

United States Office of Government Ethics

Program Review Division

Ethics Program Review

U.S. Department of Agriculture

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the United States Department of Agriculture's (USDA) ethics program in June 2012. Based on the results of our review, OGE concludes that USDA has the basic foundational elements necessary to support an effective ethics program. However, improvements are needed in the administration of the confidential financial disclosure program. OGE is also concerned about the ongoing challenges in USDA's ethics program structure and the effect it has had on the ethics program. Of particular concern is that a 2009 organizational restructuring within USDA resulted in the Office of Ethics losing visibility and prominence within the Department's organizational structure and a focus on non-ethics duties taking precedence over the ethics program.

For purposes of this review, OGE recognizes that USDA's current Designated Agency Ethics Official (DAEO) assumed his position in June 2010, a time when the program was in transition. This is noted to underscore OGE's recognition that many of the recurring weaknesses in USDA's ethics program arose before the DAEO assumed leadership over the ethics program. OGE believes the DAEO is moving in the right direction to effect positive change by assigning a high priority to maintaining a strong training program to help keep employees knowledgeable of ethics laws and regulations. OGE also commends the Secretary of Agriculture (Secretary) for exercising personal leadership to improve the program through efforts to realign the Office of Ethics as a stand-alone office reporting to USDA's General Counsel. This realignment is intended to help improve organizational visibility and address recurring weaknesses from prior OGE reviews that have once again resurfaced. As always, OGE stands ready to provide expertise and advice to assist USDA in sustaining ethics program requirements.

Highlights

- The Office of Ethics maintains an ethics program website that serves as a very useful and comprehensive ethics training tool for USDA employees as well as employees at 26 other federal agencies.
- The Office of Ethics provides discretionary training throughout the year to emphasize specific ethics rules and requirements to different audiences within USDA through DAEO involvement in senior leadership meetings, topical one page summaries for all employees, and periodic internal ethics conferences.
- The Office of Ethics surveys employees to assess their satisfaction with the quality of advice and counseling rendered.

Concerns

- Deficiencies within the confidential financial disclosure program have resulted from the negative impact of "reduced staff, prolonged vacancies, and increased volumes of non-ethics related work."
- The Office of Ethics lacks funding to expand its e-filing system to the majority of USDA confidential filers.
- The Office of Ethics did not take prompt administrative action against public filers for failing to file their public report.

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Objectives, Scope, and Methodology

OGE provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance. 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. OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act and 5 CFR part 2638.

To assess USDA's ethics program, OGE examined a variety of documents provided by USDA ethics officials; other documents that USDA forwarded to OGE, including the annual questionnaire; prior OGE program review reports; and advice and counsel provided to USDA employees. In addition, members of OGE's Program Review Division met with USDA ethics officials, the General Counsel, and the Inspector General and members of her staff to obtain additional information about the strengths and weaknesses of USDA's ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

OGE limited its examination to the ethics functions performed by USDA's Office of Ethics at its headquarters in Washington, D.C.

Agency Background

USDA is the Cabinet-level department of the federal executive branch whose mission is to provide leadership on food, agriculture, natural resources, and related issues based on sound public policy, the best available science, and efficient management. The work of the Department is organized into seven mission areas, which are collections of 17 agencies that work to support the American agricultural economy; to strengthen rural communities; to protect and conserve natural resources; and to provide a safe, sufficient, and nutritious food supply for the American people. Under the leadership of the Secretary, a Presidentially appointed, Senate-confirmed

appointee (PAS), USDA has more than 100,000 employees, located throughout its headquarters office in Washington, D.C., around the country, and internationally.

Program Administration

USDA's ethics program is centrally managed by the Office of Ethics, hereinafter referred to interchangeably as OE or the Ethics Office. At the time of examination, OE was organizationally located within the Office of Human Resources Management (OHRM), Departmental Management. The Director of OE serves as the agency's DAEO and has overall leadership, coordination, and directional responsibility for the program. The Deputy Director of OE serves as the Alternate DAEO (ADAEO).

Assisting the DAEO and ADAEO in carrying out the day-to-day management of the program is an ethics staff that consists of 25 full-time and two part-time ethics officials,¹ located within OE's headquarters office in Washington, D.C. and its four separate branch offices.² Within OE-Headquarters, where OGE focused its review, staffing consists of three Senior Ethics Specialists, two Ethics Specialists, and one Executive Assistant, in addition to the DAEO and ADAEO.

Duties within OE-Headquarters include developing policies and procedures for the overall operation of USDA's ethics program; designing and implementing the ethics training program; providing employees with ethics counseling services; and administering and monitoring USDA's financial disclosure program, to include the review and certification of all 650 public financial disclosure reports required to be filed within USDA and 2,500 of the more than 16,000 confidential financial disclosure reports required to be filed by employees within USDA's Subcabinet, Departmental Management, Foreign Agricultural Service, Risk Management Agency, and headquarters Staff Offices.

Past Deficiencies Are Evident Again

In eight prior reports, OGE has made numerous recommendations for improving both the public and confidential financial disclosure systems and ensuring that ethics staffing is sufficient to administer USDA's ethics program. (*See Appendix 1.*) The recurring themes from these reviews have centered greatly around the need for USDA to:

- Ensure OE's visibility and prominence within the Department's organizational structure,
- Ensure non-ethics duties do not take precedence over ethics-related duties at the expense of providing strong oversight and compliance monitoring of program elements,

¹ The two part-time officials reside within USDA's two independent offices - the Milk Marketing Administration and the Office of the Inspector General. Both offices provide, under the supervision of the DAEO, ethics program services to their respective employees. Of note, these officials do not work for the Office of Ethics and each reports to his own respective agency.

² OE's four branch offices are located throughout the Washington, D.C. metropolitan area and includes a Science Branch (Beltsville, MD); a Farm, Conservation, and Rural Programs Branch (Washington, D.C.); a Marketing Regulatory, and Nutrition Branch (located in Washington, D.C.); and a Forestry Ethics Branch (located in Arlington, VA).

- Ensure that adequate resources and sufficient ethics staffing are provided to OE to help effectively serve the needs of over 100,000 USDA employees, and
- Ensure that a high level of agency leadership supports the program.

OGE's current examination found USDA still struggling with the same challenges found during prior reviews:

- Gains in Higher Visibility Appeared Lost Due To Reorganization

From 1998 to 2008, OE was a distinct organizational entity that reported directly to the Assistant Secretary for Administration. In 2009, as part of an effort to realign programs and strengthen integration of activities, USDA reorganized its Departmental Staff Offices, Departmental Administration, and Assistant Secretary for Civil Rights under the newly named "Departmental Management" led by the Assistant Secretary for Administration. As a result of this restructuring, the ethics function no longer reported directly to senior leadership, but was placed within OHRM under the supervision of the OHRM Director, who reports to the Assistant Secretary for Administration through the Deputy Assistant Secretary for Administration.

This is important to note, because following OGE's 1997 review, in which significant deficiencies were identified resulting in a Notice of Deficiency (Notice) for the ethics program, USDA's ethics program was also managed under the former Office of Human Capital Management (OCHM) within Departmental Administration.³ Based on the impaired state of the program at that time, OGE believed the ethics function was obscured within the Department's organizational structure and its subordinated position in the agency was thought to be the primary impediment toward establishing a strong ethics program.

- The DAEO's Time Spent On Ethics Has Decreased From Full-Time To Part-Time

Since coming on board in 2010, the DAEO's ethics duties have significantly decreased. Specifically, 50 percent of the DAEO's time is spent on ethics, while the remainder of the time is spent on performing non-ethics assignments to support the broader OHRM mission. (Time spent on ethics by the ADAEO has also been reduced by 25 percent.)

This is important to note, because when the Director of OE position was established in 1998, OGE understood that the incumbent would be a full-time DAEO, devoting all efforts to the ethics program. (*See Appendix I.*) OGE raised this concern in 2002, when issuing its second Notice of Deficiency to USDA, since the deficiencies found in that review were largely based on OE not performing adequate oversight to maintain quality programs. OGE found the DAEO at that time to also have many other responsibilities besides ethics taking precedence at the expense of the ethics program. OGE still believes that a full-time DAEO provided with sufficient staffing and resources is necessary to build a strong ethics program at USDA.

- Staffing Levels Were Down And Additional Resources Were Needed

As mentioned earlier, OE's current ethics staff consists of 27 full-time ethics officials.

³ OHCM was the Human Resources Office that pre-dated OHRM.

USDA's 2012 Annual Ethics Questionnaire noted that OE was staffed below the 31 positions it previously had. Within the same questionnaire, it was cited that the greatest challenge to the ethics program was the lack of resources for administration, program development, training, and automation.

During the review, the DAEO explained that earlier in 2012, OE had a total staff of 29 employees. However, two staff members left and OE lacked the financial resources to rehire for those two positions. Additionally, the DAEO and ADAEO informed OGE that OE HQs lost two additional ethics specialists in 2009 which they have also not been able to replace due to a lack of funding. (Both of these employees worked with OE HQ's confidential financial disclosure program). Therefore, instead of having a total of 31 employees, as OE had in 2009, OE currently has a total of 27 employees, inclusive of the DAEO and ADAEO.

- Lines Of Authority Over The Ethics Function Were Not Clear
Similar to concerns raised during OGE's 1997 Notice, roles, responsibilities, and delegations of authority pertaining to OE were not clear after the reorganization. As a result, OGE believes this has played a contributing part as to why non-ethics duties have taken precedence over ethics duties.

While OGE remains concerned about USDA's program structure and the recurring issues which have resurfaced, OGE believes that much of the backsliding was caused by the 2009 reorganization from a stand-alone, distinct organization to a subordinated position within OHRM. Since the Secretary is personally involved in helping to address this issue, OGE is not making a formal recommendation for improvement at this time.

Ongoing Efforts

In advance of OGE's current review, the Secretary underscored the importance of ethics by announcing his plans to realign USDA's ethics program to help address ongoing challenges with OE's program structure. This organizational change also increases OE's visibility and further promotes the importance of the ethics function within USDA (*See Appendix 2 Secretary's Memorandum 1076-001.*) The restructuring plan proposes transferring OE out from OHRM and realigning OE under the General Counsel. Although the General Counsel will provide supervision, OE will remain a stand-alone entity separate from OGC, with direct access to the Secretary. The DAEO, ADAEO and all current OE staff will remain intact, and the major functional components of OE will remain unchanged.

During the on-site portion of this review, OGE met with the General Counsel to discuss this realignment initiative and the critical role that agency leadership plays in implementing an effective ethics program, in accordance with 5 CFR § 2638.202(a). The General Counsel acknowledged that there were still details to be worked through to complete the realignment, but expressed a strong commitment toward supporting the agency's ethics program. The major sticking point is how to fund OE, since the suite of administrative services to include budget will be provided to OE by either OGC or Departmental Management, as appropriate, through reimbursable agreements. As a result, the DAEO was uncertain whether the level of funding for

OE would be adequate for the program after realignment. For example, it was noted that the funding OE was provided by Departmental Management for FY 2013 did not include funds for OE to pay the National Finance Center \$100,000 in realignment expenses for re-coding OE under a new Treasury symbol.

The Secretary initially announced the realignment plan in April 2012 and communicated the plan in May 2012 to the U.S. Senate Appropriations Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, one of twelve subcommittees of the U.S. Senate Committee on Appropriations. This plan was also communicated to the appropriate House of Representatives Committees at the same time. OE's transition was completed by September 2012. OGE will continue to monitor this area of USDA's program.

Financial Disclosure

To evaluate the administration of USDA's financial disclosure program, OGE limited its examination to a judgmental sample of public and confidential financial disclosure reports that were required to be reviewed and certified by OE-Headquarters. OE-Headquarters is responsible for the review and certification of all 650 public reports and 2,500 of the more than 17,000 confidential reports that are required be filed throughout USDA. OGE selected a judgmental sample of 300 financial disclosure reports (150 public and 150 confidential) to examine timeliness of filing, review, and certification as well as to assess the overall quality of review.

Confidential System

OGE reviewed a sample of 150 confidential financial disclosure reports due in February 2012. Of the sample, 76 percent were filed timely while 95 percent of these reports were reviewed and certified in a timely manner. Because USDA's 2011 Agency Ethics Program Questionnaire indicated the agency had challenges in collecting confidential reports, OGE inquired about the filing status of reports outside of the sample. OGE found that 197 confidential reports had not been collected within OE-Headquarters, which is consistent with the number of confidential reports not collected the prior year. In addition to these outstanding reports, five other reports were still awaiting review, and two other reports had not yet been certified within the deadline of 60 days after submission and there was no evidence of a request for additional information from the filer.

It is vital that financial disclosure reports be filed, reviewed, and certified in a timely manner to ensure that potential conflicts of interests are promptly identified and remedied. OGE did not find this same level of non-compliance during its cross-reference of public reports filed outside its initial sample; in fact, it was clear that ethics officials appropriately followed up with public filers on questions needed to certify reports and recorded continual communication between the reviewer and filer. (OGE also did not detect any actual or potential conflicts of interest during the examination of sampled reports). OGE believes that the challenges in the confidential financial disclosure program have resulted from the negative impact of "reduced staff, prolonged vacancies, and increased volumes of non-ethics related work" within OE-Headquarters. Ethics officials indicated that they have focused their limited resources on the public financial

disclosure program. Nevertheless, OGE reminds ethics officials to remain diligent toward ensuring that confidential filers submit their reports by the filing deadline for confidential filing. OGE recommends that the DAEO develop a plan of action to help address deficiencies in timeliness of filing within OE-Headquarters. While these numbers only reflect the reports filed within OE-Headquarters, the DAEO may also want to conduct an internal self-assessment of the confidential system within the OE-branch offices.

Public System

Of the 150 public reports OGE selected for examination that were due in May 2011, 89 percent were filed timely while 50 percent of these reports were reviewed and certified within the required 60-day timeframe. For the remaining reports not certified within the required 60-day timeframe, OGE found documentation that ethics officials were seeking additional information from the majority of these filers. Ethics officials attributed resource limitations for the remaining reports that were certified after the deadline. Annotations throughout report files showed evidence of detailed, careful review by ethics officials. OE tracking systems also recorded continual communication between the reviewer and filer. Nevertheless, OGE reminds ethics officials that delayed reviews can diminish an agency's ability to provide timely and specific conflict of interest advice to employees, which is essential for an effective ethics program. Public reports which do not require additional information or remedial action should always be certified within 60 days of each report's receipt date.

The only other area of concern for OGE was that three public filers failed to file a public financial disclosure report despite repeated requests from OE, making these filers subject to a late filing fee and potential referral to the Department of Justice. As required by section 104(b) of the Ethics in Government Act, individuals must be referred to the Attorney General when there is reasonable cause to believe that filers are willfully failing to file. OGE believed there was a reasonable cause for USDA to refer these filers. However, subsequent to our review, OE obtained all three reports. Based upon this information, OGE is making no formal recommendation for referral to the Attorney General.

Efforts To Improve USDA's Financial Disclosure Program

Since joining USDA in 2010, the DAEO has worked to improve the operation of the agency's financial disclosure program. One key improvement has been the DAEO's pursuit of an electronic filing system (e-filing) for USDA's public and confidential financial disclosure filers. In 2011, OE entered into an agreement with the Department of Commerce to use their e-filing system to help meet executive branch financial disclosure filing requirements. E-filing at USDA was officially launched later that same year.

Given the challenges OE has faced with "reduced staff, prolonged vacancies, and increased volumes of non-ethics related work" and the large number of financial disclosure filers who are required to file throughout USDA, OGE supports this endeavor and believes that e-filing would be a welcome improvement to USDA's ethics program. Agencies that have implemented such systems have been able to save time and resources, allowing ethics officials to focus on other essential aspects of the financial disclosure system, such as identifying and resolving potential

conflicts. While OGE is pleased to see USDA moving in this direction, two issues were identified after independently examining the system:

- OGE recognizes that its current examination of the public system was based on reports that were required to be filed in 2011, when USDA was transitioning to its new e-filing system. During the course of the examination, OGE recognized that not all sampled public filers submitted reports electronically. OGE also looked at public reports filed in 2012 and found that OE was still managing receipt of both manual and electronic forms.

Allowing public filers to submit their reports electronically or in hard-copy is not the most efficient way to administer the public system since it can contribute to OE's inability to provide timely follow-up with filers to resolve any reporting deficiencies found during a review. While OGE acknowledges OE's need to maintain two separate tracking systems during the interim, the use of two separate tracking systems-- e-filed public reports within the e-filing platform and hard-copy reports within an OE-developed tracking system called "Ethos"-- is also resource intensive. OGE believes a complete transition to e-filing for the public financial disclosure program is instead the most efficient way to administer the public system. To address this issue, the DAEO indicated that all public filers will be required to file their reports electronically in 2013.

- Currently, the lack of funding precludes the majority of USDA confidential filers from e-filing. At the time of review, the only confidential filers able to e-file were those within USDA's Foreign Agricultural Service. This accounted for slightly more than 500 filers out of the 17,000 filers throughout USDA, according to OE's master list of confidential filers. The DAEO indicated that OE does not have a dedicated budget to maintain this system. Instead, the cost is divided among the USDA mission areas, but not all mission areas have elected to participate.⁴ To help ensure that the benefits of e-filing are maintained long-term and have maximum impact at USDA, it may be necessary for senior agency leadership to consider mandatory e-filing where administratively practical, rather than leaving the decision to the discretion of each mission area. Otherwise, it is likely that the burden of a manual program for over 16,000 employees will prove overwhelming to the ethics office. OGE is hopeful that the proposed restructuring will bring increased attention to this matter. OGE plans to revisit this again in six-months.

Recommendations

- Complete transition to e-filing in the public financial disclosure program.
- Establish a plan to improve the timeliness of confidential financial disclosure filing for those agencies and offices serviced by the OE-Headquarters.

⁴ USDA's Office of the Chief Information Officer covered the cost for the initial launch of e-filing.

Suggestions

- Assess the expansion of e-filing in the confidential financial disclosure program.
- Assess the confidential financial disclosure system within the OE-branch offices.

Supplemental Regulation

USDA's supplement to the standards of conduct regulation at 5 CFR § 8301.102 requires employees, other than special Government employees (SGE), who are required to file a public or confidential financial disclosure report, to obtain prior written approval before engaging in certain outside employment. Employees who wish to engage in outside employment for which advanced authorization is needed submit a Request for Prior Approval of Outside Activity/Employment form to OE. Additional rules apply to employees at the Farm Service Agency, Food Safety and Inspection Service, Office of the General Counsel, Office of the Inspector General, and the Rural Business and Cooperative Service.

To determine compliance with USDA's supplemental regulation, OGE reviewed the outside activities that were reported on both the public and confidential financial disclosure reports. OGE identified 19 outside employment activities listed on the appropriate schedule/part of the public/confidential reports and found all filers to have received prior approval, when appropriate, before engaging in outside employment.

Conflict Remedies

All of the actions required to be taken pursuant to PAS employees' ethics agreements were completed timely, in accordance with 5 CFR § 2634.802(b). In addition, all requisite evidence of action taken was also submitted timely to OGE, in accordance with 5 CFR § 2634.802(a).

Education & Training

OGE believes the education and training program is one of the strongest elements of USDA's ethics program. This is important because strong training programs create employee support for the ethics program, and well-trained employees are the principal means by which ethics violations are prevented. USDA's 2012 training plan provided for a mixture of both in-person, written, and computer-based ethics training, covering a range of ethics issues, targeted to different USDA audiences. In addition to conducting the requisite initial and annual ethics training, OE hosts discretionary training throughout the year.

Initial Ethics Orientation and Annual Ethics Training for Senior-level Officials

OE-Headquarters is responsible for ensuring that all new political appointees at USDA satisfy OGE's initial ethics orientation (IEO) requirement. IEO for these employees is accomplished by providing them with in-person training on their first day on duty. Additionally, in tandem with USDA's Office of the White House Liaison, new non-career Senior Executive Service (SES) and Schedule C appointees can also partake of a four class curriculum of live ethics training or view similar OE-developed computer-based training modules to satisfy the IEO requirement. OGE

examined the presentation provided during these in-person briefings and found the material to cover a variety of ethics issues that senior-level employees may face. Highlighted in the presentation and on USDA's ethics website are the basic requirements that satisfy 5 CFR § 2638.703, which include OGE's Standards of Ethical Conduct for Employees of the Executive Branch (Standards), USDA's supplemental regulation, and the contact information of the Ethics Office.

With regard to OGE's annual training requirement, the DAEO conducted a two-day, in-person training session for all political appointees and career SES & Administrative Law Judges to attend to satisfy the 2012 training requirement. During the on-site portion of this review, OGE attended both sessions and found them both to be informative, well-attended, and compliant with relevant annual training provisions. OGE found the DAEO's ability to incorporate relevant examples within the presentation and the question-and-answer format at the end of each session useful and effective in engaging employees. OGE was also pleased to see the General Counsel (on Day 1) and the Chief of Staff to the Secretary (on Day 2) provide opening remarks on the importance of ethics at USDA and give public recognition to ethics officials for their efforts in administering the program.⁵

Both sessions focused on conflicts of interest, gifts, and the new requirements of the Stop Trading on Congressional Knowledge Act (STOCK Act). Attendance at each session was tracked using sign-in sheets and collected at the end of each session. Ethics training evaluation forms were also made available to help OE gain insight on what attendees thought of the training and how it could be improved.

Initial Ethics Orientation and Annual Ethics Training for Regular Employees

The DAEO developed an on-boarding website for all USDA employees as part of his non-ethics responsibilities assigned while under OHRM. This website takes a new employee through each step of the new employment process. The DAEO ensured that IEO was incorporated into the website. The training for new employees on this website includes a mandatory ethics orientation training module which meets all the applicable requirements for an initial ethics orientation. Since this portal is made available on USDA's public website, new and prospective employees can benefit from the information before joining the agency. Training completion is monitored by supervisors using an on-boarding checklist and tracked by OE through USDA's Agriculture Learning (AgLearn) system or IEO training certifications. According to USDA's Agency Ethics Program Questionnaire, all 3,301 new employees received IEO in 2011.

To satisfy the annual training requirement for covered employees in 2012, USDA's training plan indicates that computer-based training will be used. According to the DAEO, this requirement can be satisfied in two ways, either by: (1) completing the training modules through USDA's AgLearn system, which is an agency-wide system that manages training records and activity, or by (2) completing the training modules through the ethics website. However, employees are encouraged to use the AgLearn system since it memorializes training completion in their official USDA record. OE has developed 19 training modules that are available through either format. Annually, OE selects three modules that employees must complete to satisfy USDA's annual

⁵ OE videotaped the first day's session and put it on USDA's ethics website for all employees to view.

training requirement.⁶ For 2012, employees were asked to view three modules on the following topics: 1) Political Activity; 2) Teaching, Speaking, and Writing, and 3) Outside Employment. Employees are also instructed to review the basic requirements that satisfy 5 CFR § 2638.704, which includes OGE's 14 Principles of Ethical Conduct, the Standards, USDA's supplemental regulation, and the Federal conflict of interest statutes, all found on USDA's ethics website. Collectively, the modules and additional mandatory materials on the website meet relevant content requirements. The DAEO informed OGE that non-filers have access to and are encouraged to take annual training each year.

Discretionary Training Provided Throughout The Year

OGE found the DAEO and ethics office staff proactive in keeping USDA employees aware of ethics-related issues throughout the year. OE employs a variety of ways to communicate ethics concepts to different audiences within the agency. One way is through USDA's useful and informative ethics website, which features separate modules for financial disclosure filing, ethics briefings for new employees, out-briefings for exiting employees, ethics training, internal agency documents, and ethics resource links. Immediate access to both OGE regulations and agency specific regulations, along with points of contact information for USDA ethics officials, are also provided. In addition to USDA employees, OGE was advised that more than 26 other federal agencies utilize this site as well.

OGE identified three other OE training initiatives identified as model practices during the examination:

- Each week at the Secretary's Sub-Cabinet meeting, the DAEO presents what has become commonly known as an "Ethics Moment," which is a short synopsis on a specific area of ethics law. This is also re-enforced with a one-page handout summarizing the ethics topic being discussed. Ethics Moments are also provided each week at the USDA White House Liaison's weekly meeting of all Schedule C and non-career SES appointees and PAS appointees.
- In an effort to remind USDA employees about specific ethics rules and requirements when they may be particularly relevant, the DAEO creates one-page ethics summaries on the most important information about a topic or requirement. These summaries provide significant guidance to employees and are tailored to address specific audiences. Given the ongoing challenges in program structure, OGE believes these summaries provide a high level of visibility to the ethics program and highlight where employees can go to seek more detailed ethics guidance.
- OE hosts its own ethics conference to provide its ethics staff with refresher training on pertinent ethics topics. The last ethics conference was held in 2011 which featured USDA's Secretary and OGE's former Director as keynote speakers.

⁶ The DAEO has determined that viewing three training modules meets OGE's one-hour annual training requirement.

Advice & Counsel

OGE examined all available advice and counseling that had been memorialized in writing by the DAEO to the most senior level officials within USDA in 2011. The examined pieces of advice, ranging from gift questions to federal-wide employee donation matters, documented the specific issue(s) in question and the basis for the counseling being rendered. It was also rendered timely, which is key in preventing conflicts of interest and other ethics violations, and was given in a practical, easy-to-comprehend format. OGE also found a process in place for sharing records of advice and counseling among ethics officials.

OE also goes beyond counseling solely in response to employee questions. For example, detailed guidance known as an "Ethics Issuance" is posted to the ethics website to address common concerns. The ethics office also offers employees the opportunity to take a survey to assess their satisfaction with the quality of advice and counseling rendered. The survey is advertised on the tag-line of every OE e-mail message and the survey itself is located on the website. Employees who take the survey are asked to rate the thoroughness of the advice rendered; the promptness of the initial response; the knowledge, courteousness, and professionalism of the ethics official rendering the advice; as well as the overall quality of the advice.

OGE considers this approach of evaluating the advice and counseling program to be a model practice. Not only does this convey the message that ethics officials are there to help but self-assessments can increase program effectiveness by identifying areas of concern and opportunities for improvement in a timely manner.

Enforcement

At USDA, the Inspector General (IG) is responsible for referring potential violations of criminal conflict of interest statutes to the Department of Justice (Justice) and concurrently notifying OGE of the referral, as required under 5 CFR § 2638.603. To assess this process, OGE compared referral documents it received with the number of referrals reported on USDA's 2011 Agency Ethics Program Questionnaire. Based on this review, OGE did not receive notification on the two referrals reported in the questionnaire. According to internal records, USDA's last notification to OGE on a referral made to Justice was in 2010 regarding a potential 18 U.S.C. § 208 violation. However, OGE had not been notified of the referral's final disposition.

OGE discussed the lack of concurrent notification with the IG. The IG agreed that in the future the IG's Investigations Liaison and Hotline Division (ILHD) will be responsible for concurrently notifying OGE of all future referrals made, inclusive of all required follow-up information. OGE commends the IG's leadership in taking swift action in this matter by sending information, through ILHD's Special Agent-in-Charge, to the investigative staff on the required use of OGE Form 202, Notification of Conflict of Interest Referral, when notifying OGE of future referrals. To address OGE's concern that the DAEO may not always be aware of when a referral is made by ILHD to Justice regarding criminal conflicts of interest, ILHD also agreed to provide a copy of the OGE-Form 202 to the DAEO. This will help the DAEO provide support to USDA's system of enforcement.

OGE notes that prior to the conclusion of this review, information was received on all referrals. Based on the actions taken, OGE is making no formal recommendation for improvement since the procedures to notify OGE of all matters required under 5 CFR § 2638.603 have been implemented.

1353 Travel Acceptances

OGE found OE to have procedures in place to administer the acceptance of travel payments from non-Federal sources for travel, subsistence, and related expenses incurred by agency employees on official travel under the authority of GSA's regulation at 41 CFR chapter 304, implementing 31 U.S.C. § 1353. The procedures for requesting and receiving authorization for acceptance of travel payments from a non-Federal source are detailed in USDA's Ethics Issuance 99-2. Employees who seek approval under §1353 are required to use the USDA-Form AD-1101, Approval and Report of Travel Funds Received from Non-Federal Sources.

To meet the semiannual reporting requirement, OE is responsible for collecting the information to be reported, drafting USDA's semiannual report of payments of more than \$250 per event, and forwarding it to OGE. OGE examined the last four semiannual reports of payments accepted from non-Federal sources covering the periods of April 2010 through March 2012 and found each report to have been consistently submitted to OGE in a timely manner.

Agency Comments

The USDA appreciates the time and effort that OGE invested in this program review, and concurs with OGE's two recommendations. The Department will provide a formal written response within 60 days.

Appendix 1: Prior OGE Program Reviews Conducted At USDA

OGE conducted prior program reviews at USDA in 1982, 1986, 1988, 1993, 1997, 1999, 2002, and 2008. In each of these reviews, OGE made recommendations for improvement. Highlighted below are findings beginning in 1997, when OGE issued its first Notice of Deficiency to USDA.

- In 1997, serious deficiencies in several ethics program requirements relating to the public and confidential financial disclosure systems and the education and counseling programs were identified. These deficiencies resulted from insufficient resources made available to the ethics program. The impaired state of the program led OGE to issue its first Notice of Deficiency to USDA ordering that action be taken to improve the program. This eventually led to the creation of USDA's Office of Ethics and the appointment of its first Director and DAEO in 1998.
- In 1999, although deficiencies were cited, OGE believed the DAEO was moving in the right direction and working to resolve ethics program deficiencies, many of which arose prior to OE's creation.
- In 2002, OGE found USDA's program to be as weak as it was in 1997. The deficiencies, especially within the components examined, were largely occurring because (1) OE was not performing adequate oversight of the program and (2) ethics staffing in the components was not adequate due to high staff turnover, non-ethics duties taking precedence over ethics duties, and a lack of training for ethics advisors. This led OGE to issue its second Notice of Deficiency to USDA.⁷
- In 2008, OGE found USDA again taking steps to restructure OE to address oversight and ethics staffing challenges still inherent in its program structure. To address these challenges, the former Secretary reorganized the ethics program by (1) combining and centralizing the former multiple agency and mission area ethics programs within USDA into a single ethics office under the direct responsibility of OE and (2) restructuring OE into a headquarters office with four branch offices.

⁷ OGE issued its two Notices of Deficiency based on its corrective action authority found at 5 CFR § 2638.402(a). After subsequent follow-up reviews and discussions held with ethics officials to ensure that all deficiencies had been corrected, OGE lifted its 1997 Notice in 2000 and its 2002 Notice in 2004.

Appendix 2: Secretary's Memorandum 1076-001

**UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250**

June 26, 2012

SECRETARY'S MEMORANDUM 1076-001

REALIGNMENT OF THE OFFICE OF ETHICS

1. INTRODUCTION

The purpose of this Memorandum is to implement the realignment of reporting lines for the Office of Ethics (OE). Effective immediately, supervision of OE is transferred from the Office of Human Resources Management (OHRM) under Departmental Management to the General Counsel. This realignment supports the Executive Branch "best practice" of housing the ethics function within each Cabinet-level Department's legal office.

2. BACKGROUND

The Ethics in Government Act, 5 U.S.C. App. 4 (Act), establishes the ethics compliance requirements and infrastructure applicable throughout the Executive Branch. General oversight authority over Executive Branch ethics matters, including supervision of departmental and agency ethics programs, is vested in the Office of Government Ethics (OGE). 5 U.S.C. App. 4 § 401.

Under the regulations implementing the Act, the head of each Executive Branch department or agency must exercise personal leadership in establishing, maintaining, and carrying out the agency's ethics program and make available sufficient resources to assure the agency's ethics program can be implemented effectively. 5 CFR § 2638.202.

A parallel exists between the ethics function, specifically its counseling, compliance and risk management aspects and the role of departmental legal advisors. USDA's General Counsel has a broad, statutorily-mandated legal counseling role that encompasses the entire range of departmental programs and activities. The General Counsel, through the Office of the General Counsel (OGC), provides legal counseling to the Secretary, to other senior USDA officials, and to agencies and offices in their institutional capacities to help ensure that all departmental efforts comply with applicable laws and regulations. The OE provides advice on conflicts of interest, political activities, post-employment requirements, and other ethics-related issues, and their efforts support USDA officials and employees in both their institutional and personal capacities. In this way, the ethics function also promotes compliance and

helps to manage legal risks to assure the integrity of USDA programs and activities.

This realignment places USDA's ethics function under the supervision of the General Counsel, consistent with other Executive departments and agencies. In addition, the realignment promotes efficiency by enhancing the Department's ability to coordinate USDA's ethics functions with the performance of other legal advisory services already provided by the General Counsel, through OGC, in the ethics arena.

3. ACTIONS ORDERED

- a. Realign the existing Director and Deputy Director, OE, and current ethics staff intact from OHRM as a stand-alone office reporting directly to the General Counsel. The current Director and Deputy Director will continue to provide overall leadership, coordination, and direction for USDA's ethics program. The major functional components of OE will remain unchanged and will be staffed by the current OE personnel. These components include: Office of the Director; Farm, Conservation, and Rural Programs Ethics Branch; Forestry Ethics Branch; Marketing, Regulatory, and Nutrition Ethics Branch; and Science Ethics Branch. OE shall be a distinct organization separate from the Office of the General Counsel.
- b. All currently assigned functions and delegations of authority pertaining to OE will be transferred from OHRM to the General Counsel.
- c. The suite of administrative services to include budget, fiscal, human resources, procurement, and information technology will be provided to OE by either the Office of the General Counsel or Departmental Management, as appropriate, pursuant to reimbursable agreements.

4. INCIDENTAL TRANSFERS

This realignment moves the current subordinate structure of OE intact from OHRM and places it under the supervision of the General Counsel as a distinct organizational unit. The Assistant Secretary for Administration and the Chief Financial Officer are authorized to approve such transfers of funds, employment authority, space, records, property, and incidentals as may be necessary to implement the provisions of this Memorandum.

5. EXISTING DIRECTIVES

This Memorandum supersedes Secretarial Memorandum No. 1076-001, dated April 15, 2012. Other prior delegations of authority, administrative regulations, and other directives not inconsistent with the provisions of this Memorandum shall remain in full force and effect.

6. EFFECTIVE DATE

The provisions of this Memorandum are effective immediately.

7. TERMINATION

This Memorandum shall remain in effect for one year or until such time as published delegations have been revised to incorporate its provisions.



THOMAS J. VILSACK
SECRETARY