

United States Office of Government Ethics

Compliance Division

Ethics Program Review
United States Department of Commerce

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Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Department of Commerce (Commerce) ethics program during January and February of 2014. OGE reviewers found Commerce ethics officials to be highly proficient and wholly committed to the mission of the ethics program. OGE reviewed the following components of Commerce's ethics program: Financial Disclosure, Education and Training, Advice and Counsel, Conflicts Remedies, Enforcement, Special Government Employees, and 1353 Travel Acceptances. In the areas of Advice and Counsel, Conflicts Remedies, Special Government Employees and 1353 Travel Acceptance, OGE's review did not identify any concerns. However, OGE's review indicated that improvements are needed to Commerce's financial disclosure and education and training processes. OGE has therefore made recommendations to address these areas. Below are the highlights and concerns that OGE noted during the review. OGE will follow up on the recommendations.

Highlights

- Commerce's ethics officials conduct assessments to gauge the effectiveness of the services they offer.
- Commerce tailors annual ethics training to its audience and attempts to improve agency employees' awareness of the services provided by ethics officials.
- Commerce has developed a comprehensive series of one-page handouts on a wide range of topics that are used both to advise employees on an individual basis and for broadcast emails sent out to all employees for issues that are of general interest (such as on political activities rules during a Presidential or Congressional election year and on holiday parties and gifts during the holiday season). Handouts are written in both a question-and-answer format and using graphs and charts, in recognition that the effectiveness of different formats varies among individuals.
- Commerce has established comprehensive written procedures for ethics advice and counsel that include instructions on assigning, tracking, and responding to requests for ethics advice from agency employees. This process enables Commerce's ethics officials to issue a large number of advisory opinions (over 2,000) on an annual basis and establishes deadlines for timely responses (immediately or within a few days).
- Commerce has designed ethics training for Federal advisory committees that have representative members, as well as for those with special Government employee members, in recognition that although representatives are not employees and not subject to ethics regulations or conflict of interest statutes, there is a higher expectation regarding the conduct of those who work with the Government, as well as ethics restrictions on misuse of Government resources and the authority of their position, and the protection of Government information and documents.

Concerns

- Commerce’s 13 ethics attorneys and 6 support staff must respond to advice and counsel requests from over 45,000 employees, review almost 10,000 financial disclosure reports, and manage ethics training for all financial disclosure filers. This workload may limit Commerce’s ability to carry out its ethics responsibilities.
- Although ethics officials notify employees of the requirement to submit financial disclosure reports in a timely manner, confidential financial disclosure reports are not consistently filed by the established deadlines. OGE sampled Commerce’s confidential reports and found that Commerce failed to collect 37 percent of the sampled annual reports and 71 percent of the sampled new entrant reports before the filing deadline expired. As a result, a significant number of new Commerce employees were allowed to perform their duties without a timely conflict of interest review by ethics specialists.
- Commerce could not account for four financial disclosure reports requested by OGE. Additionally, Commerce failed to destroy a number of public financial disclosure records by the required destruction dates.
- Commerce was unable to confirm that all new employees received initial ethics orientation and all covered employees completed annual ethics training. OGE is especially concerned that Commerce provided written ethics training to covered employees, but has no mechanism to verify the training was completed by the recipients.

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Objectives, Scope, and Methodology

OGE provides overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest. 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. The Ethics in Government Act gives OGE the authority to evaluate the effectiveness of executive agency ethics programs. *See* title IV of the Ethics in Government Act, 5 U.S.C. app. § 402, and 5 C.F.R. part 2638.

To assess Commerce's ethics program, OGE examined a variety of documents, including the 2012 and 2013 Agency Ethics Program Questionnaires (Questionnaire), samples of the public and confidential financial disclosure reports filed in 2013, and a sample of the ethics advice and counsel rendered to employees. Members of OGE's Compliance Division met with Commerce's headquarters ethics personnel and staff from other offices such as the Office of the Inspector General (OIG) to discuss the information initially gathered, clarify issues identified during the review, and discuss ethics program operations in further detail.

Program Administration

Commerce's mission is to promote job creation, economic growth, sustainable development, and improved standards of living through partnerships with businesses, universities, and communities. Its activities include working to open up new markets for U.S. goods and services, promoting business policies to help American businesses and entrepreneurs, and management of the nation's resources and assets. Commerce is therefore a multi-focused agency with oversight within the scientific, atmospheric, and economic disciplines and over the regulatory and licensing agencies under its authority. Components under Commerce include the Bureau of the Census, the National Oceanic and Atmospheric Administration, and the Patent and Trademark Office. The agency and its 45,000-plus employees worldwide are led by the Secretary of Commerce.

Commerce's ethics function is centralized at headquarters, with the agency's Assistant General Counsel for Administration as the Designated Agency Ethics Official (DAEO) and the Chief of the Ethics Law and Programs Division as the Alternate DAEO (ADAEO). The day-to-day management of the agency's ethics program is conducted at the Ethics Law and Programs Division (ELPD), which is headed by a Chief who is supported by a Deputy, 11 additional attorneys and six Ethics Program Specialists. All employees within ELPD are full-time ethics officials.

ELPD's attorneys provide advice and counsel, conduct ethics training, and review all PAS public financial disclosure reports and some non-PAS reports. The ethics program specialists, who are not attorneys, administer the public and confidential financial disclosure programs, review the bulk of the financial disclosure reports, and provide advisory services on issues such as invitations, gifts, travel, and financial disclosure.

According to ethics officials, Commerce has implemented a procedure whereby every new, incoming Secretary issues a memo to the agency's employees about the importance of ethics. Additionally, the DAEO, as the General Counsel, attends the agency's Executive Management Team meetings and has access to the Secretary's and Deputy Secretary's schedules.

ELPD also utilizes various techniques to improve its visibility and awareness of ethics responsibilities among the agency's employees. For example, ELPD distributes office supplies containing ELPD's office phone number during the initial ethics orientation presentations and during the live annual training sessions. ELPD also includes its contact information on all written materials it distributes. Additionally, ELPD conducts assessments to gauge the effectiveness of the services it offers. For example, at the close of training sessions that are held at field offices, ELPD's training officials complete reports to record the results of feedback received from managers at the field offices and the training officials' observations from the sessions.

Model Practices

OGE tries to identify model practices that other agencies should consider adopting. The following is a model practice:

- Ethics officials conduct assessments of the services they offer.

OGE however, is concerned that the current staffing level of Commerce's ethics program may increase the agency's exposure to conflicts of interest. The 13 attorneys and 6 Ethics Program Specialists who manage the day-to-day operations of the ethics program are responsible for providing ethics counseling to over 45,000 employees worldwide (issuing over 2,600 written opinions in 2013), reviewing the financial disclosure reports and conducting in-person ethics training for over 900 public financial disclosure filers, reviewing the confidential financial disclosure reports for over 8,600 confidential filers, and managing the financial disclosures and training for over 400 special Government employees. Given this workload, Commerce's ethics staff may be operating at the maximum capacity of its available resources and may have very limited ability to address extended absences, turnover, reassignments, or increased workload. Commerce should assess opportunities to expand its ethics program capacity, including engaging personnel within Commerce components as part-time ethics officials, and leveraging technology to expand the reach of the ethics program through computer-based training.

Suggestion

- OGE suggests that Commerce evaluate whether the ethics program has sufficient resources to adequately protect the integrity of the agency's operations.

Financial Disclosure

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the federal government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level federal officials publicly disclose their personal financial interests using the OGE Form 278. Title I also authorizes OGE to establish a confidential financial disclosure system, in which less senior executive branch personnel in certain designated positions may be required to complete the OGE Form 450. Financial disclosure serves to prevent, identify, and resolve conflicts of interest by providing for a systematic review of the financial interests of officers and employees. The financial disclosure reports assist agencies in administering their ethics programs and also assist in providing counseling to employees. *See* 5 C.F.R. part 2634.

Written Procedures

Section 402(d)(1) of the Ethics in Government Act requires that each executive branch agency establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available financial disclosure reports filed by the agency's officers and employees. Commerce's written procedures meet the requirements of the Ethics in Government Act as they detail how the reports are to be collected, reviewed, evaluated, and made publicly available, where applicable. Specifically, the procedures detail how employees are determined to be filers and incorporated into ELPD's master lists of filers, the due dates for filing reports, and the responsibilities within ELPD for collecting and distributing the reports for review. The procedures also include instructions for maintaining a record of disclosure for each instance a public report is made available for inspection to a member of the public.

Public Financial Disclosure

Commerce identified over 900 public financial disclosure filers at the agency, including 24 PAS officials. While all PAS officials are located within the Washington D.C. metropolitan area, there are 130 public filing positions located outside of the Washington D.C. area. Upon entry, new 278 filers are notified by their personnel offices, with concurrent notice to ELPD, of their requirement to file a new entrant report. Departing employees, along with ELPD, are similarly notified of the requirement to file termination reports. ELPD updates its master list of 278 filers annually, typically during March, by contacting the personnel offices for their updated lists of filers.

The annual filing season at Commerce commences in April when ELPD provides the annual filers a packet that includes blank filing forms and other material determined by the ADAEO to be useful for the filers. Regular reminders are subsequently sent to the filers to ensure timely filing. Included with the reminders are notices of the availability of filing extensions and offers of assistance. Filers are also sent reminders of their periodic transaction report (278-T) filing responsibilities. As reports are received by the ethics office, they are date stamped and logged into the office's tracking system and assigned for review. New entrant reports are reviewed by an attorney, with a second-level review by the ELPD Chief. Annual reports and termination 278 reports are reviewed by both attorneys and ethics program specialists. Commerce's written

procedures address effective conflict of interest analysis practices including reviewing the filer’s position description, requesting information from supervisors or other knowledgeable sources regarding the filer’s responsibilities and duties, and collecting additional information as necessary to ensure a technically complete report. 278-Ts are logged-in and assigned to a reviewer, similar to the process for annual reports. Commerce provides each OGE Form 278 annual filer with notice of certification and guidance (if needed) after each report is certified.

PAS nominee reports are processed separately by ELPD, which works directly with the White House to process the reports. PAS nominees are assigned an ELPD attorney who works with the nominee on their 278 report, their ethics agreement, any actions related to the ethics agreements, and notifications to OGE.

To evaluate the timeliness of public financial disclosure filing and certification, OGE reviewed a sample of 40 new entrant reports, 40 annual reports, and 40 termination reports that were required to be filed in 2013. Table 1 presents the results of OGE’s review.

Table 1. Review of Commerce’s Public Financial Disclosure Reports

	New Entrant	Annual	Termination
278 Reports Sampled	40	40	40
Filed Timely	40 (100%)	40 (100%)	38 (95%)
Certified Timely	39 (98%)	34 (85%)	34 (85%)

While 118 of the 120 reports sampled by OGE were filed timely (over 98 percent), ELPD was unable to locate two reports for OGE review. Although ELPD’s internal records indicate that the reports were filed and certified, OGE was unable to verify this due to the inability to locate the reports for review. OGE was informed that the reports were likely in the possession of an ELPD employee. OGE therefore recommends that ELPD immediately recover the missing reports. While the reports were stored in locked file cabinets and maintained in a secured location, there was no system to log in and log out the reports when removing them from the cabinets. ELPD subsequently informed OGE that it had established a sign-out system to track and control the reports. Additionally, while the vast majority of the reports were certified in a timely manner, with notes and comments indicative of extensive communication with filers, there were six reports that appeared to have been certified well beyond the 60-day review and certification period. OGE was informed that these reports were likely to have been reviewed earlier, but the earlier reviews were not documented. OGE therefore suggests that ELPD update its financial disclosure review process to ensure that review within the 60-day period is documented.

OGE also reviewed the 40 annual reports within the sample to identify transactions that would require the filing of a 278-T report. OGE identified 23 transactions that occurred between July 2012 and December 2012 involving six filers where a 278-T was potentially required. Of these there was only one transaction where a 278-T had not yet been filed as required, and ELPD was taking action on the matter.

Recommendation

- Recover the missing public financial disclosure reports.

Confidential Financial Disclosure

Commerce identified over 8,600 confidential filers at the agency. The personnel offices and the heads of the various Commerce offices make the determination regarding the filing status of positions at the agency utilizing OGE's confidential reports (OGE Form 450) filing criteria. New employees are notified of their requirement to file by their respective personnel offices, similar to the process for the public system, with concurrent notification of ELPD. An annual reconciliation of ELPD's master list of confidential filers is performed in December when the personnel offices provide ELPD their updated lists of filers.

The annual filing season for confidential filers commences during January when ELPD notifies the filers of the requirement to file annual reports and provides them blank 450 forms for filing. Reminders are regularly sent to encourage timely filing and the reports are collected and reviewed in a process similar to the public non-PAS reports. Procedures for conflict of interest analysis for confidential filers also include effective practices including a review of the filer's position description and responsibilities. When needed, Commerce issues one-page handouts on Disqualifications and Recusals to filers.

To evaluate the timeliness of confidential financial disclosure filing and certification, OGE reviewed 31 new entrant reports and 30 annual reports filed in 2013. Table 2 presents the results of OGE's review.

Table 2. Review of Commerce's Confidential Financial Disclosure Reports

	New Entrant	Annual
450 Reports Sampled	31	30
Filed Timely	9 (29%)	19 (63%)
Certified Timely	24 (77%)	25 (83%)

OGE's review of the confidential reports sample indicates problems with timely filing which appears to be particularly problematic with new entrant filings where only 29 percent were filed timely. Commerce ethics officials expressed that the absence of a late filing fee to compel compliance contributed to the difficulties in collecting timely confidential reports. ELPD was also unable to locate two of the sampled reports for OGE review. Similar to the missing public reports, OGE was informed that the reports were likely in the possession of an ELPD employee. Again, while the reports were stored in locked file cabinets and maintained in a secured location, there was no system to log in and log out the reports when removing them from the cabinets. OGE therefore recommends that ELPD immediately recover the missing reports and institute a system to track reports that have been removed from the cabinets.

Regarding the late filings, ELPD indicated that this may have occurred due to new filers often disagreeing about their filing designations, resulting in a back and forth between the filers, the respective personnel offices, and the filers' supervisors. Additionally, personnel offices may delay notifying a filer of their filing requirements due to the difficulty in making filing determinations for certain filers. ELPD stated that these delays are caught during the annual updates of their master list. ELPD also acknowledged the issue of late annual filings and stated that they have contacted Bureau Chiefs, the Chiefs of Staff at the Bureaus, and the filers' supervisors to encourage timely filing. However, ELPD is limited by the availability of its staff resources to follow up with all the late filers. OGE recommends that ELPD take additional steps to improve the filing timeliness of new entrant and annual confidential reports. For example, ELPD may offer training to agency officials for making filing determinations, establish a "help line" to assist personnel officials when making filing determinations, or institute a reminder system to reach out to confidential filers prior to the filing deadline.

Regarding the several instances of late certification of the reports, ELPD acknowledged the issue and cited the limited staff resources available to review and certify over 8,600 annual reports as a possible cause. With approximately 20 percent of all Commerce employees holding positions significant enough to require the filing of a confidential financial disclosure report, and without sufficient resources to timely certify all incoming reports, OGE recommends ELPD assess its financial disclosure review process and implement the changes necessary to improve timeliness of financial disclosure certification. Possible improvements may include expanding ethics program resources and/or training supervisory personnel to review and timely certify the confidential financial disclosure reports of their subordinates. Commerce may also wish to reassess the duties and responsibilities of its confidential filing positions to confirm all positions still meet the confidential filing requirements.

Recommendations

- Recover the missing confidential financial disclosure reports.
- Take additional steps to improve the timeliness of the filing of new entrant and annual confidential reports.
- Assess the financial disclosure review process and improve certification timeliness for both new entrant and annual confidential filers.
- Institute a sign-out system to better track and control confidential financial disclosure reports.

Retention of Financial Disclosure Reports

Public and confidential financial disclosure reports are to be retained by agencies for six years and then destroyed unless needed for an ongoing investigation. *See* 5 C.F.R. § 2634.603 and 604. Commerce's written procedures reflect this guidance and ethics officials stated they review the financial disclosure files to identify for destruction those reports older than six years. OGE

reviewed the public and confidential reports stored in secure, locked cabinets and observed that public financial disclosure reports older than six years were not consistently destroyed, as required. OGE did not observe any confidential reports older than six years. OGE therefore recommends that ELPD destroy public reports older than six years, unless needed for an ongoing investigation. ELPD officials agreed to destroy the outstanding reports and update the process to ensure that reports older than six years are appropriately destroyed.

Recommendation

- Destroy public financial disclosure reports older than six years, unless needed for an ongoing investigation.

Education and Training

Initial Ethics Orientation

OGE regulation requires that all new agency employees receive ethics official contact information along with the following material within 90 days of beginning work for an agency: (1) the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards) and any agency supplemental Standards to keep or review; or (2) summaries of the Standards, any agency supplemental Standards, and the Principles of Ethical Conduct (the Principals) to keep. Employees must receive one hour of official duty time to review the material. *See* 5 C.F.R. § 2638.703.

According to ELPD, in-person initial ethics orientation is conducted at Commerce's bureaus and other offices across the Washington D.C. metropolitan area. Each office has a two-day employee orientation, hosted by the Human Resources (HR) office where an hour-long initial ethics orientation by an ethics attorney is on the agenda. Additionally, in-person initial ethics orientation by an ELPD attorney is provided every Monday at Commerce Headquarters, and is available for employees at the Washington D.C. area field offices who may have missed the initial ethics orientation provided at their offices. New employees are also provided two pamphlets titled "Top 10 Ethics Rules" and "Summary of Ethics Rules." They respectively cover: 1) a portion of each of the Standards that are most applicable to the agency, and 2) a summary of the Standards, the Principals, and ethics officials' contact information. OGE determined from a review of these documents and the presentation material from the live training sessions that the training content meets the regulatory requirements of 5 C.F.R. § 2638.703. Employees located at the field offices outside the Washington D.C. area receive only the "Top 10 Ethics Rules" and "Summary of Ethics Rules" handouts from their personnel offices.

According to ELPD attendance at the live training session is recorded by the presenting ethics attorneys through the use of sign-in sheets or rosters provided by the bureaus. New employees outside the Washington D.C. area who receive only the written training are not tracked. ELPD is reliant on the personnel offices at these locations to provide the initial ethics orientation material to the new employees.

OGE attempted to verify whether initial ethics orientation was provided to the 72 new entrant public and confidential filers sampled in the financial disclosure section above. While ELPD verified receipt of initial ethics orientation for 59 of the sampled employees, 5 employees did not have a record of initial ethics orientation and 8 employees were not tracked because they were located outside the Washington D.C. area. ELPD believes that these employees would have received the written training handouts during their new employee orientation process. While OGE is reasonably confident that the majority of new employees at the agency are receiving initial ethics orientation as required, OGE is nevertheless concerned that ELPD could not positively confirm that all new agency employees received the training, including those located outside the Washington D.C. area. Therefore OGE recommends that ELPD institute a system to confirm the completion of initial ethics orientation for all employees. ELPD may, for example, coordinate with the field offices outside the Washington D.C. area to receive confirmation from the field offices that they have provided written training material as each new employee is processed or add an initial ethics orientation certification to employees' personnel files.

Annual Ethics Training Plan

OGE regulations under 5 C.F.R. § 2638.706 require agencies to develop, at the beginning of each year, a written plan for annual ethics training. The plan must contain a brief description of the agency's annual training and include estimates of the number of employees who will receive verbal and written training. Commerce's annual ethics training plan contains descriptions of the training to be provided to the different types of agency employees. Training content is tailored according to whether the audience consists of public filers or confidential filers. The annual training plan also includes a list of initiatives to improve ELPD's communications with agency employees, improve employees' awareness of ethics laws and policies, and improve awareness of ELPD's services available to the employees. They include issuance of broadcast emails on specific ethics topics and meetings with field office supervisors to discuss issues of concern particular to the office. However, while Commerce's annual training plan indicates novel approaches to providing ethics training to agency employees, it does not provide estimates on the number of employees expected to attend each of the types of training offered, including the numbers of employees expected to receive in-person training and written training. OGE therefore recommends that ELPD include such estimates into the 2014 training plan.

Annual Ethics Training

OGE regulation requires all covered employees receive annual ethics training consisting of a review of: (1) the Principles; (2) the Standards; (3) any agency supplemental Standards; (4) the criminal conflict of interest statutes; and (5) ethics official contact information. Training length and delivery method vary by an employee's financial disclosure filing status. *See* 5 C.F.R. § 2638.704 and 705. ELPD's training presentations meet the regulatory requirements as they include coverage of the Standards, the criminal conflict of interest statutes, and ethics officials' contact information. ELPD's written training also meets the regulatory content requirements as it contains the Standards in summary form, the Principals, citations to the criminal conflict of interest statutes, and ethics officials' contact information.

In-person annual ethics training at Commerce is conducted by ELPD's ethics attorneys. As previously discussed, the training is tailored according to whether the audience consists of public filers or confidential filers. ELPD coordinates its training sessions at the beginning of each calendar year, with the first session usually beginning in March. Covered filers within ELPD's filer lists are sent links to written training material during the start of the filing seasons for public and confidential reports. Additionally, ELPD sends covered filers periodic email notices of upcoming in-person training sessions. Public filers within the Washington D.C. area are covered through presentations at Headquarters and through visits to the field offices within the area. Confidential filers within the Washington D.C. region are covered through the triennial process where ELPD visits certain area field offices to ensure employees at those locations receive in-person training at least once every three years. Filers who miss the training provided at their local offices have the option of attending the sessions held at Headquarters. ELPD also visits selected field offices outside the Washington D.C. area that have significant confidential filers as part of the three-year cycle to provide in-person training. Certain locations are visited annually due to the number of public filers in those locations. Attendance at the in-person sessions is tracked through sign-in sheets, with the attendance information transferred to spreadsheets maintained by ELPD. Employees located in offices not covered by in-person training in a particular year or where it is not administratively feasible for ELPD to visit are encouraged to attend a session at the nearest location where training is provided. Those unable to attend are provided packets of the written training material.

To assess whether filers receive annual ethics training, OGE attempted to determine whether a sample of 80 covered employees received training. ELPD confirmed that 36 received in-person training, while 5 had either resigned from the agency or were on extended administrative leave. The remaining 39 covered employees were not provided in-person training because they were either outside the Washington D.C. area or were not scheduled to receive in-person training based on the three-year cycle. According to ELPD, these employees are sent written training packets, but ELPD neither tracks nor verifies that training has been completed. Per ELPD, it is the responsibility of the employee to review the material that is made available to them. OGE was also informed that it would be difficult to track completion for over 8,600 confidential filers.

Because annual ethics training is an integral component of ensuring that employees remain free of conflicts of interest, OGE recommends that ELPD ensure that employees have reviewed the written ethics training made available to them. OGE also recommends that ELPD expand the availability of verbal training to counter instances when providing in-person training to certain employees is administratively infeasible. Potentially cost-effective examples include the use of video teleconferencing, online archiving of selected in-person sessions, or computer-based annual ethics training made available to any agency employee. ELPD may also consider engaging personnel outside the Washington D.C. area as part-time ethics officials to administer in-person training to covered employees outside the Washington D.C. area.

Recommendations

- Institute a system for the ethics office to confirm the completion of initial ethics orientation for all employees.

- Include estimates of the number of employees expected to attend each of the types of training offered, including the numbers of employees expected to receive in-person training and written training into the 2015 training plan.
- Going forward, obtain confirmation that employees have reviewed written annual ethics training made available to them.
- Expand the availability of verbal training to address instances when providing in-person training is administratively unfeasible.

Advice and Counsel

The DAEO is required to ensure that a counseling program for agency employees, concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. *See* 5 C.F.R. § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 C.F.R. § 2638.204.

ELPD has established written procedures for providing ethics advice and counsel, including instructions on assigning, tracking, and responding to requests for ethics advice from agency employees that are submitted in writing and over the telephone. The procedures also include detailed instructions outlining the criteria for issuing conflict of interest waivers and reviewing travel gifts. All ethics issues and questions at the agency are referred to ELPD and are logged. The ethics attorneys address all complex requests for advice, while the ethics program specialists respond to routine, non-complex questions that may be quickly answered. Records of advice provided are kept in both paper and electronic filing systems. Once final, these records of advice are available to the ELPD staff for reference.

There were 2,945 (2,683 written, 162 verbal) requests for advice recorded in 2013. OGE's review of a sample of the advice rendered covered financial conflicts of interest, financial disclosure, impartiality, gifts, misuse of position, outside activities, non-federal sources for official travel, post-Government employment, and seeking employment. OGE determined that the guidance was provided in a timely manner and was supported by detailed citations to statutory and regulatory criteria.

Conflict Remedies

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. *See* 5 U.S.C. app. § 110. Additionally, the criminal conflict of interest law at 18 U.S.C. § 208 prohibits an employee from participating in an official capacity in a particular matter in which he or she has a financial interest. Congress included two provisions that permit an agency to issue a waiver of the prohibition in individual cases. Under

Executive order 12674, agencies must consult with OGE prior to issuing a waiver under section 208.

PAS nominees at Commerce are assigned an ELPD attorney, with oversight by ELPD's Program Manager for Presidential Appointee Services, to assist in the processing of their nominee financial disclosure reports and actions related to compliance with their ethics agreements. The Program Manager tracks and provides weekly updates to the ELPD Chief on the status of nominees in process, including actions related to compliance with ethics agreements. The assigned attorney notifies OGE once an ethics agreement has been complied with. OGE confirmed that Commerce's current PAS officials are in compliance with their ethics agreements and that the requisite evidence of action taken was also submitted timely to OGE. Regarding waivers under 18 U.S.C. § 208, Commerce issued one waiver in 2013 and consulted with OGE on this waiver.

Enforcement

Agencies must concurrently notify OGE when a case involving an alleged violation of a criminal conflict-of-interest statute is referred to the Department of Justice (Justice). Agencies are also required to report when Justice declines to prosecute a potential violation, any follow-up actions on a referral, and the disposition of the referral. *See* 5 C.F.R. § 2638.603. OGE's review of Commerce's system of enforcement focused primarily on these requirements.

Commerce's Office of Inspector General (OIG) conducts investigations of potential violations of the Federal conflict of interest statutes and makes any necessary referrals to the Department of Justice (Justice). The OIG is also responsible for notifying OGE of any referrals made to Justice. In 2012 and 2013, Commerce made two referrals in each year to Justice, with an additional referral in 2014. However, OGE was not notified of any of these referrals, and the OIG did not appear to be aware of the notification requirement. OGE therefore provided Commerce's OIG the process for notifying OGE and recommended that Commerce ensure concurrent notification of OGE of any referrals made to Justice, and their subsequent disposition.

Recommendations

- Coordinate with Commerce OIG to ensure OGE is concurrently notified of any referrals made to the Department of Justice involving alleged violations of the criminal conflict of interest statutes.
- Coordinate with Commerce OIG to identify any outstanding referrals for which OGE has not received notification and provide the appropriate notification under 5 C.F.R. § 2638.603.

Special Government Employees

Special Government employees (SGE) are officers or employees of the executive or legislative branch, retained, designated, appointed or employed to perform their duties, full-time or intermittently, for not more than 130 days in any 365-day period. SGEs typically serve on agency advisory boards or commissions.

At Commerce an SGE may either be a member of one of the agency's 60 Federal Advisory Committee Act (FACA) committees, a member of a non-FACA committee, or a non-FACA agency employee. FACA committees may consist of members who are either SGEs or representatives, with the designation made by Commerce's Office of General Counsel, through guidance contained in the statute, regulation, or other criteria relating to the establishment of the committee. At the time of OGE's review, the 60 committees contained 366 SGEs. ELPD attorneys are assigned committees and are responsible for keeping track of the member changes, financial disclosure report filings, ethics training, and ethics advice for the SGEs in their committees. The due dates for financial disclosure report filings vary by committee and are dependent on the date of the first meeting for a committee in a given year. OGE sampled 45 SGE financial disclosure reports from three committees to determine whether the reports were filed and certified timely during 2013 and whether the SGEs were provided annual ethics training during this period. OGE found that financial disclosure reports for all 45 SGEs were filed and certified timely, prior to the first meeting in 2013. Additionally, the ELPD attorneys forwarded written annual training material to the SGEs prior to the first committee meetings.

ELPD identified 43 non-FACA SGEs, including 23 SGEs who are members of three non-FACA committees.¹ OGE sampled 12 SGE confidential reports and found that 10 of the 12 reports were filed timely while all 12 reports were certified timely and contained ELPD reviewer notes that were indicative of a detailed review process. OGE also verified that the SGEs received annual ethics training, as required.

1353 Travel Acceptances

Federal agencies may allow employees to accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under the authority of the General Services Administration (GSA) regulation at 41 C.F.R. chapter 304, implementing 31 U.S.C. § 1353. Semiannual reports of payments accepted under 31 U.S.C. § 1353 must be submitted to OGE by May 31 and November 30 of each year.

Commerce has established written procedures to address situations where employees are offered travel payments from non-Federal sources. Under these procedures, travel payments from non-

¹ During the course of the review OGE learned that Commerce OIG had initiated an audit that includes examining ethics-related matters concerning SGE board members of First Responders Network Authority (FirstNet), an independent entity within Commerce's National Telecommunications & Information Administration. OGE reviewed Commerce OIG's final report on FirstNet and notes that the Department acknowledged the report's findings and concurred with the report's recommendations.

Federal sources are acceptable when such payments would advance the mission of the agency, are voluntary, and would not create appearances of conflict. Prior to accepting such offers, employees are required to receive approval from an authorized official at their component. Employees at individual components, however, are barred from accepting travel payments from sources such as contractors, grantees, and licensees that conduct business with the employee's component. The procedures state that analyzing travel payments is a two-step process; ELPD determines if the travel is consistent with legal guidelines and Department policy, and a manager determines if the travel furthers the agency mission and is unlikely to generate public criticism. OGE examined the two semiannual reports submitted during 2013 and found that both reports were submitted to OGE in a timely manner.

Agency Comments

Commerce provided the following comments after reviewing a draft of this report:

“Ethics officials at the Department of Commerce appreciate the time and effort the Office of Government Ethics took to review its ethics programs and operations. We view our program as comprehensive and effective and are glad that the report notes some of the notable achievements of our program. However, we recognize that there are aspects that could be improved and we are continuing the process that began during the conduct of the program review itself to assess our own procedures in order to identify areas for improvement. During the course of the program review, even before the OGE report was received, we made changes to tighten our processes as issues came to our attention (for example, we instituted a “gatekeeper” system to better control access to reports by ethics staff to make the location of reports easier to track and improve accountability). We will continue to make improvements on those OGE recommendations still outstanding.

With regard to the recommendation that the Ethics Law and Program Division (ELPD) take additional steps to improve the timeliness of the collection of new entrant and annual confidential filers, ELPD will work closely with the Human Resources offices. The Human Resources offices process employees as they are hired and promoted and are responsible for identifying which employees are required to file reports. Ethics officials will emphasize the need for HR offices to notify new filers of the reporting requirements in a timely manner and to provide ELPD with information on such new filers so that ethics officials can track the timely collection of new entrant reports more effectively. Ethics officials will work with Human Resources offices to develop a system for tracking compliance and reminding employees of their obligations to timely file reports.

With regard to timely certification of 8,600 confidential financial disclosure reports, recommendations by OGE for possible improvements included that ELPD acquire additional resources and training supervisory personnel to review and timely certify reports. Obviously, we (like all agencies) would appreciate the ability to acquire additional resources to assist with the process. However, in light of budget restrictions for all agencies, we have considered means to improve operations within current funding limits. We will have ethics officials do at least an initial review to identify conflicts, since it is our office policy to quickly review reports for

conflicts, and we will consider noting that initial review even if final certification is delayed. We have also considered the recommendation that reports be collected and reviewed at an intermediate level by supervisors, who would then forward the reports to ELPD for final certification by an ethics official. In the past we have included supervisors in the collection and certification process for some components of the department (with regard to OGE Form 278s). However, management officials have been reluctant to take on such responsibilities and employees raised concerns. Furthermore, we found that this process slowed down significantly the collection and certification process and did not result in improvements in the identification of potential conflicts of interest. However, we will continue to consider means to improve our current system.”