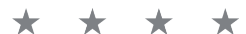




Ethics Program Review

U.S. Department of Transportation
Office of the Secretary

Report No. 24-47
July 31, 2024



The United States Office of Government Ethics (OGE) conducted a review of the United States Department of Transportation (DOT) Office of the Secretary (OST) ethics program from March through June 2024. The review covered program activities for calendar year 2023. 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 all elements of the ethics program administered by the OST Ethics Office, located within of the Office of the General Counsel. These elements include program administration, financial disclosure, education and training, ethics counseling, agency-specific ethics rules on outside employment, conflict remedies, enforcement, and special government employees. OGE also examined the oversight and guidance the Ethics Office provides for DOT’s ethics program department–wide.

Methodology: OGE examined a variety of documents provided by the OST Ethics Office, including OST’s response to OGE’s Annual Agency Ethics Program Questionnaire for 2023, written procedures for administering the ethics program, samples of public and confidential financial disclosure reports filed in 2023, ethics training materials, and a sample of the ethics counseling provided to employees.

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

Agency Background

DOT is the cabinet-level department of the federal executive branch that oversees and administers programs, policies, and regulations to ensure travel safety and mobility while also overseeing the transportation system's role in the nation's economic growth. DOT is made up of 11 operating administrations (OA), including OST, with nearly 55,000 employees across the country. The department operates under the leadership of the Secretary of Transportation, a presidentially appointed, Senate-confirmed (PAS) appointee.

Program Administration

At DOT, the career Deputy General Counsel serves as the department's Designated Agency Ethics Official (DAEO) while the Assistant General Counsel for General Law serves as the Alternate DAEO (ADAEO). The ADAEO is also the Deputy Ethics Official for OST and heads the OST Ethics Office. Assisting the DAEO and ADAEO in carrying out the day-to-day management of the OST ethics program are two attorney advisors who work on ethics full-time, three attorney advisors who work on ethics part-time, and an ethics program support staff assistant who supports several offices within OGC.²

In addition to managing the OST ethics program, the OST Ethics Office conducts initial ethics training for all new DOT employees, except for those employees at the Federal Aviation Administration, the Great Lakes St. Lawrence Seaway Development Corporation, and the Office of the Inspector General, who are provided initial ethics training by their respective OAs. The OST Ethics Office also provides guidance and leadership to the OAs by holding monthly meetings with ethics officials DOT-wide to ensure consistency, share information and advice, foster collaboration, and confirm that OA financial disclosure reports are collected, reviewed, and certified timely.

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.

The financial disclosure system within DOT is decentralized. Except for a limited number of public financial disclosure filers (e.g., PAS officials and a limited number of other non-career officials) whose reports are directly administered by OST ethics officials, DOT components administer the financial disclosure system for their respective filers under the general direction of the OST Ethics Office.

² Each OA also has a Deputy Ethics Official who is delegated to oversee the ethics program for their OA, including collecting, reviewing, and certifying confidential financial disclosure reports, providing ethics advice, and conducting annual ethics training for confidential 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.³ OGE examined OST's written procedures and determined that they met applicable requirements.

Notices to DAEO

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.⁴ This helps to ensure the timely collection of financial disclosure reports.

The OST Ethics Office receives advance notices of all new employees, including new OST employees, from its human resources offices and is on the human resources offboarding list for terminating employees. OGE's review of a sample of notices determined that DOT's human resources offices provided the DAEO timely notices of appointments to positions that require incumbents to file public and confidential financial disclosure reports. OGE also found timely notices by human resources of departing public filers.

Public Financial Disclosure

Within 30 days of assuming a covered public filing position, an individual must file a public financial disclosure report.⁵ 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.⁶ 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.⁷

To evaluate the administration of OST's public financial disclosure system, OGE examined all 33 new entrants, a sample of 40 annual, and all 27 termination non-PAS public reports required to be filed in 2023. Table 1 below presents the results of OGE's examination.

³ See 5 U.S.C. app. § 402(d)(1).

⁴ See 5 C.F.R. § 2638.105(a)(1) and (2).

⁵ See 5 C.F.R. § 2634.201(b).

⁶ See 5 C.F.R. § 2634.201(a) and (e).

⁷ See 5 C.F.R. § 2634.605.

Table 1. OGE’s Examination of DOT OST Public Financial Disclosure Reports

	New Entrant		Annual		Termination	Total	
Reports Examined	33		40		27	100	
Filed Timely	31	(94%)	40	(100%)	27 (100%)	98	(98%)
Certified Timely	28	(85%)	40	(100%)	27 (100%)	95	(95%)

As indicated in Table 1, OGE found timely filing and certification of the public reports examined. The two late new entrant reports were filed less than five days past the due dates and the five late certifications were generally within two weeks of the certification deadlines.

Confidential Financial Disclosure

Within 30 days of assuming a covered confidential filing position, an individual must file a confidential financial disclosure report.⁸ The individual must also subsequently file an annual report by February 15 each year.⁹ 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.¹⁰

To evaluate the administration of OST’s confidential financial disclosure system, OGE examined a sample of 25 new entrant and 25 annual confidential reports that were required to be filed with OST in 2023. Table 2 below presents the results of OGE’s review.

Table 2. OGE’s Examination of DOT OST Confidential Financial Disclosure Reports

	New Entrant		Annual		Total	
Reports Examined	25		30		55	
Filed Timely	25	(100%)	30	(100%)	55 (100%)	
Certified Timely	25	(100%)	30	(100%)	55 (100%)	

As indicated in Table 2, OGE found that all sampled confidential reports were filed and certified 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 employees; notices for prospective employees and newly appointed supervisors

⁸ See 5 C.F.R. § 2634.903(b).

⁹ See 5 C.F.R. § 2634.903(a).

¹⁰ See 5 C.F.R. § 2634.605.

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.¹¹ 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

Senate-confirmed Presidential appointees, except for those in positions identified in 5 C.F.R. § 2634.201(c)(2), 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.¹²

The OST Ethics Office provides one-on-one or small group initial ethics training to all incoming DOT leadership-level employees on their first day of employment. OGE determined through its review of the OST Ethics Office's training tracking spreadsheets that all covered employees completed the required briefing within 15 days of appointment during the period under review.

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.¹³

OGE examined the procedures established by OST to provide notices to prospective employees and a sample of notices that were sent to new employees in 2023. Based on this examination, OGE determined that there was reasonable assurance that all prospective OST employees received the required information along with their written offer of employment during the period under review.

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 ethics office and the text of the regulation

¹¹ See 5 C.F.R. Part 2638 Subpart C.

¹² See 5 C.F.R. § 2638.305.

¹³ See 5 C.F.R. § 2638.303.

specifying the government ethics responsibilities of supervisors; 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.

OGE examined the procedures established by OST to provide notices to new supervisors and a sample of notices that were sent to new supervisors in 2023. Based on this examination, OGE determined that there was reasonable assurance that new OST supervisors received the required information upon their initial appointment to a supervisory position.

Initial Ethics Training

Each new employee of the agency subject to the Standards of Conduct must complete initial ethics training (IET) that meets the requirements of 5 C.F.R. § 2638.304 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 ethics office.¹⁴

The OST Ethics Office provides incoming DOT leadership level employees, including career Senior Executive Service (SES) and noncareer appointees, one-on-one or small group initial ethics training on their first day of employment. They provide incoming career general schedule employees larger group IET on their first day of employment. Additionally, OST Ethics Office officials review and explain the restrictions of the President's Ethics Pledge to new SES and noncareer appointees and provide all new employees who file financial disclosure reports a general overview of the filing requirements, including the requirement to file new entrant reports within 30 days of the employee entering their new position.

OGE reviewed the material covered in the presentations provided to new senior officials and non-senior employees and determined that the material met the applicable content requirements. OGE also determined through its review of the OST Ethics Office's training tracking spreadsheets that all incoming senior officials received IET within 3 months of their appointment, as required.

Written Procedures for Initial Ethics Training

Agencies are required to establish written procedures for, among other things, IET, which the DAEO must review each year. 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

¹⁴ See 5 C.F.R. § 2638.304.

initial ethics training requirements; and written confirmation that there is a reasonable basis for concluding that the procedures have been implemented.

OGE reviewed the written procedures OST established for providing IET and found that they met relevant requirements. According to the OST Ethics Office all of the 327 OST employees required to receive IET received the training within the 3 months of their appointment, as required.

Annual Ethics Training for Public and Confidential Filers and Certain other Employees

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.¹⁵

In addition, interactive training is generally 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.¹⁶

According to OST ethics officials, the OST Ethics Office conducts live training for all filing employees, public and confidential, either virtually via Microsoft Teams or through in-person sessions. Each attendee also receives a link to the Summary of the Standards of Conduct in the calendar appointment for each training session and in the follow-up emails sent to attendees after each session. The link is also advertised during the training presentation. OGE reviewed the materials OST used to provide this training and determined that the materials met applicable content requirements.

¹⁵ See 5 C.F.R. § 2638.308.

¹⁶ See 5 C.F.R. § 2638.307.

The OST Ethics Office records training attendance through sign-in sheets that are distributed during in-person sessions. Attendee names for training sessions conducted via Microsoft Teams are recorded automatically by Microsoft Teams. OGE determined through the review of the public and confidential filer lists that all required OST filers received annual ethics training in 2023.

Model Practice

OGE identifies model practices and shares them when it appears they may benefit other executive branch agency ethics programs. OGE considers the following to be a model practice implemented at DOT:

The OST Ethics Office provided live annual ethics training to all OST filing employees during calendar year 2023.

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.¹⁷ 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 the OST Ethics Office provided to OST employees in 2023. The selected samples addressed financial conflicts, impartiality, gifts, misuse of position and post government employment. OGE found the counseling to be consistent with applicable laws and regulations.

Model Practice

The DOT DAEO issued a memorandum in November 2023 reminding all DOT employees of their ethics responsibilities when exchanging gifts during the holiday season. The memorandum included a comprehensive list of ethics officials who employees throughout DOT may contact about ethics-related inquiries. The DOT Chief of Staff supplemented the DAEO's memorandum with a December 2023 message to all DOT political appointees emphasizing the importance of consulting ethics officials prior to accepting invitations from stakeholders to attend events.

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.¹⁸ 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.

¹⁷ See 5 C.F.R. § 2638.104 (c)(4).

¹⁸ See Executive Order 12674 and 5 C.F.R. § 2635.105.

While DOT has issued jointly with OGE a supplemental standards of conduct regulation which contains financial interest prohibitions applicable to employees of the Federal Railroad Administration and the Federal Aviation Administration, such prohibitions are not applicable to OST employees.

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.¹⁹ 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.²⁰ OST did not issue any such waivers in 2023.

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.²¹ This written notice is commonly known as an “ethics agreement.” OST had two PAS officials who entered into ethics agreements in 2023. OGE found that both of these officials timely complied with the terms of their 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).²² DOT’s Office of Inspector General referred one case of potential violations of the conflict-of-interest laws to DOJ in 2023. DOT also reported that 16 disciplinary actions were taken based wholly or in part upon violations of the Standards of Conduct in 2023.

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. SGEs are required to file financial disclosure reports and receive ethics training.²³

OST oversees six advisory committees employing SGEs and representatives. Of these six committees, only two were active in 2023 and also employed SGEs: the Advisory Committee on Human Trafficking (ACHT) and the Advisory Committee on Transportation Equity (ACTE). The two committees each employed three SGEs.

¹⁹ See 18 U.S.C. § 208.

²⁰ See Executive Order 12674.

²¹ See 5 U.S.C. app. § 110.

²² See 5 C.F.R. § 2638.206.

²³ See 18 U.S.C. § 202(a).

Financial Disclosure

OGE examined all six ACHT and ACTE committee members' new entrant confidential disclosure reports and found that all were filed and reviewed by the OST Ethics Office prior to the first advisory committee meeting of the year, as required.

Ethics Training

The OST Ethics Office provided virtual live initial ethics training to all ACHT and ACTE board member SGEs during 2023 and OGE determined that the training met applicable content requirements. However, while all three ACTE committee members were trained timely and prior to their first advisory committee meeting, the three ACHT committee members received their initial ethics training *after* the first advisory committee meeting. According to OST Ethics Office officials, the late training occurred because the OST Ethics Office was not notified timely of the date of ACHT's first committee meeting.

Recommendation

1. Ensure all SGE advisory committee members receive initial ethics training prior to their first advisory committee meeting.

Agency Comments

The OST Ethics Office provided the attached comments to OGE's ethics program review report.



U.S. Department
of Transportation
Office of the Secretary
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Ms. Shelley K. Finlayson
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Dear Ms. Finlayson:

Thank you for the opportunity to review and comment on the U.S. Office of Government Ethics (OGE) Ethics Program Review Report (Report) for the U.S. Department of Transportation (DOT) Office of the Secretary (OST). We appreciate the efforts of your team.

DOT is committed to ensuring that all of its employees uphold the highest standards of ethical conduct. Our dedicated OST ethics team leads this effort for OST employees with the full support of Secretary of Transportation Pete Buttigieg. In my capacity as DOT's Designated Agency Ethics Official (DAEO), I meet several times each week with DOT's Alternate DAEO and members of the OST ethics team to discuss and provide advice on ethics matters. We, in turn, also meet with members of the Secretary's leadership team to discuss a variety of ethics issues each week. We are proud of our continued efforts to maintain the integrity and responsiveness of the OST ethics program.

We have reviewed and concur with the recommendation in your Report, and we have already implemented corrective actions to address the recommendation. As of the date of this letter, all new Special Government Employees (SGEs) who began serving on OST advisory committees in 2024 received initial ethics training prior to their first committee meeting. We continue to strengthen our coordination efforts with DOT's Committee Management Officer and our Designated Federal Officers for each advisory committee to ensure timely completion of financial disclosure and training requirements for advisory committee SGEs.

Thank you for your support of the OST ethics program. We appreciate OGE's continued assistance and guidance as we help DOT employees uphold the highest standards of ethical conduct.

Sincerely,

Judith S. Kaleta
Designated Agency Ethics Official
Deputy General Counsel