



Ethics Program Review

U.S. Department of Labor Headquarters

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The United States Office of Government Ethics (OGE) conducted a review of the United States Department of Labor (DOL) headquarters’ ethics program from April to July 2024. The review covered program activities primarily 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 the administration of the ethics program within DOL headquarters. This administration includes managing the public and confidential financial disclosure systems, providing ethics training and counseling, ensuring required notices are sent to prospective employees and new supervisors, resolving conflicts of interest, enforcing ethics-related restrictions, and providing ethics services for special government employees (SGE).

OGE’s review focused primarily on ethics program activities that occurred in 2023. This general scope was expanded when necessary to provide context.

Methodology: OGE examined a variety of documents provided by DOL ethics officials, including DOL’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. In addition, OGE interviewed agency ethics officials to clarify the information gathered, follow up on issues identified during the review, and discuss ethics program operations in further detail.

¹ See 5 U.S.C. § 13122 and 5 C.F.R. part 2638.

Program Administration

DOL's ethics program is administered by the Office of Legal Counsel (OLC) within the Office of the Solicitor (SOL). The DOL Solicitor serves as the Designated Agency Ethics Official (DAEO). The Associate Solicitor, who heads OLC, serves as the Alternate DAEO (ADAEO). The ADAEO oversees the day-to-day operations of DOL's ethics program with the assistance of a team of six ethics officials, in addition to the DAEO.

The administration of DOL's ethics program is decentralized with the exception of the public financial disclosure system.² OLC is responsible for administering the public financial disclosure system and for providing ethics training and advice DOL-wide. In addition, OLC provides ethics guidance and programmatic oversight to the seven Regional Solicitors who act as ethics officials for their respective regions.

Previous OGE Review

OGE previously conducted a review of DOL headquarters in 2020 and issued six recommendations for ethics program improvement. In 2022, OGE completed a follow-up review and as a result, all six recommendations remained open. During this 2024 review of DOL headquarters' ethics program, OGE determined that recommendations 1 through 5 have been implemented and should be closed. Recommendation 6 regarding SGE confidential financial disclosure remains open.

	Recommendation	2022 Follow-up Review Result	2024 Review Result
1	Update written procedures for prospective employees to include required ethics-related information	Open	Closed
2	Ensure prospective employees receive the required notice with their written offer of employment	Open	Closed
3	Update written procedures for issuing notices to new supervisors to include required ethics related information	Open	Closed
4	Establish written procedures for Initial Ethics Training (IET)	Open	Closed
5	Ensure that the DAEO reviews the IET procedures annually	Open	Closed
6	Ensure that SGEs file confidential disclosure reports, as required	Open	Open

² The confidential system is decentralized and is administered by DOL's component agencies. OLC is directly responsible for the confidential system for SOL employees only.

Financial Disclosure

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

Financial Disclosure Written Procedures

Each executive branch agency must establish written procedures for collecting, reviewing, evaluating, and where applicable, making available to the public financial disclosure reports filed by the agency's officers and employees.³ OGE examined DOL's written procedures and determined that they met applicable requirements.

Notices to the DAEO

Agency human resources offices play a vital role in ensuring the effective administration of the ethics program. Without necessary information about agency employees, ethics officials cannot successfully carry out their important work. Among other things, the lead human resources official is required to notify the DAEO of all appointments to positions that require incumbents to file public or confidential financial disclosure reports no later than 15 days after the appointment. The lead human resources official must also notify the DAEO of terminations of employees in positions that require incumbents to file public financial disclosure reports no later than 15 days after termination.⁴ This helps to ensure the timely collection of financial disclosure reports.

The Division of Executive Resources, a component of DOL's Office of Human Resources (OHR), sends OLC a report of all the latest appointments and terminations of public filers every two weeks. OLC ethics officials provided OGE with examples of the reports and OGE determined that these reports include the required information concerning appointments to and terminations from positions whose incumbents are required to file public financial disclosure reports. According to OLC ethics officials, for confidential filers, each component agency within DOL coordinates with their human resources officials to maintain a list of confidential 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

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).

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 DOL headquarters' public financial disclosure system, OGE examined a sample of 140 of the approximately 400 non-PAS public reports that were required to be filed in 2023. This sample included 50 new entrant, 50 annual, and 40 termination reports. Table 1 below presents the results of OGE's examination.

Table 1. OGE's Examination of DOL HQ Public Financial Disclosure Reports

	New Entrant	Annual	Termination	Total
Reports Examined	50	50	40	140
Filed Timely	37 (74%)	42 (84%)	30 (75%)	109 (78%)
Certified within 60 Days	38 (76%)	45 (90%)	33 (83%)	116 (83%)

As noted in Table 1, OGE's examination found that only 67 (75%) of the 90 new entrant and termination public reports were filed timely.

Recommendations

1. Ensure new entrant and termination public financial disclosure reports are filed timely.

Table 1 also indicates that only 38 (76%) of the 50 new entrant public reports were certified timely. However, of the 12 new entrant reports certified past 60 days, 6 had significant updates and editing between the filer and reviewer which appear to have justified the delayed certification.

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 DOL headquarters confidential financial disclosure system, OGE examined a sample of 85 of the confidential reports that were required to be filed in 2023. This sample included 46 new entrant, and 39 annual reports. Table 2 below presents the results of OGE's examination.

⁷ See 5 C.F.R. § 2634.605.

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.

Table 2. OGE’s Examination of DOL HQ Confidential Financial Disclosure Reports

	New Entrant	Annual	Total
Reports Examined	46	39	85
Filed Timely	35 (76%)	38 (97%)	73 (76%)
Certified within 60 Days	46 (100%)	37 (95%)	83 (98%)

As noted in Table 2, OGE’s review found that 35 (76%) of the 46 confidential new entrant reports were filed timely. However, of the 11 new entrant reports that were late, 7 of them were late by two days or less; therefore, OGE is not making a recommendation for improvement.

Education and Training

Each executive branch agency must carry out a government ethics education program to teach employees how to identify government ethics issues and obtain assistance in complying with government ethics laws and regulations. The training program is to include: briefings for certain PAS employees; notices for prospective employees and newly appointed supervisors regarding their ethics-related obligations; initial ethics training for new employees; and annual ethics training for public and confidential financial disclosure report filers and certain other employees.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

Certain PAS officials must complete an ethics briefing to discuss their immediate ethics obligations no later than 15 days after their appointment, unless the DAEO grants an extension. Any extension of more than 15 days requires the DAEO to make a written determination that extraordinary circumstances make it necessary to provide the briefing at a later date.¹²

According to OLC, ethics officials provided in-person live training to the one DOL PAS employee appointed in 2023 within 15 days of their appointment date, as required. OGE reviewed the material covered in the briefing and determined that it met the applicable content requirements.

¹¹ See 5 C.F.R. Part 2638 Subpart C.

¹² See 5 C.F.R. § 2638.305.

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 DOL's written procedures for providing the required notices to the prospective employees and found that they were in compliance with applicable requirements. Moreover, based on an examination of the five samples of notifications sent from HR to prospective headquarters employees, OGE determined that the written procedures were also effective.

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 specifying the government ethics responsibilities of supervisors;¹⁴ 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.¹⁵

OGE examined DOL's written procedures for providing the required notices to new supervisors and found that they were in compliance with applicable requirements. OGE examined five samples of notices sent to new headquarters supervisors in 2023 and determined that they met all relevant content requirements.

Initial Ethics Training

Each new employee subject to the Standards of Conduct must complete initial ethics training within three months of appointment, unless excluded by the DAEO. The training must be interactive and focus on government ethics laws and regulations that the DAEO deems appropriate. The training must address: financial conflicts of interest, impartiality, misuse of position, and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and, instructions for contacting the agency's ethics office.¹⁶

¹³ See 5 C.F.R. § 2638.303.

¹⁴ See 5 C.F.R. § 2638.103.

¹⁵ See 5 C.F.R. § 2638.306.

¹⁶ See 5 C.F.R. § 2638.304.

According to information provided by OLC ethics officials, initial ethics training at DOL headquarters is provided via an online training program called *Learning Link*. OGE reviewed the *Learning Link* training module and determined that it met the relevant standards to qualify as interactive training and that it met applicable content requirements.

New employees confirm completion of the initial ethics training using the self-certification function of *Learning Link*. According to DOL's 2023 Annual Agency Ethics Program Questionnaire and follow-up conducted by OGE during this review, 1,370 (97%) of 1,406 new headquarters employees received the required initial ethics training in 2023, and only 6 of these employees received the training beyond the three-month deadline.

Written Procedures for Initial Ethics Training

Agencies are required to establish written procedures for, among other things, initial ethics training, which the DAEO must review each year.¹⁷ Further, in agencies with 1,000 or more employees, any office that is not under the supervision of the DAEO, but has been delegated responsibility for issuing notices or conducting training, must submit the following materials to the DAEO by January 15 each year: a written summary of procedures that office has established to ensure compliance with initial ethics training requirements; and written confirmation that there is a reasonable basis for concluding that the procedures have been implemented.¹⁸ OGE examined DOL's IET written procedures and found they met applicable requirements.

Annual Ethics Training for Public Filers

Generally, live training must be provided each calendar year to each employee whose pay is set at Level I or Level II of the Executive Schedule. Live training must also be provided to other employees who are required to file public financial disclosure reports every other year, with interactive training provided in the intervening years. The training presentation, whether live or interactive, must focus on government ethics laws and regulations that the DAEO deems appropriate and must address financial conflicts of interest, impartiality, misuse of position, and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and, instructions for contacting the agency's ethics office.¹⁹

According to information provided to OGE by OLC ethics officials, OLC provided live annual training supplemented with written materials to headquarters public filers in 2023. OGE determined that the live presentation combined with the written materials met applicable content requirements.

¹⁷ See 5 C.F.R. § 2638.304.

¹⁸ See 5 C.F.R. § 2638.310.

¹⁹ See 5 C.F.R. § 2638.308.

Annual Ethics Training for Confidential Filers

Generally, interactive training is required to be provided each calendar year to employees who are required to file a confidential financial disclosure report pursuant; employees appointed by the President and employees of the Executive Office of the President; contracting officers; and, other employees designated by the head of the agency. The training presentation must focus on government ethics laws and regulations that the DAEO deems appropriate and must address financial conflicts of interest, impartiality, misuse of position, and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and, instructions for contacting the agency's ethics office.²⁰

According to OLC ethics officials, headquarters confidential filers and other covered non-filing employees received virtual live annual ethics conducted in 2023. The presentation featured a chat function allowing attendees to interact with presenters. Additional written materials were provided to supplement the live presentation. OGE determined that the presentation combined with the written materials met applicable content requirements.

In 2023, 373 public filers and 5,171 confidential filers within DOL's headquarters were required to receive annual ethics training. Table 3 below reflects the number and percentage of these public and of confidential filers who completed annual ethics training in 2023 and the type of training completed.

Table 3. OGE's Examination of Annual Ethics Training for Financial Disclosure Report Filers

DATA ANALYSIS	Training Format		Total
	Live	Interactive	
Percentage of public filers who completed annual ethics training before the end of the calendar year. <i>See</i> 5 C.F.R. § 2638.308(a).			
• Executive Schedule Level I and Level II. <i>See</i> 5 C.F.R. § 2638.308(e)(1).	2 (100%)	-0-	2 (100%)
• Other PAS and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(2).	10 (100%)	-0-	10 (100%)
• SES and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(3).	333 (92%)	-0-	333 (92%)
Total			345 (92%)
Percentage of confidential filers and certain other employees who completed annual ethics training before the end of the calendar year. <i>See</i> 5 C.F.R. § 2638.307(a)(d).			
• Employees required to file an annual confidential financial disclosure report. <i>See</i> 5 C.F.R. § 2638.307(a)(1).	4,985 (96%)	-0-	255 (96%)

²⁰ *See* 5 C.F.R. § 2638.307.

As indicated in the table above, 92% of public filers and 96% of confidential filers and other covered employees received live annual ethics training in 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.²¹ A robust ethics counseling program is necessary to ensure that employees receive the guidance they need to comply with the ethics rules.

OGE reviewed nine samples of the ethics-related counseling that OLC ethics officials provided to DOL employees in 2023. The counseling addressed impartiality, post-employment restrictions, conflicts of interests, and outside activities. OGE found the counseling to be consistent with applicable statutes and regulations.

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.²² 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.²³ According to OLC ethics officials, DOL issued no 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.²⁴ This written notice is commonly known as an “ethics agreement.” The one DOL PAS official confirmed in 2023 provided timely certification to OGE that they had complied with all terms of their ethics agreement.

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).²⁵ DOL made one such referrals to DOJ in 2023 that was declined for prosecution. DOL OIG also notified OGE of the referral.

Special Government Employees

A special government employee (SGE) is an officer or employee of the executive or legislative branch retained, designated, appointed, or employed to perform official duties, full-

²¹ See 5 C.F.R. § 2638.104 (c)(4).

²² See 18 U.S.C. § 208.

²³ See Executive Order 12674.

²⁴ See 5 U.S.C. app. § 110.

²⁵ See 5 C.F.R. § 2638.206.

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.²⁶

In 2023, SGEs served on the following four DOL advisory committees:

- Advisory Council on Employee Welfare and Pension Benefit Plans (EAC)
- Advisory Board on Toxic Substances and Worker Health (ABTSWH)
- Bureau of Labor Statistics Technical Advisory Committee (TAC)
- Advisory Committee on Veterans' Employment, Training, and Employer Outreach (ACVETEO)

OGE evaluated the collection and review of confidential financial disclosure reports and the provision of annual ethics training for SGE members of EAC, ABTSWH, and ACVETEO.

Confidential Financial Disclosure

OGE requested 41 confidential financial disclosure reports filed by SGE committee member in 2023. OGE only received 14 of the requested reports. After following up with ethics officials at DOL, OGE received an additional 23 reports. However, all of the reports received were filed in 2024. And, of the 37 reports OGE received, only 21 (57%) were filed timely and 33 (89%) were certified timely.

Ethics Training

In 2023, DOL committee management officials provided live annual ethics training for advisory committee SGEs on the day of their first meeting. Of the 56 SGEs required to receive IET, 42 (75%) received IET at their first meeting, 3 received IET after the first meeting, and 11 did not receive any IET for 2023. OLC ethics officials explained some members were not able to attend the first meeting and received IET at a later date. They added that there was an administrative error in scheduling the correct time for training in 2023 and a misunderstanding of 5 C.F.R. § 2638.304(b)(2) among the committee management officials.

Recommendations

2. Ensure that SGEs file confidential financial disclosure reports in a timely manner.
3. Ensure that SGEs receive IET in a timely manner.

Agency Comments

The Department of Labor appreciates the recognition by OGE of the substantial procedural and process improvements implemented since 2020. As explained in its initial written

²⁶ See 18 U.S.C. § 202(a).

responses to OGE, the retirement of a long-time ethics official in December of 2022 resulted in a vacancy in the Financial Disclosure Program Manager position for the first five months of CY 2023, stretching the resources of DOL's ethics officials during that timeframe. The Department has filled that position and continues to implement additional oversight and collaborative processes to improve the financial disclosure program. This includes, but is not limited to, new tools for addressing filer compliance, as well as increased collaboration with individuals responsible for the collection and review of SGE reports.