees to receive training from personnel data collected and maintained by OMB's Management and Operations Division.

### **Annual Ethics Training**

OGE regulation requires all covered employees receive annual ethics training consisting of a review of: (1) the Principles; (2) the Standards; (3) any agency supplemental Standards; (4) the criminal conflict of interest statutes; and (5) ethics official contact information. Training length and delivery method vary by an employee's financial disclosure filing status. *See* 5 C.F.R. §§ 2638.704 and 705.

OMB identifies covered employees using its master list of financial disclosure filers. Annual training is provided by the DAEO and ADAEO. The DAEO provides in-person annual ethics

training to political appointees, while the ADAEO provides in-person training to career employees and any political appointees who chose to attend the ADAEO's training sessions. Under 5 C.F.R. § 2638.705(a)(2), all OMB employees must receive annual ethics training. For financial disclosure filers, ethics training is always provided in-person. Non-filers receive in-person training every three years with written training provided during the intervening years, as noted in OMB's annual ethics training plan. In September 2013, the OMB Director supported the ethics training program through an agency-wide email asking employees to schedule their annual training sessions, complementing the 65 percent of employees who already completed training, and emphasizing the agency's shared commitment to ethical conduct.

Training completion is tracked on a master tracking sheet generated from employee data provided by MOD. Sign-in sheets are used to update training completion status on the master tracking sheet. OGE's review of OMB's tracking sheet showed OMB accounted for training for 419 of 426 employees in 2013 (98 percent). Three employees, found on the master list of financial disclosure filers, arrived subsequent to annual training and did not receive training. Of the remaining four employees that did not receive annual training, three had been detailed outside of OMB before annual training was provided and one employee was on extended sick leave. However, because the master tracking sheet was generated from employee data as of August 2013, OMB's annual ethics training did not accurately account for employees who joined the agency subsequent to that date.

### Recommendation 13

- OGE recommends OMB develop and implement a process to provide training to employees that arrive subsequent to annual training being provided, include a mechanism to track that training, provide training to detailed employees before they begin their details, and confirm at the end of the year that all covered employees have received annual ethics training.

Training provided by the DAEO to political appointees was delivered in-person and included (1) a handout of training slides to guide a discussion of ethics laws and regulations and (2) supplemental material provided electronically including a copy of the Standards, links to the online ethics material, and instructions for completing public financial disclosure forms 278 and 278-T. Because a slide presentation was not a part of the in-person training, OGE reviewed the content of the printed handout used to guide the training discussion. The handout contained most required content, but did not address OMB's supplemental standards of conduct.

Training provided by the ADAEO to the career staff (and political appointees who chose to attend the ADAEO's training) was also delivered in-person. Training slides were emailed to the

participants, but were not presented during the in-person training. Because the ADAEO provided annual ethics training by oral presentation using speaker's notes, OGE reviewed the content of the ADAEO's speaker's notes. The speaker's notes contained most required content, but did not address 18 U.S.C. §§ 203, 205, and 209.

Although varying training delivery and instructors can lead to more engaging and effective training, inconsistent core content between presenters may increase the likelihood of providing incomplete annual ethics training. The DAEO's written training material, used to guide the training discussion, did not contain OMB's supplemental standards of conduct while the ADAEO's in-person training, which addressed the supplemental standards, did not provide coverage of three criminal conflict of interest statutes. Individualized, guided discussions run the additional risk of focusing on particular topics of interest to the possible exclusion of other required content. There is also no mechanism to confirm that material provided electronically to supplement the training sessions, which may direct employees to the missing content, is ever reviewed by training recipients. For recipients of written training material, the DAEO prepared a draft "Affirmation of Completion of Written Ethics Training" form for OMB employees to complete, but as of this review, that form had not received approval for use within OMB.

OGE also notes that although OMB's supplemental regulation was reviewed during in-person annual training by the ADAEO, the supplemental regulation was not covered in the written material provided to employees. Because those OMB employees who do not file financial disclosure reports receive only written annual training in years when verbal training is not provided, their training would likewise be incomplete on those intervening years when the supplemental regulation is not covered. Prior to his departure, the outgoing DAEO indicated he would advise the agency to abandon the divided training model in favor of a single, coordinated OMB OGC training effort. OGE makes the following recommendation:

#### Recommendation 14

- Develop annual ethics training for all covered employees that fully meets the content requirements of 5 C.F.R. § 2638.704(b).

#### **Advice and Counsel**

The DAEO is required to ensure that a counseling program for agency employees, concerning ethics and standards of conduct matters, including post-employment matters, 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.

OMB typically provides ethics advice and counsel by email which frequently follows initial verbal consultations; although OMB noted a disproportionately high volume of verbal or in-person consultations in 2013 as a result of the government shutdown. Requests for ethics counsel were answered by both the DAEO and ADAEO in 2013. The DAEO and ADAEO consulted with one another as necessary, prior to the ADAEO's retirement, and notified the General Counsel on those matters deemed particularly sensitive or potentially controversial. Advice and counsel is retained electronically within the email system with noteworthy guidance retained in hard copy.

The DAEO and ADAEO each estimated receiving approximately 300 requests for ethics advice in 2013 with the ADAEO providing post-employment advice through an additional 150 exit briefings. OGE reviewed 20 samples of advice and counsel provided by OMB from throughout 2013. The samples of advice and counsel covered a broad range of ethics topics including financial disclosure, gift acceptance, seeking employment, post-government employment, and outside activities. The sampled advice and counsel appeared to be consistent with applicable laws and regulations, provided in a timely manner, and contained analysis appropriate to the questions asked.

With the departure of the OMB's DAEO and ADAEO, OGE reiterates the need for OMB to ensure the ethics program has sufficient resources. OMB ethics officials must respond to some 600 requests for ethics guidance annually, must manage the additional post-employment exit briefings, and must administer all other elements of the ethics program, including training and financial disclosure review. If the current part-time ethics system is retained, OGE is concerned that this workload may jeopardize OMB's ability to provide timely ethics guidance, could negatively impact other elements of the ethics program, and exposes the agency to potential conflicts of interest.

#### **Agency-Specific Ethics Rules**

As authorized by Executive Order 12674 and implemented by 5 C.F.R. § 2635.105, an agency may modify or supplement the Standards of Ethical Conduct, with the concurrence of OGE, to meet the particular needs of that agency. A supplemental agency regulation is issued jointly by the agency and OGE and is published in title 5 of the Code of Federal Regulations.

OMB has supplemental regulations at 5 C.F.R. part 8701 that require employees to obtain written approval for outside employment, whether compensated or not. Employees must obtain written approval of their division or office head, the General Counsel, and the DAEO. Requests for approval must contain the name of the outside organization, proposed hours and dates for

outside employment, and statements that employment will not depend on information gained as a result of their OMB position nor will official time, government property, resources, or facilities not available to the general public be used in connection with the outside employment.

OMB manages the approval process for outside employment by requiring employees to submit an approval memorandum to be signed by the supervisor, General Counsel, and DAEO. Ethics officials emphasized that supervisors and managers are vital to promoting awareness of the approval process. OGE reviewed a sample of 10 approval forms and found they contained the required information with two exceptions where the employees did not identify specific outside organizations (instead referring to “various soccer leagues” and “a local barre studio”). OGE also requested outside employment approval documentation for two public financial disclosure filers from OGE’s financial disclosure sample. The retirement of the ADAEO, who managed the approval process for the ethics office, coupled with computer network problems, precluded OMB from providing OGE with these two approval documents. OGE also noted that the ADAEO, approving the forms on behalf of the DAEO, also signed for OMB’s General Counsel thereby eliminating one approving official. OMB did not have any documentation showing the authority to approve outside employment on behalf of the General Counsel had been delegated to the DAEO or ADAEO. Previously, a career-SES General Counsel also served as DAEO, thereby meeting two of the three approval requirements of the supplemental regulation. Subsequent OMB General Counsels were all political appointees, and OMB notes that a formal delegation of authority to the DAEO or ADAEO to approve outside employment on behalf of the General Counsel may have been overlooked. Therefore, OGE makes the following recommendation:

#### Recommendation 15

- Ensure written approvals for outside employment are conducted consistent with the requirements set forth in 5 C.F.R. part 8701.

#### Recommendation 16

- Establish a system of retention for outside employment approval documentation that will function effectively in cases of staff turnover or changed responsibilities. OMB should consider developing written procedures and establishing dedicated file retention areas.

### **Conflict Remedies**

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. Under normal circumstances, OMB does not typically consider granting waivers under 18 U.S.C. § 208 as a conflict remedy. The DAEO explained that OMB prefers divestiture or recusal, if possible, over waiving a criminal statute in all but the most extraordinary circumstances. No waivers were issued by OMB during 2013.

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, common known as an “ethics agreement.” At OMB, the DAEO is responsible for confirming PAS officials have complied with any ethics agreements made and for providing notification of that compliance to OGE. Compliance documentation is typically collected by email, but the DAEO emphasized that documentation may be requested in-person when approaching a compliance deadline. Three of OMB’s PAS officials entered into ethics agreements in 2013. All three complied with their ethics agreements by the established deadlines. The DAEO notified OGE of compliance beyond the notification deadline in two cases, but OGE notes that both delays could be attributed to the effects of the government shutdown in October 2013. OGE reminds OMB to ensure its internal controls are sufficient to provide timely notification to OGE of ethics agreement compliance.

## **Enforcement**

OMB reported no disciplinary actions based wholly or in part upon violations of the criminal conflict of interest statutes (18 U.S.C §§ 203, 205, 207, 208, and 209) and no disciplinary actions based wholly or in part upon violations of the Standards (5 C.F.R. part 2635). OMB made no referrals to the Department of Justice (DOJ) of potential violations of the criminal conflict of interest statutes.

OMB does not have an Inspector General. If a referral becomes necessary, the OMB Director will make the referral to DOJ in coordination with the OGC. The DAEO or OGC management will concurrently notify OGE of the referral and its eventual disposition in accordance with 5 C.F.R. § 2638.603. OMB has also developed draft procedures for compliance and enforcement, but as previously noted these procedures have not yet been formalized throughout the agency. OGE reiterates its recommendation that OMB take appropriate steps to formalize its written procedures.

## **Special Government Employees**

Special Government employees (SGE) are officers or employees of the executive or legislative 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. SGEs typically serve on agency advisory boards or commissions. OMB employs no SGEs.

## **1353 Travel Acceptances**

Federal agencies may allow employees to accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under the authority of the General Services Administration (GSA) 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 of each year.

At the time of the review, the ADAEO was responsible for reviewing and approving travel payments for acceptance under 31 U.S.C. § 1353 following a process set forth in draft ethics program policies and procedures. The ADAEO's determination was forwarded to an OMB paralegal who tracked the information and prepared and submitted to required semiannual reports to OGE. OGE records show OMB's May 2013 and November 2013 reports were submitted timely.

## **Agency Comments**

Supplemental program review material provided by OMB and attached to its formal comment letter has not been included and will be reviewed as part of OGE's follow-up to this program review.

OMB comments begin on the following page.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

GENERAL COUNSEL

February 18, 2015

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

Dear Mr. Shaub:

I write in response to the January 5, 2015, draft report of your plenary review of the Office of Management and Budget's (OMB) ethics program. The OMB Office of General Counsel (OGC) appreciates the thoughtful recommendations of the Office of Government Ethics (OGE) regarding the operation of OMB's program and welcomes this opportunity to reply to your preliminary findings. OMB leadership is mindful of its unique role within government and is committed to maintaining the highest standard of ethical conduct. A comprehensive, robust ethics program is critical to this objective. To this end, OMB already has taken significant steps to strengthen our ethics program, including hiring a full-time ethics attorney, developing and implementing agency procedures based on best practices throughout the Federal Government, and identifying additional resources for the program.

As a result of the onsite plenary review, OGE issued sixteen (16) recommendations in its January 2015 ethics program review report. We have taken the following actions in response to those recommendations:

	Recommendation	Agency Action	Status
1	Ensure that the ethics program is sufficiently staffed to provide for the effective administration of the provisions of the Ethics in Government Act, Executive Order 12674, and the regulations promulgated thereunder. Consider reducing the non-ethics portfolios of the Designated Agency Ethics Official (DAEO) and Alternate DAEO (ADAEO) and/or expanding ethics responsibilities to other members of the OGC staff as additional Deputy Ethics Officials under 5 C.F.R. 2638.204.	OMB has reorganized its team of ethics officials in the following way: (1) the General Counsel, who has eight years of experience with government ethics, is now the DAEO; (2) a full-time ethics attorney now serves as the ADAEO; and (3) another OGC attorney serves as a deputy ethics official or Deputy DAEO. The Agency also will engage paralegals, interns, and detailees, as necessary. Appointment paperwork attached.	Closed
2	Take appropriate steps to assess and formalize the written procedures for OMB's various ethics program	OMB OGC is drafting an OMB Ethics Desk Book describing processes for all OMB ethics program operations. Ethics	Open

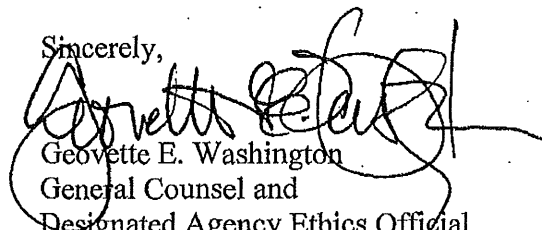
	operations. This process should include addressing any revisions necessary to reflect the changes to the ethics program staff which occurred during this review and any changes in ethics program responsibilities.	officials also are storing opinions and process information on an OGC-dedicated ethics shared drive for immediate reference and to establish a record of institutional practice and procedure.	
3	Update written procedures for public financial disclosure to include procedures for review, evaluation, and public availability of the OGE Form 278-T (Periodic Transaction Report). Establish written procedures for collection, review, and evaluation of the OGE Form 450 (Confidential Financial Disclosure).	OGC has issued written Form 450 guidance to supervisors and filers, which includes submission instructions, supervisory conflict analysis, and technical review and evaluation by the ethics officials (see attached). Form 278-T filers also have received submission instructions (see attached). The OMB Ethics Desk Book also includes this specific guidance describing this process.	Open
4	Ensure new entrant public financial disclosure reports are submitted by the applicable filing deadlines.	The Management and Operations Division (MOD), OMB's human resources component, is sending timely updates to the ethics officials regarding new entrant Form 278 filers. With additional ethics staff and updated processes, OMB expects to complete the reviews in a timely manner.	Open
5	Locate the outstanding new entrant public financial disclosure report.	We are still sorting through the legacy files in an effort to locate this.	Open
6	Ensure annual public financial disclosure reports are reviewed and certified by ethics officials by the established deadline.	With recently added resources and updated processes, OMB expects to complete the reviews in a timely manner following the May 15, 2015, filing deadline.	Open
7	Locate the outstanding termination financial disclosure report.	We have identified the employee whose termination report is missing. We are sorting through the legacy files in an effort to locate this.	Open
8	Determine if the COTRs should have filed confidential financial disclosure reports in 2013 and, if so, perform a conflicts of interest analysis based on their duties and responsibilities from the date they became confidential filers until their first certified report.	OMB leadership has identified active Contractor Officer Technical Representatives (COTRs) who will file a Form 450 by the February 17, 2015, filing deadline. Conflict analysis and advice will follow receipt of the forms.	Open
9	Assess the duties and responsibilities of OMB employees' positions as they relate to 5 C.F.R. 2634.904 to determine if additional employees should be	To address this issue, OMB has implemented a two-part phased approach. Phase One will cover incumbent filers and new entrants who clearly meet the Form	Open

	designated as confidential financial disclosure filers. Ideally, ethics officials should consult with supervisory personnel for the most current information on employees' duties and responsibilities. OGE notes that positions relating to contracting and procurement should receive additional scrutiny.	450 filing requirements such as government purchase card holders and COTRs, who will file by February 17, 2015. Phase Two will address other employees who may exercise independent authority with respect to particular matters. Ethics officials are working with OMB leadership to identify the remainder of those new entrant filers.	
10	Complete the consolidation of financial disclosure reports to secure storage in the DAEO's office as part of OMB's document management plan. Consider implementing a sign-out or tracking system to maintain better physical control over financial disclosure reports.	OMB is in the process of consolidating and organizing the financial disclosure records. The records will be stored in a secure cabinet in the ADAEO's office, as well as on the OGC shared drive.	Open
11	As part of the consolidation of financial disclosure reports, perform a check to confirm no outstanding financial disclosure reports have been retained beyond the retention period.	OMB is in the process of consolidating and organizing the financial disclosure records.	Open
12	Ensure that OMB employees receive, within 90 days from beginning work for the agency, the appropriate ethics materials, contact information, and time to review the material set forth in 5 C.F.R. 2638.703. If the Office of Administration (OA) continues to provide initial ethics orientation for OMB, ethics officials may wish to provide OA with content that is specific to OMB, including OMB's supplemental Standards and contact information for OMB ethics officials.	<p>OMB MOD is sending OGC weekly on-boarding lists of new employees. Ethics program officials then notify the new employees of OA-sponsored monthly mandatory new entrant training, except in the case of political appointees, senior officials, and U.S. Digital Services employees who will be trained in person by an OMB ethics official. After new OMB employees attend the OA new entrant training session, OA sends the sign-in sheets to OGC for tracking.</p> <p>The OA training includes an updated list of OMB ethics officials, contact information, and a copy of the Standards and Principles.</p> <p>In addition, OMB supplemental regulations regarding outside employment will be covered during the OMB orientation process, along with a reminder to attend the in-person initial ethics training offered by OA.</p>	Closed

13	OGE recommends OMB develop and implement a process to provide training to employees who arrive subsequent to annual training being provided, include a mechanism to track that training, provide training to detailed employees before they begin their details, and confirm at the end of the year that all covered employees have received annual ethics training.	The process described above in the response to Recommendation No. 12 will ensure that new employees still receive necessary ethics training even if they arrive after OMB-wide annual ethics training has occurred.	Closed
14	Develop annual ethics training for all covered employees that fully meets the content requirements of 5 C.F.R. 2638.704(b).	OMB ethics officials are working with leadership to design training for CY2015 and will insure that content covers the regulatory requirements.	Open
15	Ensure written approvals for outside employment are conducted consistent with the requirements set forth in 5 C.F.R. part 8701 (OMB supplemental ethics regulations).	OMB's General Counsel has delegated authority to ADAEO and DDAEO to approve outside employment requests. Copy of delegation attached.	Closed
16	Establish a system of retention for outside employment approval documentation that will function effectively in cases of staff turnover or changed responsibilities. OMB should consider developing written procedures and establishing dedicated file retention areas.	Written approvals are stored in the OGC shared drive and hard copies also are stored in a secure file cabinet in ADAEO's office for future reference.	Closed

We look forward to continuing to work with OGE to fully address each of the recommendations above.

Sincerely,

  
 Geovette E. Washington  
 General Counsel and  
 Designated Agency Ethics Official  
 Office of Management and Budget  
 Phone: 202-395-5060  
 Email: [gWASHINGTON@omb.eop.gov](mailto:gWASHINGTON@omb.eop.gov)