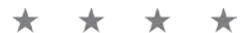




Ethics Program Review

U.S. Department of Health and Human Services
Office of the Secretary

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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 focused this review on the administration of the ethics program within the Department of Health and Human Services' (HHS) Office of the Secretary² and on the ethics functions performed by the Office of General Counsel (OGC) Ethics Division, which is responsible for overseeing the HHS ethics program department-wide.³

Methodology: OGE conducted the onsite fieldwork portion of its review in May and June 2016. Follow-up fieldwork was conducted in September 2016 to gather additional information. In conducting its review, OGE examined the HHS response to OGE's Annual Agency Ethics Program Questionnaire (Annual Questionnaire) covering calendar year 2015, written procedures for administering the public and confidential financial disclosure systems, samples of public and confidential financial disclosure reports filed in 2015 and 2016, the initial and annual ethics training programs, samples of ethics advice rendered by the OGC-Ethics Division, and OGC-Ethics Division procedures for remedying conflicts of interest and enforcing

¹ See title IV of the Ethics in Government Act, 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

² For purposes of this report, the Office of the Secretary refers to the Immediate Office of the Secretary, the Office of the Deputy Secretary, the Executive Secretariat, the Office of the Assistant Secretary for Legislation, the Office of the Assistant Secretary for Public Affairs, the Centers for Faith-Based and Neighborhood Partnerships, the Office of Intergovernmental and External Affairs, the Office of the Regional Director, the Office of Health Reform, and the Office of the General Counsel.

³ OGE routinely conducts separate reviews of large components of cabinet-level agencies. In keeping with this practice, OGE also initiated an ethics program review at HHS' Food and Drug Administration (FDA) in August 2016. The results of the FDA ethics program review will be issued in a separate report.

the ethics rules. In addition, OGE evaluated HHS procedures for administering the ethics requirements for special government employees. Finally, OGE met with ethics officials and other HHS personnel to discuss the information initially gathered, clarify issues identified during the review, and discuss ethics program operations in further detail.

Agency Background

HHS is a federal Cabinet-level department whose mission is to enhance the health and well-being of all Americans. The department accomplishes its mission by providing for effective health and human services and by fostering sound, sustained advances in the sciences underlying medicine, public health and social services.

Under the leadership of the Secretary of Health and Human Services, a presidentially appointed, Senate-confirmed official, HHS employs more than 77,000 employees, located within its headquarters office in Washington, D.C., and throughout the United States. The work of the department is organized into 11 operating divisions, consisting of 8 agencies in the U.S. Public Health Service and 3 human services agencies.

Program Administration

The OGC-Ethics Division is headed by the Associate General Counsel for Ethics, who serves as the HHS Designated Agency Ethics Official (DAEO) and is a member of the Senior Executive Service. The DAEO has overall leadership, coordination, and directional responsibility for the HHS ethics program. Assisting the DAEO in carrying out the day-to-day management of the department's ethics program is an OGC-Ethics Division staff consisting of 24 full-time ethics officials.⁴ The duties of the OGC-Ethics Division include establishing policies and procedures for the overall operation of the HHS ethics program, overseeing and monitoring the administration of the department's public and confidential financial disclosure systems, designing and implementing the ethics training program, providing ethics counseling services, and conducting internal compliance-based reviews of the ethics program as administered at the various HHS components.⁵ The OGC-Ethics Division also provides ethics program services directly to all political appointees and employees in several divisions within the HHS Office of the Secretary.

The incumbent of the position of Principal Deputy Associate General Counsel for Ethics Advice and Policy also serves as the HHS Alternate Designated Agency Ethics Official (ADAEO). At the time of OGE's onsite examination, this position was vacant and the DAEO was actively interviewing potential candidates to fill the vacancy. The ADAEO position was subsequently filled at the end of November 2016.

The administration of the HHS ethics program department-wide is decentralized. In addition to the staff in the OGC-Ethics Division, the DAEO relies on a network of Deputy Ethics

⁴ The majority of ethics officials are located at the OGC-Ethics Division's headquarters office in Washington, D.C. However, two ethics officials who work specifically on FDA matters and three who work specifically on National Institutes of Health (NIH) matters are located at satellite offices at those components.

⁵ At least 10 internal compliance-based reviews are conducted by the OGC-Ethics Division each year.

Counselors (DECs) to help administer the ethics program within the various HHS operating and staff divisions. DECs are generally senior-level management officials chosen by the DAEO in consultation with the head of each operating or staff division. Assisting each DEC in carrying out their ethics-related duties are management and/or personnel specialists who serve the program as Ethics Coordinators. According to the HHS response to OGE's Annual Questionnaire, in 2015 HHS had almost 470 DECs and Ethics Coordinators located throughout the various HHS components. Approximately 164 of these ethics officials performed ethics duties between 31-40 hours per week.

For their respective divisions, DECs are responsible for establishing a system for reviewing public and confidential financial disclosure reports, considering outside activity requests, providing ethics counseling, administering annual ethics training and initial ethics orientation programs, and ensuring that violations of the criminal conflict of interest statutes or the Standards of Conduct of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct of Conduct) are reported to investigatory authorities and, where appropriate, seeing that disciplinary action is taken. DEC responsibilities are laid out in the HHS "Statement of Functions, Responsibilities, and Authority," commonly referred to as the "Green Book." The Green Book is composed of 14 chapters which contain guidance, standard procedures, and instructions for administering the ethics program. OGE considers the Green Book to be a valuable resource for DECs in view of the importance of having a succession plan in place in order to maintain consistency and provide for continuity within the ethics program.

Agency Leadership Support

The Secretary of HHS has demonstrated support for the department's ethics program. As a recent example, the Secretary issued a message to all HHS employees on March 1, 2016, to underscore the importance of adhering to the highest standards of ethical conduct. The message expressed the Secretary's expectation that HHS employees understand their ethical and legal responsibilities by attending and participating in ethics training sessions and making sure that financial disclosure reports are filed, reviewed, and certified to help avoid conflicts of interest. The message also highlighted the HHS DAEO and the network of DECs that support the department in each operating /staff division. The Secretary's message is posted on the OGC-Ethics Division's ethics intranet page for immediate access.

Senior leadership has undertaken other efforts to support the management of HHS' ethics program. These efforts include department leaders participating at ethics training and other events, such as the annual DEC Workshop.

Model Practices

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 model practices implemented at HHS:

- The OGC-Ethics Division has developed a detailed guide (“Green Book”) for DEC’s which assists in ensuring consistency and continuity within HHS’ decentralized ethics program.
- The Secretary of HHS and other senior-level officials visibly demonstrate support of the ethics program.

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.

Administration of the HHS Public Financial Disclosure System

The OGC-Ethics Division formulates policies and procedures for the overall administration of HHS’ public financial disclosure system. The OGC-Ethics Division also reviews and certifies public reports for all political appointees, including presidentially appointed Senate-confirmed (PAS) officials, non-career members of the Senior Executive Service (SES), and Schedule C employees, as well as public reports filed by the DEC’s and employees of the Immediate Office of the Secretary, the Office of the Deputy Secretary, and Office of the General Counsel.

DEC’s and their staffs are responsible for collecting, reviewing, and certifying all other HHS public reports filed within their respective components. These reports are then required to be forwarded to the OGC Ethics Division. As part of its oversight responsibilities, the OGC Ethics Division conducts its own additional review of these reports to help ensure that all conflicts or potential conflicts of interest have been promptly identified and resolved.

The OGC Ethics Division also manages a pre-appointment clearance process for selectees for positions that require the filing of a public financial disclosure report.⁶ Such selectees are required to submit a draft or updated financial disclosure report before such appointments are processed. This procedure helps avoid the possibility of senior-level employees performing federal duties without receiving a prior conflict of interest determination.

OGE’s Examination of Public Reports

In 2015, the OGC-Ethics Division was responsible for the review and certification of 362 public reports that were required be filed within the Office of the Secretary, which consists of the Immediate Office of the Secretary, the Office of the Deputy Secretary, and Office of the General Counsel. OGE examined a sample of 94 of these reports to evaluate timeliness of filing, review,

⁶ This process is used for individuals promoted or transferred to public filing positions, as well as for new hires.

and certification, as well as to assess the overall quality of review. Table 1 below presents the results of OGE’s examination.

Table 1. Examination of Public Financial Disclosure Reports (2015)

	New Entrant	Annual	Termination	Total
278 Reports Sampled	26	40	28	94
Filed Timely	26 (100%)	39 (98%)	27 (96%)	92 (98%)
Certified Timely	26 (100%) ⁷	33 (83%)	22 (79%)	81 (86%)

Of the sample of reports OGE examined, 98% were filed timely and 86% were certified timely. Moreover, OGC-Ethics Division reviewer notes showed evidence of a detailed review of these reports, which in many cases resulted in the opportunity for the OGC-Ethics Division staff to provide counseling to filers aimed at preventing ethics-related violations.

OGE identified the following model practices related to the public financial disclosure system.

Model Practices

- As part of its oversight function and to help ensure that all conflicts or potential conflicts of interest have been promptly identified and resolved, the OGC-Ethics Division conducts an additional review of all certified public reports.
- As a condition of pre-employment, the OGC-Ethics Division uses a pre-appointment clearance process for prospective employees who are selected for senior-level positions for which a public report is required.

Administration of the HHS Confidential Financial Disclosure System

As with the public system, the OGC-Ethics Division is responsible for formulating policies and procedures for the overall administration of HHS’ confidential financial disclosure system and for providing guidance to and general oversight of the DEC’s.⁸ The OGC-Ethics

⁷ As noted previously, prior to a prospective employee being hired at HHS, the OGC-Ethics Division reviews the prospective employee’s report for potential conflicts in relation to the duties of the position for which they are being considered. Prospective employees are required to agree to resolve any potential conflicts by entering into a written ethics agreement. HHS’ practice is to wait until new entrants provide evidence of compliance with their ethics agreements before certifying their reports. In some cases, this practice results in a report being certified more than 60 days after the report is filed. OGE considers this to be equivalent to seeking additional information, in which case a report can be certified more than 60 days after being filed and still be considered timely certified.

⁸ The DAEO has delegated responsibility of reviewing confidential reports to the DEC’s who, in turn, have the authority to delegate the review responsibility to other officials if the DEC determines that the function would best be carried out by another official or office.

Division also reviews and certifies the confidential reports filed within certain Office of the Secretary components.⁹

OGE’s Examination of Confidential Reports

To evaluate the confidential financial disclosure system, OGE examined a sample of 49 confidential financial disclosure reports that were required to be collected, reviewed, and certified by the OGC-Ethics Division in 2016. OGE examined these reports for timeliness of filing, review, and certification, as well as to assess the overall quality of review. Table 2 below presents the results of OGE’s examination.

Table 2. Examination of Confidential Financial Disclosure Reports (2016)

	New Entrant		Annual		Total	
450 Reports Sampled	4		45		49	
Filed Timely	3	(75%)	42	(93%)	45	(92%)
Certified Timely	4	(100%)	45	(100%)	49	(100%)

Based on documented communications between reviewers and filers, it was apparent that ethics officials conducted a detailed review of the confidential reports and followed up with filers to obtain additional information, as necessary.

Education and Training

An ethics training program is essential to raising awareness among employees about the ethics laws and rules that apply to them and informing them of agency ethics officials’ availability to provide ethics counseling. Each agency’s ethics training program is required to include at least an initial ethics orientation for all new employees and annual ethics training for covered employees.¹⁰

To meet initial ethics orientation (IEO) requirements, all new agency employees must receive ethics official contact information along with the following material within 90 days of beginning work: (1) the Standards of Conduct and any agency supplemental Standards of Conduct to keep or review; or (2) summaries of the Standards of Conduct, any agency supplemental Standards of Conduct, and the Principles of Ethical Conduct (Principles) to keep. Employees must receive one hour of official duty time to review the material.¹¹

To meet the annual ethics training requirements, covered employees must receive annual training consisting of a review of: (1) the Principles; (2) the Standards of Conduct; (3) any

⁹ Within the Office of the General Counsel, responsibility for the review and certification of confidential reports is delegated to Regional Chief Counsels and Associate General Counsels for filers within their offices.

¹⁰ See 5 C.F.R. §§ 2638.704 and 705 for definition of covered employees.

¹¹ See 5 C.F.R. § 2638.703.

agency supplemental Standards of Conduct; (4) the criminal conflict of interest statutes; and (5) ethics official contact information. Training length and delivery method may vary by an employee's financial disclosure filing status.¹²

Initial Ethics Orientation for New Political Appointees

The OGC-Ethics Division is responsible for ensuring that all political appointees, including PAS, non-career SES, and Schedule C appointees at HHS, receive IEO. The DAEO provides in-person, one-on-one tailored IEO to all new PAS appointees, including the Secretary and Deputy Secretary of HHS. This training addresses all of the required material and also includes a detailed review of the PAS appointee's ethics agreement and a reference binder for the appointee to keep. The reference binder includes information regarding the Standards of Conduct, the criminal conflict of interest statutes, and other ethics-related guidance. Any questions the PAS appointee may have are also addressed during this orientation. According to the DAEO, IEO for PAS appointees can last up to 120 minutes, depending on the questions asked. In 2015, in-person IEO briefings were provided to the Surgeon General and the Commissioner of the Administration on Children, Youth and Families.

IEO for non-career SES and Schedule C appointees is accomplished through in-person ethics training provided by the OGC-Ethics Division as part of the HHS orientation program for all new political appointees. The IEO portion of this program is scheduled for one hour, and it occurs on the appointee's first day at HHS. The training is usually conducted in small groups of up to five appointees, depending on how many arrive at any given time. In addition to a verbal briefing, written ethics materials are also provided. OGE examined the presentation materials provided during these in-person briefings and found the material to cover a variety of ethics issues that senior-level employees may encounter. OGE confirmed that all new political appointees, including all new PAS appointees, received in-person IEO in 2015.

Annual Ethics Training for Political Appointees

The OGC-Ethics Division conducts live training sessions for all PAS, non-career SES, and Schedule C appointees to satisfy OGE's annual training requirement. For 2015, the training content focused on conflicts of interest, impartiality, and an overview on how to use *Integrity*, OGE's electronic financial disclosure system.¹³ These sessions are conducted in small groups, though some attendees may call in. OGE confirmed that all political appointees, including PAS appointees, received live annual ethics training by the end of 2015.

Initial Ethics Orientation for New Career Employees

The OGC-Ethics Division exceeds the minimum IEO requirements by providing all new career employees in the Office of the Secretary with an in-person ethics briefing in addition to requiring them to complete a one-hour online ethics training module. The in-person briefings are conducted during new employee in-processing. Twice a month, a member of the OGC-Ethics

¹² See 5 C.F.R. §§ 2638.704 and 705.

¹³ As part of the written materials provided to the Secretary, the DAEO provides a summary document on the overall HHS ethics program to help keep the Secretary informed about the state of the ethics program.

Division provides a 20-minute introductory overview of ethics laws and regulations to new career employees within the Office of the Secretary as part of the HHS orientation program for new employees. The employees also receive a one-page reference document that provides the 14 Principles of Ethical Conduct and web links to: 1) the Standards of Conduct; 2) the HHS supplemental Standards of Conduct; and 3) the names and contact information for all HHS ethics officials. Employees are encouraged to review the web links during normal duty hours. In addition to the one-page reference document, the OGC-Ethics Division provides new employees with web links to the criminal conflict of interest statutes, the OGC-Ethics Division's intranet page, and the HHS online IEO training module.

The OGC-Ethics Division tracks receipt of the in-person briefing portion of IEO. According to IEO tracking records provided by the OGC-Ethics Division, all 306 new career employees hired into the Office of the Secretary in 2015 attended an in-person IEO briefing.

The OGC-Ethics Division also requires all new career employees to complete an online training module which covers in more detail the elements of the Standards of Conduct, the HHS supplemental Standards of Conduct, and the criminal conflict of interest statutes. The online training, which new employees are required to complete during the first 90 days of employment, is offered through HHS' Learning Management System (LMS).¹⁴

According to IEO tracking records provided by the OGC-Ethics Division, 283 of the 306 new Office of the Secretary career employees who were required to complete the online training module in 2015 completed it. OGE was advised that due to technical difficulties experienced with accessing the online training through the LMS,¹⁵ the OGC-Ethics Division was not able to determine whether the remaining 23 employees took the online training in 2015. To help ensure that technical issues will not interfere with tracking efforts in the future, OGE was advised that the OGC-Ethics Division will now provide new employees with email reminders regarding the online IEO module. Email confirmations combined with online tracking data will be used to ensure that all new employees have completed the online module within 90 days.

Annual Ethics Training for Career Employees

OGE determined that 2015 annual ethics training for career covered employees in the Office of the Secretary was satisfied primarily through the use of computer-based training which was tracked electronically. However, on occasion, the OGC-Ethics Division provided annual ethics training in-person upon request. In these instances, sign-in sheets were used to track attendance.

The 2015 annual training focused on gifts and the seeking employment/post-employment rules. The training also included links to the 14 Principles, the Standards of Conduct, the conflict of interest statutes, and the HHS supplemental standards. OGE determined that the training

¹⁴ The Learning Management System houses over 3,000 free online training courses and is used across HHS. The system is also used to track course registrations and to view training history, certifications, and curricula.

¹⁵ According to ethics officials, in 2015, the LMS malfunctioned and created unanticipated issues affecting access to the online IEO training.

satisfied the annual ethics training content requirements. In addition, according to training records provided to OGE, 99% of all covered career employees within the Office of the Secretary were trained by the end of 2015.

Additional Training Efforts

OGE found the DAEO and OGC-Ethics Division staff to be proactive in keeping employees aware of ethics-related issues throughout the year by employing a variety of methods to communicate ethics concepts to different audiences. One way is through the HHS ethics intranet page, which features hyperlinks to the Standards of Conduct, the criminal conflict of interest statutes, HHS' supplemental Standards of Conduct, and relevant pages on OGE's website. The ethics intranet page is also highlighted during HHS' initial ethics orientation and annual ethics training. Immediate access to both OGE regulations and agency specific regulations, along with points of contact information for HHS ethics officials, are also provided.

OGE also identified other training initiatives that help raise awareness of ethics issues and protect employees from inadvertently violating the ethics rules. OGE considers the following initiatives to be model practices.

Model Practices

- Monthly training sessions are conducted by the OGC-Ethics Division for employees interested in learning more about the ethics rules that apply when looking for a non-federal job or leaving federal employment. For those unable to attend the in-person session, this training is also offered via teleconference.
- Based on an initiative from the HHS Deputy Secretary, the OGC-Ethics Division provides mandatory training on the topic of insider trading to all supervisory Administrative Law Judges, Associate Chief Administrative Law Judges, and SES employees.
- The OGC-Ethics Division provides targeted training regarding pertinent ethics topics as requested by offices and divisions within HHS. For example, ethics briefings have been provided to employees being detailed to international organizations and employees who have procurement responsibilities.
- The OGC-Ethics Division schedules training sessions for DEC's and their ethics staffs throughout the year. The largest of these meetings is the one-day Annual DEC Workshop which provides refresher training on ethics topics. The last annual DEC workshop was held in May 2016 and featured members of OGE's Ethics and Legal Policy Branch as speakers.

Advice and Counseling

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

developed and conducted.¹⁶ The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program.¹⁷

To evaluate HHS's advice and counseling program, OGE selected a sample of 26 instances of written advice that had been rendered by the OGC-Ethics Division during 2015. The advice, ranging from gift questions to criminal conflict of interest matters, documented the specific issue(s) in question and the basis for the opinion being rendered. The advice was provided in a practical, easy-to-understand format and appeared to be consistent with applicable laws and regulations. The advice was also rendered timely, which is key to preventing conflicts of interest and other ethics violations.

OGE also found the OGC-Ethics Division's approach to providing guidance on the federal post-government employment restrictions to departing employees to be commendable. As part of the exit process, employees departing from the Office of the Secretary are required to receive an in-person post-employment briefing. In addition to the briefing, employees are provided with written materials that outline the basic post-employment restrictions.

Model Practice

- In-person post-employment briefings are provided to departing employees within the Office of the Secretary as part of the employee exit process.

Agency-Specific Ethics Rules

An agency may modify or supplement the Standards of Conduct, with the concurrence of OGE, to meet the particular needs of that agency. A supplemental agency regulation is issued jointly by the agency and OGE and is published in Title 5 of the Code of Federal Regulations.¹⁸

HHS has jointly issued with OGE a supplemental Standards of Conduct regulation.¹⁹ This regulation imposes requirements applicable to employees HHS-wide, including the Office of the Secretary, as well as requirements applicable only to employees at certain components.²⁰ Relevant to OGE's review, the supplemental regulation requires all HHS employees, including Office of the Secretary employees, to obtain prior approval for certain types of outside employment and activities.²¹ These include outside professional and consultative work, writing and editing, teaching and lecturing, and holding office in professional societies.

HHS employees who wish to engage in a covered outside employment or activity are required to file a Request for Approval of Outside Activity (HHS-520). This form is also used when an employee needs to make a revised request, when the outside activity or the employee's

¹⁶ See 5 C.F.R. § 2638.203.

¹⁷ See 5 C.F.R. § 2638.204.

¹⁸ See 5 C.F.R. § 2635.105.

¹⁹ See 5 C.F.R. part 5501.

²⁰ The HHS supplement imposes additional requirements on employees at the Food and Drug Administration, the National Institutes of Health, the Office of the General Counsel, and the Office of the Inspector General.

²¹ See 5 C.F.R. § 5501.106.

duties change significantly, and for a renewal request when an employee wants to continue the outside activity.

HHS also has a supplemental financial disclosure regulation that requires any employee for whom an outside employment or activity has been previously approved to file an Annual Report of Outside Activity (HHS-521) to help ensure that the outside employment or activity continues to meet the Standards of Conduct for approval.²² The HHS-521 must be filed with the employee's supervisor by February 28 of each year and covers all employment or activities that were approved or undertaken in the previous calendar year.

The OGC-Ethics Division evaluates and approves, as appropriate, outside employment and activity requests for PAS employees, Schedule C employees, DECAs, and employees from the Office of the Secretary.²³

To evaluate the OGC-Ethics Division's administration of the HHS supplemental regulations, OGE examined the outside activity approval system to ensure that there were approvals, as appropriate, for covered outside activities reported on the sample of public and confidential financial disclosure reports OGE examined. OGE identified six instances of outside employment or activities disclosed in the sample of reports and determined that all filers received prior approval before engaging in the disclosed outside employment or activity.

Conflict Remedies

The 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.²⁴ 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.²⁵

During 2015, the OGC-Ethics Division did not issue any waivers for regular employees. However, waivers for special government employees are issued on an ongoing basis. Copies of these waivers are provided to OGE quarterly.

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 to alleviate the conflict of interest,²⁶ commonly known as an "ethics agreement."

OGE determined that during the period under review, all HHS PAS officials complied with their ethics agreements and that the requisite evidence of action taken was submitted to

²² See 5 C.F.R. part 5502.

²³ DECAs have the authority to approve outside activities for employees from their respective operating or staff divisions.

²⁴ See 18 U.S.C. § 208.

²⁵ See Executive Order 12674.

²⁶ See 5 U.S.C. app. § 110.

OGE in a timely manner. OGE also determined that the OGC-Ethics Division met the regulatory requirement to maintain ethics agreements with each PAS official's financial disclosure report.²⁷

Enforcement

The HHS Office of the Inspector General (OIG) is responsible for referring potential violations of the criminal conflict of interest statutes to the Department of Justice (Justice) and concurrently notifying OGE of the referral.²⁸ To assess this process, OGE compared the referral notifications it received against the referrals reported in the HHS response to the 2015 Annual Questionnaire. Based on this comparison, OGE verified that it received notifications for both referrals reported in the Questionnaire. OGE also received notification from HHS of a referral made to Justice in 2016 regarding a potential violation of 18 U.S.C. § 208.

The DAEO must ensure that the services of the OIG are utilized, as appropriate.²⁹ During OGE's review, it was apparent that a working relationship exists between the OGC-Ethics Division and OIG. OGE determined that both offices communicate and coordinate with one another on matters of mutual interest, including ethics-related matters, on a regular basis. This determination is further supported by the fact that the DAEO has designated the Chief Counsel to the Inspector General to serve as the DEC for all current and former OIG employees. As a DEC, the Chief Counsel is responsible for collecting, reviewing, and certifying public and confidential financial disclosure reports filed by OIG staff, providing ethics advice, conducting annual ethics training, and approving OIG staff requests to engage in outside employment or activities. The DEC is assisted by staff members who serve as Ethics Coordinators.

Special Government Employees

According to the HHS response to the 2015 Annual Questionnaire, HHS had 197 federal advisory committees in 2015. HHS uses these committees to obtain the opinions of outside experts and other individuals who are interested in or affected by the assigned subject matter under review. These committees engage in a range of activities, from policy development and regulatory initiatives to consideration of grant applications and drug approvals. At the time of OGE's review, the OGC-Ethics Division had determined that more than 3,000 HHS advisory committee members were special Government employees (SGEs). As SGEs, these committee members are required to file new entrant confidential reports upon appointment and annually thereafter.³⁰ They are also required to receive ethics training.

Components within the HHS Office of the Secretary manage 16 federal advisory committees. OGE selected four of these committees for examination: 1) the Advisory Council on Alzheimer's Research, Care and Services, 2) the National Advisory Committee on Children and Disasters Working Group, 3) the Advisory Committee on Minority Health, and 4) the Advisory Committee on Blood and Tissue Safety and Availability. To evaluate the ethics program services rendered to the members of these committees, OGE examined the collection of confidential

²⁷ See 5 C.F.R. § 2634.805.

²⁸ See 5 C.F.R. § 2638.603.

²⁹ See 5 C.F.R. § 2638.203(b)(12).

³⁰ See 5 C.F.R. § 2634.903(b).

financial disclosure reports and the provision of annual ethics training to the committee members for 2015. The following is a summary of the findings of OGE's evaluation of these committees.

Advisory Council on Alzheimer's Research, Care and Services

Thirteen SGE members served on this committee in 2015. OGE examined 11 of the confidential reports that were required to be filed by members of this committee in 2015 and determined that all had been filed, reviewed, and certified in a timely manner.³¹ OGE also determined that ethics training was provided to all committee members in 2015 and the training met applicable content requirements.

National Advisory Committee on Children and Disasters Working Group

Four SGE members served on this committee in 2015. OGE examined all four confidential reports that were required to be filed by members of this committee in 2015 and determined that all had been filed, reviewed, and certified in a timely manner. OGE also determined that ethics training was provided to all committee members in 2015 and the training met applicable content requirements.

Advisory Committee on Minority Health

Ten SGE members served on this committee in 2015. Due to an administrative oversight by this committee's Designated Federal Official, members of this committee were not notified of the requirement to file an annual confidential report in 2015 and thus none of the members filed. However, the OGC-Ethics Division advised that since OGE's review, all confidential reports for 2015 have been filed by committee members. Additionally, the OGC Ethics Division advised OGE that the 2015 administrative oversight for this committee was an aberration from normal operating procedures. Finally, the OGC Ethics Division advised that this oversight was corrected in 2016 and that all committee members have submitted confidential reports for 2016. Despite the failure to collect confidential reports in 2015, OGE determined that ethics training was provided to all committee members in 2015 and the training met applicable content requirements.

Advisory Committee on Blood and Tissue Safety and Availability

Eleven SGE members served on this committee in 2015. Of the 11 members, OGE examined the confidential reports filed by 2 of the newest members who were appointed to the committee in 2015 and determined that both reports had been filed, reviewed, and certified in a timely manner. With regard to the reports for the nine remaining members, due to an administrative oversight by the committee's Designated Federal Official, these members were not notified of the requirement to file an annual confidential report in 2015 and thus they did not file. However, the OGC Ethics Division advised that since OGE's review, all confidential reports for 2015 have been filed by committee members. Additionally, the OGC Ethics Division advised OGE that the 2015 administrative oversight for this committee was an aberration from normal

³¹ Two reports were not made available to OGE at the time of the review fieldwork. OGC-Ethics Division officials later confirmed that these two reports had been collected, reviewed, and certified.

operating procedures. Finally, the OGC Ethics Division advised that this oversight was corrected in 2016 and that all committee members have submitted confidential reports for 2016. Despite the failure to collect confidential reports in 2015, OGE determined that ethics training was provided to all committee members in 2015 and the training met applicable content requirements.

Since the completion of OGE's review, HHS has taken several steps to ensure the financial disclosure issues identified at the Advisory Committee on Minority Health and Advisory Committee on Blood and Tissue Safety and Availability do not recur. These steps include the hiring of a contractor to assist with the ethics program services provided to the committees and the recruiting of both a senior GS-14 employee with committee management experience, as well as a GS-12/13 employee, to add to the committee staff. The responsible office is also in the process of developing new procedures to ensure such administrative oversight does not occur in the future. In light of these measures and the fact that the delinquent 2015 annual financial disclosure reports and subsequent 2016 reports have been collected, OGE is not making a formal recommendation for improvement.

SGEs Not Serving on Federal Advisory Committees

OGE is aware that HHS is currently taking steps to address challenges associated with identifying SGEs who do not serve on federal advisory committees. These challenges were documented in an August 2016 Government Accountability Office report entitled, "Federal Workforce: Opportunities Exist to Improve Data on Selected Groups of Special Government Employees." During follow-up discussions with the OGC-Ethics Division, OGE was advised that HHS is planning to conduct a review of HHS' internal processes and procedures as they relate to experts and consultants identified as SGEs who do not serve on federal advisory committees to help identify areas that require improvement. In addition, the OGC-Ethics Division is assisting with efforts by HHS human resource officials to implement new requirements of 5 C.F.R. part 2638, Office of Government Ethics and Executive Agency Ethics Program Responsibilities. These efforts include improving the identification of SGEs not serving on federal advisory committees.

According to the HHS response to the 2015 Annual Questionnaire, HHS had 12 SGEs who did not serve on a federal advisory committee in 2015. OGC-Ethics Division officials acknowledged difficulties in obtaining data relating to non-advisory committee SGEs from the department's human resource offices due to information systems capabilities.