

## **United States Office of Government Ethics**

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Compliance Division

# Ethics Program Review

U.S. Department of the Interior  
Departmental Ethics Office

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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.

OGE’s review focused on the ethics program administered by the Departmental Ethics Office, which primarily serves the Office of the Secretary, the Office of the Solicitor and political appointees. OGE also evaluated a sample of other components of the Department of the Interior by conducting inspections of the ethics programs of the Bureau of Land Management, the Bureau of Reclamation and the U.S. Fish and Wildlife Service.<sup>1</sup>

To assess the Departmental Ethics Office ethics program, OGE examined a variety of documents including the 2015 Annual Agency Ethics Program Questionnaire, written procedures for administering the program, samples of the public and confidential financial disclosure reports filed in 2015, ethics training materials and a sample of the ethics advice and counseling rendered to employees. OGE also met with agency officials to clarify the information gathered, follow up on issues identified during the review, and discuss ethics program operations in further detail.

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<sup>1</sup> The results of these inspections are described generally in this report to the extent that they suggest agency-wide trends, and they are described in detail in individual inspection reports that OGE is issuing separately.

## Agency Background

Established in 1849, the Department of the Interior’s (DOI) mission includes protecting and managing the nation’s natural resources and meeting responsibilities to Native Americans and certain island communities. Activities under its mission include managing and providing access to public lands, historic preservation, endangered species conservation and upholding federal trust responsibilities to federally recognized Indian tribes and Alaska Natives. DOI is headed by a Presidentially appointed and Senate-confirmed (PAS) Secretary who leads a workforce of 70,000 employees and almost 280,000 volunteers located at the following bureaus and offices throughout the United States:

Bureaus	Offices
National Park Service	Office of the Secretary
U.S. Fish and Wildlife Service	Office of Policy, Management and Budget
Bureau of Indian Affairs	Office of Insular Affairs
Bureau of Indian Education	Office of the Solicitor
Bureau of Land Management	Office of the Inspector General
Office of Surface Mining, Reclamation and Enforcement	Office of the Chief Information Officer
Bureau of Ocean Energy Management	Office of Subsistence Management
Bureau of Safety and Environmental Enforcement	Office of the Special Trustee for American Indians
U. S. Geological Survey	
Bureau of Reclamation	

As discussed above, in addition to the review of the ethics program administered by the Departmental Ethics Office, OGE conducted inspections of the Bureau of Land Management, the Bureau of Reclamation and the U.S. Fish and Wildlife Service in order to evaluate the strength of a sample of DOI’s ethics programs that are not directly administered by the Departmental Ethics Office. The Bureau of Land management manages over 245 million surface acres of public land, with activities covering recreation, conservation and commercial activities. The Bureau of Reclamation manages, develops and protects water resources across the western United States. The U.S. Fish and Wildlife Service engages with various stakeholders to conserve and protect the nation’s fish, wildlife, plants and their habitats. The results of OGE’s inspections of the three bureaus indicated that they were compliant with most of the ethics program elements assessed; however, OGE identified deficiencies in the public and confidential financial disclosure program elements. These deficiencies are addressed generally in the relevant sections below and in detail in the individual inspection reports.

## Program Administration

The ethics program at DOI is headed by the Director of the Departmental Ethics Office, who also serves as the Designated Agency Ethics Official (DAEO). The Departmental Ethics Office provides ethics services to employees at the Office of the Secretary, the Office of the Solicitor and to all agency political appointees. The Departmental Ethics Office also maintains oversight of the bureau ethics programs which are managed by bureau ethics counselors appointed by the DAEO. Oversight activities of the Departmental Ethics Office include advising and providing interpretations to the bureau ethics counselors on changes to ethics-related statutes and regulations and producing training materials and bulletins for bureau use, including computer-based training modules and video presentations. Additionally, the DAEO holds monthly meetings with the bureau ethics counselors and the Departmental Ethics Office conducts compliance reviews and annual assessments of bureau ethics programs.

The Departmental Ethics Office is staffed by the DAEO, four full-time attorneys, including the Alternate DAEO, one part-time attorney, four ethics specialists, and two contractors who provide administrative support. OGE's report of its most recent previous review of DOI's ethics program cited deficiencies attributable to employee turnover or insufficient staffing at the Departmental Ethics Office. In connection with our current review of the program, the Departmental Ethics Office has acknowledged the continued need for additional staffing and stated that the previous Secretary of the Interior had previously agreed to an action plan that included adding 13 new positions to the Departmental Ethics Office. However, at the time of the review staffing levels had not increased due to funding constraints.

The Departmental Ethics Office has taken several steps in an effort to address its staffing shortage. For example, it has enlisted the department's leadership to speak at employee ethics forums, record videos to inform employees about the importance of adhering to ethics rules, and communicate with Departmental Ethics Office officials on an ongoing basis. Other Departmental Ethics Office actions aimed at improving the ethics program have included updating procedures to improve efficiency in financial disclosure reviews and leveraging technology to improve process efficiencies. Examples of the Departmental Ethics Office leveraging technology include an electronic database to track recusals of PAS employees and an electronic tracking system to increase communication and coordination on ethics advice and counseling.

## 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 by remaining free of conflicts of interest. To ensure this confidence, high-level federal officials publicly disclose their personal financial interests. 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 file confidential financial disclosure reports. 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. DOI's written procedures for its public and confidential financial disclosure systems generally meet the requirements of the Ethics in Government Act. In addition to the guidance on collecting, reviewing and where applicable, making publicly available financial disclosure reports, the procedures include guidance on reportable asset types, addressing identified financial conflicts and addressing instances of over-reporting of information. The Departmental Ethics Office has also issued separate written guidance on determining filing positions and timelines for collecting financial disclosure reports. However, the main body of the written procedures for financial disclosure does not include guidance on collection, review and public availability of periodic transaction reports pursuant to the Stop Trading on Congressional Knowledge Act of 2012, Pub. L. No. 112-105 (2012) (STOCK Act).

Despite transaction reporting not being addressed directly in DOI's written procedures, OGE was informed that the Departmental Ethics Office sends out monthly transaction reporting instructions and templates of periodic transaction reports to the public filers for whom the Departmental Ethics Office is responsible. Additionally, all incoming employees receive the Ethics Guide for DOI Employees, which includes a notice of the requirement for public employees to file transaction reports under the STOCK Act. While OGE recognizes that the monthly reminders and ethics guide raise employee awareness of periodic transaction reporting, in order to fully meet the compliance requirements and ensure the continuation of these practices, OGE recommends that the Departmental Ethics Office update the main body of its written procedures to formalize its current process for collection, review, evaluation, and public availability of periodic transaction reports.

### Recommendation

- Update DOI's financial disclosure written procedures to include guidance on the collection, review, evaluation, and public availability of periodic transaction reports.

## **Public Financial Disclosure**

DOI uses the executive branch-wide filing system, *Integrity*, for public reports of nominees and appointees to Presidentially appointed positions requiring Senate confirmation (PAS positions) and of the DAEO. DOI uses a commercially available electronic filing system for all other filers.

In 2015, the Departmental Ethics Office identified 197 positions requiring the filing of a public financial disclosure report, including 17 PAS positions. To ensure the accuracy of its list

of public positions, the Departmental Ethics Office updates the list using biweekly notices from the department’s human resources (HR) offices regarding incoming and departing public filers.

The Departmental Ethics Office also uses the notices from HR in order to collect new entrant and termination public reports. Upon receipt of a notice from HR, the Departmental Ethics Office notifies the new or departing employee via the commercially available electronic filing system of the requirement to file a financial disclosure report. The completed financial disclosure report is filed through the electronic filing system and reviewed by Departmental Ethics Office officials. During OGE’s review, the Departmental Ethics Office staff indicated that there was been difficulty in consistently obtaining information from HR regarding employees entering and departing positions requiring the filing of financial disclosure reports, thereby impacting the Departmental Ethics Office’s ability to timely notify employees and obtain the required financial disclosure filings.

With regard to annual public financial disclosure reports, at the start of the annual filing season the Departmental Ethics Office notifies the annual filers via the electronic filing system of the requirement to file. The Departmental Ethics Office sends reminder notices to the filers 10 days and 5 days prior to the due date, with a final reminder on the due date. In addition, the Departmental Ethics Office officials verbally contact those who have yet to file three days prior to the due date. The Departmental Ethics Office’s escalation process requires delinquent filers to be reminded daily until filing, with notices also sent to the filer’s superior.

To evaluate the timeliness of public financial disclosure filing and certification for employees under the Departmental Ethics Office’s responsibility, OGE reviewed a sample of 40 annual reports, all 23 new entrant reports and all 16 termination reports that were required to be filed in 2015 (Table 1).

**Table 1. Review of Public Financial Disclosure Reports**

	New Entrant		Annual		Termination		Total	
<b>Reports Sampled</b>	23		40		16		79	
<b>Filed Timely</b>	11	(48%)	37	(93%)	12	(75%)	60	(76%)
<b>Certified Timely</b>	22	(96%)	36	(90%)	15	(94%)	73	(92%)

OGE found that the Departmental Ethics Office’s certifications of reports were generally completed timely. Moreover, the reports indicated Departmental Ethics Office follow-up with filers to clarify or confirm certain disclosures and the use of prohibited holdings lists to aid in the reviews. However, consistent with the concerns expressed by the Departmental Ethics Office, OGE found delays in the filing timeliness of new entrant reports. Filing delays were also observed with termination reports. While most of the filing delays were within two weeks of the due date, several of the late new entrant filings were more protracted. The Departmental Ethics Office considered late notifications from HR offices to be the department’s primary obstacle to timely filing and indicated to OGE that it was attempting to address the issue through discussions with HR offices, encouraging them to provide timely notification of new employees, promotions to filing positions, and departures.

## Recommendations

- Improve filing timeliness of new entrant public financial disclosure reports.
- Improve filing timeliness of termination public financial disclosure reports.

In accordance with the STOCK Act, employees in positions requiring public financial disclosure are also required to file periodic transaction reports disclosing purchases, sales or exchanges of stocks, bonds, commodities futures or other forms of securities when the transaction amount exceeds \$1,000. OGE reviewed the sample of annual reports to identify transactions that would have required the filing of periodic transaction reports and identified six reports where periodic transaction reports were required. Periodic transactions reports were appropriately filed for transactions identified in three of the six annual reports. With regard to the three remaining reports, late filing fees were waived in two cases because Departmental Ethics Office officials determined that the filers inadvertently failed to file the required periodic transaction reports. In the final case, no periodic transaction report was required because the transactions were purchases that were below the reporting threshold at the time of the purchases.

## Inspection Results

OGE's inspection of the Bureau of Land Management identified problems with the timeliness of new entrant and annual public financial disclosure filing, and the inspection of the Bureau of Reclamation identified problems with the timeliness of new entrant public filing. Although OGE will address the necessary corrective actions in each bureau's respective inspection report, OGE strongly encourages the Departmental Ethics Office to review the public financial disclosure programs across all of its bureaus and offices and provide the appropriate guidance and support to correct any deficiencies identified.

## **Confidential Financial Disclosure**

In 2015, 699 positions required the filing of a confidential financial disclosure report. Supervisors determine whether positions require the filing of confidential reports by utilizing guidance issued by the Departmental Ethics Office, which includes a worksheet that assists supervisors in making their determinations. The supervisory determinations are forwarded to and maintained by the HR offices who in turn inform the Departmental Ethics Office of the most current filing positions. The Departmental Ethics Office also follows up with the supervisors annually to confirm whether positions previously determined to be filing positions remain filing positions. The Departmental Ethics Office's process for receiving information on new employees that should file confidential reports and notifying the employees of the requirement to file is similar to the process used for public filers: HR is required to notify the Departmental Ethics Office when an employee enters into a confidential filing position, and the Departmental Ethics Office then notifies the employee via the electronic filing system of the requirement to file.

To evaluate the timeliness of confidential financial disclosure filing and certification, OGE reviewed all 20 new entrant reports and a sample of 30 annual reports that were required to be filed in 2015 (Table 2).

**Table 2. Review of Confidential Financial Disclosure Reports**

	New Entrant		Annual		Total	
<b>450 Reports Sampled</b>	20		30		50	
<b>Filed Timely</b>	8	(40%)	28	(93%)	36	(72%)
<b>Certified Timely</b>	18	(90%)	30	(100%)	48	(96%)

Similar to the public system, while overall certification and timely filing rates were high for annual reports, OGE’s reviews identified problems with the timelines of new entrant filing. The majority of the late filings were several months late, with the primary cause of the delays attributed to late notifications from HR of employees hired into or promoted to filing positions. Additionally, according to the Departmental Ethics Office, confidential filers were occasionally not properly coded as filers by HR, although these errors were determined to be inadvertent. As noted previously in the public financial disclosure section, Departmental Ethics Office officials stated that they were attempting to improve new entrant filing timeliness through discussions with the HR offices, including discussing the proper coding of confidential filing positions.

Recommendations

- Improve filing timeliness of new entrant confidential financial disclosure reports.
- Develop and provide evidence of concrete measures taken to improve new entrant filing timeliness as a result of Departmental Ethics Office’s coordination with HR offices.

Confidential Financial Disclosure Supplemental Instructions

OGE regulations at 5 C.F.R. §§ 2634.601 and 901 allow agencies, subject to the prior written approval of the Director of the Office of Government Ethics, to formulate supplemental reporting requirements when additional information may be necessary because of special or unique agency circumstances. DOI requested and received approval from OGE to utilize a supplement to the confidential financial disclosure form (OGE Form 450) in order to identify a number of unique conflict of interest prohibitions that apply to certain groups and categories of DOI employees. The supplement includes an instruction requiring that all assets held by DOI confidential report filers, their spouses, and dependent children for investment or the production of income be reported regardless of value. DOI cited its concern that even one share of a prohibited stock would be a violation of law as the reason for this instruction.

OGE’s review of sample of confidential financial disclosure reports filed with the Departmental Ethics Office found that supplements were not included with confidential reports. Departmental Ethics Office staff stated that supplements were not included because they could not be incorporated into DOI’s e-filing system and were therefore temporarily suspended.

### Recommendation

- If the DOI-specific conflict of interest prohibitions cited in the original request to OGE for a supplement are still a concern, ensure that the supplement to the confidential financial disclosure form, including the instruction on asset reporting thresholds, are provided to confidential report filers.

### Inspection Results

OGE's inspection of the Bureau of Reclamation identified problems with the timeliness of new entrant and annual confidential financial disclosure filing. OGE's inspection of the Bureau of Land Management identified problems with the timeliness of new entrant confidential filing. Moreover, OGE's inspections at all three bureaus found that the required supplemental instructions were not included in the sample of confidential financial disclosure reports. Although OGE will address the necessary corrective actions in each bureau's respective inspection report, OGE strongly encourages the Departmental Ethics Office to review the confidential financial disclosure programs across all of its bureaus and offices and provide the appropriate guidance and support to correct any deficiencies identified.

### **Retention of Reports**

Agencies are required to secure and maintain public and confidential financial disclosure reports for six years. Public financial disclosure reports remain publicly available during the six-year period. Unless the reports are needed in an ongoing investigation, reports are to be destroyed after the six-year period. The Departmental Ethics Office maintains all non-PAS reports in the electronic filing system, which provides monthly alerts and delete options regarding reports that have reached the six-year mark. PAS reports are also maintained in hard copy format and are stored using a combination-key entry system. OGE's review of the Departmental Ethics Office's financial disclosure records found several hard copies of reports that were retained beyond the six year period.

### Recommendation

- Review the hard copy financial disclosure reports and destroy any reports that exceed the retention period that are not needed for an ongoing investigation.

## **Education and Training**

### **Initial Ethics Orientation**

OGE regulations require 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 Principles) to keep.

Employees must receive one hour of official duty time to review the material. *See* 5 C.F.R. § 2638.703.

All new department employees receive the Ethics Guide for DOI Employees (Ethics Guide) on the day they enter on duty and are informed of the requirement to review the material. The Ethics Guide includes the Principles, summaries of the Standards, summaries of DOI specific supplemental material, ethics official contact information, and summaries of the conflict of interest statutes. The Departmental Ethics Office relies on the distribution of the Ethics Guide to new employees during orientation to ensure that all employees receive the required initial ethics orientation content.

In addition to receiving the Ethics Guide, employees for whom Departmental Ethics Office is responsible receive live orientation briefings. Employees in the Office of the Secretary and the Office of the Solicitor are required to attend a new employee orientation, which includes an ethics briefing by a Departmental Ethics Office official covering selected portions of the ethics statutes and regulations. Political appointees receive one-on-one ethics briefings from a Departmental Ethics Office official and are provided additional written guidance on matters specific to political appointees, including the Ethics Pledge.

### **Annual Ethics Training Plan**

OGE regulations at 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. The Departmental Ethics Office's annual ethics training plan for 2015 was prepared at the beginning of 2015 and included a description of the material to be covered. However, the plan did not include estimates of the number of employees who would receive verbal and written training.

#### Recommendation

- Include estimates of the number of employees expected to receive verbal and written annual ethics training in future annual ethics training plans.

### **Annual Ethics Training**

OGE regulations require all covered employees to 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 may vary by an employee's financial disclosure filing status. *See* 5 C.F.R. §§ 2638.704 and 705.

The Departmental Ethics Office offers annual ethics training to all Office of the Secretary and Office of the Solicitor employees, as well as to all employees in DOI's various bureaus and offices. Over the course of the year, the Departmental Ethics Office provides annual ethics training through multiple in-person sessions that are also routinely broadcast as "webinars."

Employees may also review an online computer-based presentation or view online Departmental Ethics Office-prepared videos depicting ethics-related scenarios that employees may encounter. The video scenarios are supplemented by a separate computer-based presentation that the employee is required to view in order to receive credit for training completion. OGE's review of the training content indicates that the in-person training, the video scenarios, and the online computer-based presentation meet the content requirement for annual ethics training.

The Departmental Ethics Office tracks training completion through sign-in sheets for the in-person sessions and through online confirmations for the computer-based presentations. OGE's review of the Departmental Ethics Office's training records indicated that only 126 (64%) of the 197 public filers and 421 (60%) of the 699 confidential filers received training in 2015. According to the Departmental Ethics Office, reasons for the extraordinarily low annual ethics training completion percentages included the Departmental Ethics Office failing to track training completion during the year and filers' disregarding the end-of-year training reminders sent by the Departmental Ethics Office. The Departmental Ethics Office stated that beginning in 2016 it will track training completion on a monthly basis to allow ethics officials to stay up-to-date on training completion rates, send timely reminder notices during the course of the year and take necessary corrective action to address non-compliance.

#### Recommendation

- Provide annual ethics training to covered employees, as required by 5 C.F.R. §§ 2638.704 and 705.

#### **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. *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.

The Departmental Ethics Office provides advice and counseling to employees at the Office of the Secretary and the Office of the Solicitor, as well as to political appointees. Requests for advice may be received via email, in-person, or by phone. The requests are addressed by Departmental Ethics Office staff on a rotational basis. The Departmental Ethics Office officials collaborate on complex issues and written advice is logged and memorialized in an electronic tracking system.

Departmental Ethics Office officials estimated that they received and responded to approximately 950 requests for advice in 2015. OGE's review of 15 samples of advice and counseling indicated that the guidance was provided in a timely manner and appeared generally consistent with applicable laws and regulations. The sample covered a broad range of ethics topics including financial conflicts of interest, impartiality, misuse of position, post-employment, gifts and outside activities.

## Agency-Specific Ethics Rules

As authorized by Executive Order 12674 and implemented by 5 C.F.R. § 2635.105, an agency may modify or supplement the Standards, 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.

DOI's supplemental regulation at 5 C.F.R. § 3501 includes prohibitions on:

- Interests in Federal lands by employees of the Bureau of Land Management and the U.S. Geological Survey, as well as senior DOI employees;
- Financial interests in certain mining activities by employees of the Office of Surface Mining Reclamation and Enforcement and the U.S. Geological Survey;
- Surveys or examinations by U.S. Geological Survey employees for private parties;
- Employment as real estate agents and realty specialist by Bureau of Land Management employees; and
- Positions taken by Bureau of Indian Affairs and Office of the Assistant Secretary – Indian Affairs employees on a tribal election board or a tribal school board overseeing Bureau of Indian Affairs schools.

Additionally, DOI employees, except those employed by the U. S. Geological Survey, are required to obtain prior written approval for employment activities with a prohibited source.<sup>2</sup>

OGE's review of selected financial disclosure reports of senior employees at the Bureau of Land Management, U.S. Geological Survey, Office of Surface Mining Reclamation and Enforcement, Bureau of Indian Affairs and the Office of the Secretary – Indian Affairs, as well as other senior employees at the Office of the Secretary, did not reveal financial interests or outside activities prohibited by the DOI's supplemental regulation. OGE also selected a sample of outside activity requests made by employees from the Office of the Secretary to determine whether any of the activities involved prohibited sources and if Departmental Ethics Office approvals of such activities were adequately supported and documented. None of the outside activity requests selected for review by OGE involved prohibited sources.

## Conflict Remedies

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

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<sup>2</sup> U. S. Geological Survey employees are required to obtain prior written approval before engaging in *any* outside employment.

prohibition in individual cases. Under Executive order 12674, agencies must consult with OGE, where practicable, prior to issuing a waiver under section 208. In 2015, the Departmental Ethics Office issued five waivers under the provisions of 18 U.S.C. § 208(b)(1) and consulted with OGE on each of the waivers.

Additionally, the Ethics in Government Act expressly recognizes the need for nominees for PAS positions 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, common known as an “ethics agreement.” OGE confirmed that appointees in PAS positions who were appointed in 2015 have complied with their ethics agreements and that the requisite evidence of action taken was also submitted timely to OGE. The Departmental Ethics Office also maintains ethics agreements with the filers’ financial disclosure reports in accordance with 5 C.F.R. § 2634.805.

## **Enforcement**

In the annual Agency Ethics Program Questionnaire submitted in to OGE in 2016 and covering calendar year 2015 DOI reported one disciplinary action based wholly or in part upon violations of the criminal conflict of interest statutes (18 U.S.C. §§ 203, 205, 207, 208, and 209) and four disciplinary actions based wholly or in part upon violations of the Standards (5 C.F.R. part 2635).

DOI’s Inspector General (IG) conducts investigations of potential violations of the criminal conflict of interest statutes and makes any necessary referrals to the Department of Justice (Justice). The IG is also responsible for notifying OGE of any referrals made to Justice. The IG made five referrals to DOJ in 2015 and OGE was notified on all of the five referrals. DOJ declined action on two referrals while the remaining three referrals were under review by DOJ at the time of OGE’s review.

## **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.

DOI employs 120 SGEs department-wide. The Departmental Ethics Office provides ethics services for eight of these SGEs; DOI’s other offices and bureaus provide ethics services for the remaining SGEs. OGE observed the following deficiencies with regard to oversight of SGEs by the Departmental Ethics Office:

- Four SGEs did not file financial disclosure reports in 2015.
- One SGE, who was appointed in 2008, filed a financial disclosure report in 2015; however, the Departmental Ethics Office could not verify whether the SGE had filed any reports for the previous years.

- One SGE filed a new entrant report 11 months beyond the filing deadline. The report was certified by the Departmental Ethics Office one month beyond the certification deadline.
- Three of the eight SGEs did not receive ethics training in 2015 and the remaining five SGEs received ethics training that did not fully cover the content requirements.

The Departmental Ethics Office must address the deficiencies in managing the SGEs under its responsibility. In order to address these deficiencies, OGE makes the following recommendations:

#### Recommendations

- Correct the SGE designation process to ensure that all SGEs are properly identified.
- Ensure SGE financial disclosure reports are filed in a timely manner and properly maintained.
- Ensure SGE financial disclosure reports are certified in a timely manner.
- Ensure that ethics training is provided to all SGEs.
- Ensure that ethics training for SGEs meets the content requirements of 5 C.F.R. § 2638.704(b).

#### **Agency Comments**

The Departmental Ethics Office provided the attached letter in response to OGE's invitation to provide comments on the draft report.



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO:

MAY 27 2016

The Honorable Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, N.W.  
Suite 500  
Washington, D.C. 20005-3917

Dear Mr. Shaub:

Thank you for the opportunity to review and comment on the U.S. Office of Government Ethics (OGE) draft program review report of the U.S. Department of the Interior (DOI), Departmental Ethics Office (DEO). We are pleased that OGE found the Departmental Ethics Office ethics program generally to be in compliance with applicable laws, regulations, and policies.

The DEO works closely with the Office of Government Ethics (OGE) to provide a strong, robust, and compliant ethics program for employees at DOI. We appreciate the time and effort OGE staff devoted to reviewing our ethics program in 2015. While we are proud of the progress the DEO staff has made in recent years to create an excellent program, we are always looking for ways to improve. We agree with OGE, as indicated in its program review report, that there are measures we can take to further strengthen our ethics program. The DEO is committed to implementing the recommendations reflected in the report, and to working with OGE to continuously improve our program – fostering a culture that expects ethical conduct by employees and ensuring the public's confidence in the integrity of DOI's programs and operations.

Prior to the OGE Program Review, the DEO proactively self-identified, as an area for improvement, the timely filing of new entrant confidential financial disclosure reports (OGE Form 450) and new entrant and termination public financial disclosure reports (OGE Form 278e). DOI Human Resources (HR) offices process new and departing employees, and are responsible for identifying and notifying the DEO which employees are required to file new entrant reports and when officials in public financial disclosure positions terminate employment from such positions. The DEO has engaged in discussions with DOI's HR offices to emphasize the importance of timely notification of reporting requirements. We will continue to work with HR offices to improve the filing timeliness of new entrant and termination financial disclosure reports. We also will develop and provide evidence of concrete measures taken to improve new entrant filing timeliness resulting from our coordination efforts with HR offices.

With regard to DOI's supplement to the OGE Form 450, requiring additional reporting information, the DEO temporarily suspended the requirement as it was incompatible with the electronic system in use to review and certify financial disclosure reports. The DEO will work with OGE and our financial disclosure system vendor to identify a solution to provide the supplement to confidential financial disclosure report filers.

As to the hard copies of financial disclosure reports maintained beyond a six-year period, the DEO will review these records and destroy any that exceed the retention period and are not needed for any ongoing investigation. Also, and as recommended, the DEO has updated our financial disclosure written procedures to include guidance on the collection, review, evaluation, and public availability of periodic transaction reports pursuant to the STOCK Act.

The DEO takes great pride in the quality of the one-on-one, and the in-person group and webinar training we make available to DOI employees. We endeavor to provide training that focuses on relevant ethical questions with rule and scenario based training, while also remaining compliant with OGE's content requirements for annual ethics training. The numbers provided to OGE for the 2015 Annual Ethics Training do not accurately reflect actual covered employees trained. The system used to track annual ethics training had several deficiencies and is not an internal DEO system. We have corrected those deficiencies for 2016 and onward, by creating our own tracking system. Moreover, covered employees will receive a notice until they have completed annual ethics training during the months of October, November and December. Additionally, in December, supervisors will be notified if any filer has not completed annual ethics training. Further, as recommended, we intend to include estimates of the number of employees expected to receive verbal and written annual ethics training in our future annual ethics training plans. We have amended our 2016 training plan accordingly.

In January 2016, the DEO established a special Government employee (SGE) Working Group to remedy deficiencies identified in managing SGEs under our responsibility. To this end, the SGE Working Group representatives currently are working with the relevant offices, HR and the Department's Committee Management Program, in identifying and analyzing specific SGE positions. The Working Group also intends to develop processes and procedures addressing the proper identification of SGEs, the timely filing and certification of financial disclosure reports submitted by SGEs, and the provision of ethics training that is compliant with content requirements pursuant to OGE regulations. Additionally, the DEO has begun to and will continue to communicate with OGE on best practices for managing SGEs.

An important component of the DEO's ethics program is our evaluation of the ethics program administered by DOI's bureaus and offices. We appreciate OGE's encouragement that we review the public and financial disclosure programs across all of DOI's bureaus and offices and provide the appropriate guidance and support to correct any deficiencies identified. We will strongly consider this suggestion.

The DEO will continue to internally monitor our program to ensure compliance with OGE requirements, and to identify and implement programmatic improvement to provide DOI employees with access to the best program possible. Thank you, again, for conducting a review of our program and for the opportunity to provide the above comments.

Sincerely,



Melinda J. Loftin

Designated Agency Ethics Official