



Ethics Program Review

U.S. Department of Commerce

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The United States Office of Government Ethics (OGE) conducted a review of the United States Department of Commerce (Commerce) ethics program intermittently from May through August 2018. The review covered program activities for calendar year 2017. The following summarizes the results of that review.

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Objectives, Scope, and Methodology

Objectives: OGE provides overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest. The Ethics in Government Act gives OGE the authority to evaluate the effectiveness of executive agency ethics programs.¹ OGE uses this evaluation authority largely to conduct reviews of agency ethics programs. The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

Scope: OGE’s review focused on all elements of the ethics program administered by Commerce’s Ethics Law and Programs Division (Ethics Division). The Ethics Division is responsible for administering and overseeing Commerce’s ethics program department-wide. The ethics program elements examined included: program administration, public and confidential financial disclosure, education and training, ethics counseling, conflicts remedies, enforcement, and special government employees.

Methodology: OGE examined a variety of documents provided by the Ethics Division, including Commerce’s response to OGE’s Annual Agency Ethics Program Questionnaire for 2017, written procedures for administering the ethics program, samples of public and confidential financial disclosure reports filed in 2017, ethics training materials, a sample of ethics counseling provided to employees, and procedures for administering the ethics requirements for special government employees. In addition, OGE met with Commerce ethics

¹ See 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

officials to clarify the information gathered, follow up on issues identified during the review, and discuss ethics program operations in further detail.

Agency Background

Commerce is the Cabinet-level department of the federal executive branch whose mission is to work with businesses, universities, communities, and the Nation's workers to promote job creation, economic growth, sustainable development, and improved standards of living for Americans. It consists of 12 bureaus and nearly 47,000 employees located in all 50 states and five U.S. territories, and in more than 86 countries worldwide. Headquartered in Washington, DC, the department is led by the Secretary of Commerce, a presidentially appointed, Senate-confirmed official.

Program Administration

Commerce's ethics program is centrally administered by the Ethics Division, a division of the Office of the Assistant General Counsel for Administration and Transactions, within the Office of the General Counsel. In September 2017, the Secretary appointed the Chief of the Ethics Division to the Designated Agency Ethics Official (DAEO) position and the Assistant General Counsel for Administration and Transactions to the position of Alternate DAEO (ADAEO).²

In addition to the DAEO and ADAEO, at the time of OGE's review the Ethics Division consisted of 19 full-time ethics officials, including a Deputy Chief, 12 attorneys, 4 ethics program specialists, and 2 administrative specialists. It also employed 2 part-time law clerks.³

Duties within the Ethics Division include developing policies and procedures for the overall operation of the department's ethics program, designing and implementing the annual ethics training and initial ethics training programs department-wide, providing employees with ethics counseling services and administering the department's public and confidential financial disclosure programs. Other Commerce offices have responsibility for certain aspects of the ethics program. For example, the Ethics Division is assisted by Commerce human resource officials to implement the new requirements of 5 C.F.R. part 2638, Office of Government Ethics and Executive Agency Ethics Program Responsibilities.

Financial Disclosure

Title I of the Ethics in Government Act requires that agencies administer public and confidential financial disclosure systems.⁴ 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.

² OGE notes that during its last review of Commerce's ethics program in 2015, the Assistant General Counsel for Administration served as the DAEO while the Chief of the Ethics Division served as the ADAEO. The DAEO and ADAEO are both career senior executive level employees.

³ At the time of OGE's review, the Ethics Division was in the process of hiring for three vacant ethics staff positions.

⁴ See 5 U.S.C. app.

Financial Disclosure Written Procedures

Each executive branch agency must establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available, financial disclosure reports filed by the agency's officers and employees.⁵ Written procedures are important to help ensure that agency ethics officials consistently and efficiently administer the financial disclosure program.

The Ethics Division has developed written procedures for administering Commerce's public and confidential financial disclosure systems. OGE found these procedures to be in compliance with applicable statutory requirements and OGE guidance.

In addition to written procedures for financial disclosure, OGE also found the Ethics Division to have comprehensive written procedures that reflect the current practices for administering other elements of Commerce's ethics program. For example, the Ethics Division has developed written procedures for administering the department's education and training program and advice and counseling services. In view of the importance of succession planning to help maintain consistency and provide for continuity within an ethics program, OGE views the development of individualized written procedures to be a model agency practice and valuable resource for both employees and ethics officials.

Model Practice

- The Ethics Division has developed comprehensive written procedures that reflect the current practices for administering various elements of Commerce's ethics program.

Notices to the DAEO

The lead human resources official is required to notify the DAEO of all appointments to positions that require incumbents to file public or confidential financial disclosure reports no later than 15 days after the appointment. The lead human resources official must also notify the DAEO of terminations of employees in positions that require incumbents to file public financial disclosure reports no later than 15 days after termination.⁶ This helps to ensure the timely collection of financial disclosure reports.

OGE found there is reasonable assurance that Commerce's human resource officials are promptly notifying the Ethics Division of appointments to and terminations from positions that require incumbents to file a public financial disclosure report. However, OGE could not conclude the same regarding the prompt notification of appointments to positions that require incumbents to file confidential reports, specifically regarding employees who are not new to Commerce, but have been assigned new duties or responsibilities that trigger the confidential filing requirement. As discussed later in the report, late notification from human resources

⁵ See 5 U.S.C. app. § 402(d)(1).

⁶ See 5 C.F.R. § 2638.105(a)(1) and (2).

officials was cited by the Ethics Division as the contributing factor as to why new entrant confidential reports selected within OGE’s sample were filed late.

OGE recommends that the Ethics Division increase its coordination efforts with Commerce human resources officials to help ensure the prompt notification of appointments to positions that require incumbents to file confidential reports. This will require the development of comprehensive written procedures to help ensure that this notification requirement is met.

Recommendations

1. Increase coordination efforts with Commerce human resources officials to help ensure the prompt notification of appointments to positions that require incumbents to file confidential reports.
2. Establish written procedures to help ensure that the government ethics responsibilities for human resource officials are met, in accordance with 5 C.F.R § 2638.105.

Public Financial Disclosure

Within 30 days of assuming a covered public filing position, an individual must file a public financial disclosure report.⁷ The individual must subsequently file an annual report by May 15 each year and a termination report within 30 days of departing the public filing position.⁸ The reports are required to be reviewed for potential conflicts of interest and certified within 60 days of receipt by the ethics office, unless additional information is being sought from the filer or remedial action is being taken.⁹

According to records provided to OGE, in 2017 the Ethics Division was responsible for the review and certification of 1,126 public reports.¹⁰ To evaluate Commerce’s public financial disclosure process, OGE selected a sample of 120 of these reports to examine. Of the 120 public reports examined, 40 were new entrant, 40 were annual, and 40 were termination reports. Table 1 below presents the results of OGE’s examination.

Table 1. Examination of Public Financial Disclosure Reports (2017)

	New Entrant		Annual		Termination		Total
Reports Examined	40		40		40		120
Filed Timely	36	(90%)	39	(98%)	38	(95%)	113 (94%)
Certified Within 60 Days	29	(73%)	27	(68%)	33	(83%)	89 (74%)

⁷ See 5 C.F.R. § 2634.201(b).

⁸ See 5 C.F.R. § 2634.201(a) and (e).

⁹ See 5 C.F.R. § 2634.605.

¹⁰ The Ethics Division uses OGE’s *Integrity* system, a web-based electronic report filing system, to administer the department’s public financial disclosure filing system.

As shown in Table 1 above, of the sample of reports OGE examined, 94% were filed timely; however, only 74 percent were certified within the required 60-day timeframe. For those reports not certified within the required 60-day timeframe, late certification ranged from 76 days to 208 days beyond the applicable deadline.

According to Ethics Division officials, delays in certification in 2017 often resulted from difficulties in obtaining additional information from some filers. Despite the instances of late certification, OGE notes that the Ethics Division appears to conduct timely and substantive intermediate reviews of public reports prior to final certification. Considering the prompt and thorough immediate reviews conducted by Ethics Division officials and that in some cases reviewers were awaiting additional information from filers prior to certification, OGE is not making a formal recommendation to improve certification timeliness. However, OGE reminds the Ethics Division that it remains essential that reports be reviewed and certified within 60 days of being filed to ensure that potential conflicts of interest are promptly identified and remedied.

OGE was satisfied with the quality of the conflict of interest analyses the Ethics Division conducted. Moreover, OGE found evidence that in many instances the analyses resulted in the opportunity for the Ethics Division staff to provide counseling to filers.

While OGE did uncover one minor technical deficiency related to documenting filing extensions within the *Integrity* e-filing system, we have already discussed this with the Ethics Division and do not feel that a formal recommendation addressing the deficiency is necessary.

Confidential Financial Disclosure

Within 30 days of assuming a covered confidential filing position, an individual must file a confidential financial disclosure report.¹¹ The individual must also file an annual report by February 15 each year.¹² The reports are required to be reviewed for potential conflicts of interest and certified within 60 days of receipt by the ethics office, unless additional information is being sought from the filer or remedial action is being taken.¹³

According to records provided to OGE, in 2017, the Ethics Division was responsible for the review and certification of 10,500 confidential reports that were required to be filed department-wide. To evaluate Commerce's confidential financial disclosure process, OGE selected a sample of 82 of these reports to examine. Of the 82 confidential reports examined, 41 were new entrant and 41 were annual reports. Table 2 below presents the results of OGE's examination.

¹¹ See 5 C.F.R. § 2634.903(b).

¹² See 5 C.F.R. § 2634.903(a).

¹³ See 5 C.F.R. § 2634.605.

Table 2. Examination of Confidential Financial Disclosure Reports (2017)

	New Entrant		Annual		Total	
Reports Examined	41		41		82	
Filed Timely	28	(68%)	33	(80%)	61	(74%)
Certified Timely	39	(95%)	37	(90%)	76	(93%)

As indicated in Table 2 above, while 93% of all sampled reports were certified timely, only 68% of the new entrant reports were filed timely.

As noted earlier in the **Notices to the DAEO** subsection of this report, OGE was advised that most of the difficulty in timely identifying new entrant filers arises when current employees are assigned new duties or responsibilities throughout the year that trigger the confidential filing requirement. Although the Ethics Division relies on its human resources officials, in conjunction with supervisors, to assist in identifying employees who are required to file new entrant reports, OGE was advised by Ethics Division officials that they are not always receiving consistent or timely notification from human resources.

Recommendation

3. Implement corrective action to improve the filing timeliness of new entrant confidential reports, particularly with regard to current employees who are assigned new duties or responsibilities throughout the year that trigger the confidential filing requirement.

As with the public reports, OGE was satisfied with the quality of the conflict of interest analyses the Ethics Division conducted on the confidential reports sampled.

Benefits of an Electronic Filing System

The Ethics Division requires all of its confidential financial disclosure filers to file their confidential reports via hardcopy. As previously mentioned, in 2017, Commerce had 10,500 confidential filers department-wide. OGE notes that during the fieldwork, the DAEO indicated an interest in pursuing an electronic filing system (e-filing) for Commerce’s financial disclosure program to help with the administration of the confidential financial disclosure program. OGE supports Commerce in the pursuit of this endeavor. Other executive branch agencies who are using an e-filing system have found great efficiencies in time and resources, and the resources saved have been moved to other essential aspects of financial disclosure—such as conflicts analysis—and other aspects of the overall ethics program.

Education and Training

Each executive branch agency must carry out a government ethics education program to teach employees how to identify government ethics issues and obtain assistance in complying with government ethics laws and regulations. The training program is to include: briefings for certain PAS employees; notices for prospective employees and newly appointed supervisors regarding their ethics-related obligations; initial ethics training for new employees; and annual ethics training for public and confidential financial disclosure report filers and certain other employees.¹⁴ An ethics education program is essential to raising awareness among employees about the ethics laws and rules that apply to them and the availability of agency ethics officials to provide ethics counseling.

Ethics Briefing for Certain Agency Leaders

Senate-confirmed Presidential appointees, except for those in positions identified in 5 C.F.R. § 2634.201(c)(2), must complete an ethics briefing to discuss their immediate ethics obligations no later than 15 days after their appointment, unless the DAEO grants an extension. Any extension of more than 15 days requires the DAEO to make a written determination that extraordinary circumstances make it necessary to provide the briefing at a later date.¹⁵

OGE confirmed that in 2017, the 11 new PAS appointees completed their ethics briefing within 15 days of appointment. The briefings were provided by Ethics Division officials at the same time the PAS appointee received their required initial ethics training.

Notices to Prospective Employees

Written offers of employment for positions covered by the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct) must include: a statement regarding the agency's commitment to government ethics; notice that the individual will be subject to the Standards of Conduct and the criminal conflict of interest statutes; information on how to obtain additional information on applicable ethics requirements; and, where applicable, notice of the time frame for completing initial ethics training and information regarding the filing of new entrant financial disclosure reports.¹⁶

In 2017, the DAEO prepared a memorandum to Commerce human resource officials notifying them of the new requirement to provide the aforementioned ethics information in written offer letters to prospective employees. However, written procedures have not been developed, as required.¹⁷

Recommendation

4. Establish written procedures for issuing notices to prospective employees, as required by 5 C.F.R. § 2638.303(c).

¹⁴ See 5 C.F.R. Part 2638 subpart C.

¹⁵ See 5 C.F.R. § 2638.305.

¹⁶ See 5 C.F.R. § 2638.303.

¹⁷ See 5 C.F.R. § 2638.303(c).

Notices to New Supervisors

An agency must provide each employee upon initial appointment to a supervisory position with certain written materials within one year of the appointment. The written materials must include contact information for the agency's ethics office and the text of 5 C.F.R. § 2638.103; a copy of, a hyperlink to, or the address of a web site containing the Principles of Ethical Conduct; and such other information as the DAEO deems necessary for new supervisors.

At the time of OGE's review, written procedures for providing notices to new supervisors had not been established, as required.¹⁸

Recommendation

5. Establish written procedures for supervisory ethics notices, as required by 5 C.F.R. § 2638.306(d).

Initial Ethics Training

Each new employee of the agency subject to the Standards of Conduct must complete initial ethics training (IET) that meets the requirements of 5 C.F.R. § 2638.304 within three months of appointment, unless excluded by the DAEO. The training must be interactive and focus on government ethics laws and regulations that the DAEO deems appropriate. The training must address: financial conflicts of interest; impartiality; misuse of position; and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and, instructions for contacting the agency's ethics office.¹⁹ Agencies must also establish written procedures for IET that the DAEO annually reviews.

Initial Ethics Training for New Political Appointees

The Ethics Division is responsible for ensuring that all political appointees at Commerce, including PAS, non-career SES, and Schedule C appointees, satisfy the IET requirement. In-person, one-on-one ethics briefings are provided to all new PAS appointees, including the Secretary and Deputy Secretary of Commerce, within the first 15 days of their entering on duty. These briefings include a discussion of the PAS appointee's ethics obligations in order to satisfy the additional training requirement for PAS appointees at 5 C.F.R. § 2638.305. For senior-level positions other than PAS appointees, such as non-career SES and Schedule C appointees, the Ethics Division conducts in-person briefings in a group setting. OGE confirmed that all new political appointees received in-person IET in 2017.

¹⁸ See 5 C.F.R. § 2638.306(d).

¹⁹ See 5 C.F.R. § 2638.304.

In addition to the verbal briefings, all senior-level officials are provided written ethics material to keep. OGE determined that the briefings in combination with the ethics reference material met the IET requirement.

Initial Ethics Training for New Career Employees

In 2017, the Ethics Division exceeded the IET requirement by providing in-person ethics training to incoming Commerce headquarters employees as well as employees who entered on duty at the following Commerce components: the National Institute of Standards Technology, the National Oceanic and Atmospheric Administration, the United States Patent and Trademark Office, and the United States Census Bureau.²⁰ In addition to the in-person briefings, new career employees receive written ethics materials to keep.

New career employees located outside the Washington, DC metropolitan area, or who are otherwise unable to participate in the live training, were required to complete online interactive IET in 2017.²¹

Annual Ethics Training for Public Filers

Generally, live training must be provided each calendar year to each employee whose pay is set at Level I or Level II of the Executive Schedule. Live training must also be provided to other employees who are required to file public financial disclosure reports pursuant to 5 C.F.R. § 2634.201(a) every other year, with interactive training provided in the intervening years. The training presentation, whether live or interactive, must focus on government ethics laws and regulations that the DAEO deems appropriate. The training, whether live or interactive, must address: financial conflicts of interest; impartiality; misuse of position; and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and, instructions for contacting the agency's ethics office.²²

For 2017, the Ethics Division used a combination of in-person and online interactive training to help satisfy the annual training requirement for public filers. OGE evaluated the in-person and online content and determined that it satisfied annual ethics training requirements. In addition, OGE confirmed through an examination of training records that 99% of all public filers were trained by the end of 2017.

²⁰ According to Ethics Division officials, in-person training sessions are conducted weekly at Commerce headquarters and bi-weekly at these components.

²¹ Pursuant to 5 C.F.R. § 2638.304(a)(2), the DAEO excluded field representatives at the U.S. Census Bureau who are non-supervisory employees at and below the GS-8 level from the interactive ethics training requirement.

²² See 5 C.F.R. § 2638.308.

Annual Ethics Training for Confidential Filers and Certain other Employees

Generally, interactive training is required to be provided each calendar year to employees who are required to file a confidential financial disclosure report pursuant to 5 C.F.R. § 2634.904; employees appointed by the President and employees of the Executive Office of the President; contracting officers described in 41 U.S.C. § 2101; and, other employees designated by the head of the agency. The training presentation must focus on government ethics laws and regulations that the DAEO deems appropriate. The training must address: financial conflicts of interest; impartiality; misuse of position; and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and, instructions for contacting the agency's ethics office.²³

As with public filers, the Ethics Division used a combination of in-person and online interactive training to help satisfy the annual training requirement for confidential filers in 2017. OGE evaluated the in-person and online content and determined that it satisfied annual ethics training requirements. In addition, OGE confirmed through an examination of training records that 98% of all confidential filers were trained by the end of 2017.

Additional Ethics Outreach Efforts

OGE found the Ethics Division to be proactive in keeping Commerce employees aware of ethics-related issues throughout the year. In particular, OGE identified two training initiatives during its examination of the education and training program:

- In an effort to remind Commerce employees about specific ethics rules and requirements when they may be particularly relevant, the Ethics Division creates one-page ethics summaries on the most important information about a topic or requirement. These summaries provide significant guidance to employees and are tailored to address specific audiences.
- In 2017, the Ethics Division introduced an ethics newsletter, known as the Ethics Compass, as another way to disseminate ethics information on pertinent ethics topics to Commerce employees. These newsletters are located on the Ethics Division's ethics page located on Commerce's website, which features ethics resource links, information on financial disclosure filing, post-employment information for exiting employees, ethics training, and contact information for the Ethics Division.

Model Practice

- Throughout the year, the Ethics Division provides ethics guidance beyond the required annual ethics training.

²³ See 5 C.F.R. § 2638.307.

Advice and Counseling

The DAEO, acting directly or through other officials, is responsible for providing advice and counseling to prospective and current employees regarding government ethics laws and regulations, and providing former employees with advice and counseling regarding post-employment restrictions applicable to them.²⁴ A robust ethics counseling program is necessary to ensure that employees receive the guidance they need to comply with the ethics rules.

The Ethics Division is responsible for providing advice and counseling to Commerce employees department-wide. In 2017, the Ethics Division formally responded to 3,842 requests for guidance. Employees are encouraged to contact the Ethics Division via all forms of communication, including e-mail, telephone, and in-person visits. However, most inquiries are made via e-mail to the Ethics Division's ethics email box²⁵ or directly to an ethics attorney. Written counseling files are stored on a shared electronic drive to which all ethics officials within the Ethics Division have access.

OGE examined a sample of written advice that had been provided by the Ethics Division to Commerce employees in 2017 and determined the advice to be consistent with applicable laws and regulations. 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 was rendered timely.

Model Practice

- The Ethics Division has developed written procedures for providing ethics advice and counseling, including instructions on assigning, tracking, and responding to requests for ethics advice from agency employees. The procedures also include detailed instructions outlining the criteria for issuing conflict of interest waivers and reviewing travel gifts.

Conflict Remedies

The primary criminal conflict of interest law prohibits an employee from participating in an official capacity in a particular matter in which he or she has a financial interest.²⁶ 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.²⁷ In 2017, Commerce did not issue any such waivers.

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

²⁴ See 5 C.F.R. § 2638.104 (c)(4).

²⁵ The Ethics Division email box is managed by a division staff member who assigns incoming requests on a rotating basis.

²⁶ See 18 U.S.C. § 208.

²⁷ See Executive Order 12674.

specific actions to be taken in order to alleviate the conflict of interest.²⁸ This written notice is commonly known as an “ethics agreement.”

OGE determined that during the period under review, the majority of Commerce PAS appointees complied with their ethics agreements in a timely manner. However, the requisite evidence of action taken by two appointees were not submitted to OGE in a timely manner. OGE also determined that the Ethics Division met the regulatory requirement to maintain ethics agreements with each PAS official’s financial disclosure report.

Enforcement

Executive branch offices are required to notify OGE when they refer a potential violation of a conflict of interest law to the Department of Justice (Justice).²⁹

The Commerce Office of the Inspector General (OIG) is responsible for referring potential violations of the criminal conflict of interest laws to Justice and concurrently notifying OGE of the referral.³⁰ In 2017, two referrals were made by Commerce’s OIG to Justice regarding potential violations of the criminal conflict of interest laws. The Commerce OIG concurrently notified OGE in both instances, using the OGE Form 202.

While Justice declined prosecution regarding both referrals, OGE was advised by the OIG that for one of the referrals made, an adverse finding regarding one of the involved employees related to the Standards of Ethical Conduct. As a result, Part 3 of the OGE Form 202 must now be completed by the DAEO.³¹ While OGE has made several attempts in 2017 to obtain this information, it has not been provided.

Recommendation

6. Complete Part 3 of the OGE Form 202 to explain: whether disciplinary or other corrective action has been initiated or taken against the employee who is subject of the adverse finding; if no disciplinary or corrective action has been initiated or taken, whether an official with authority over the employees activity considered whether such action was warranted; and if not, the reason that the official did not actively consider whether corrective action was warranted.

²⁸ See 5 U.S.C. app. § 110.

²⁹ See 5 C.F.R. § 2638.206.

³⁰ See 5 C.F.R. § 2638.603.

³¹ In November 2016, OGE issued Advisory PA-16-09 containing updated procedures for reporting referrals to Justice. As described in the advisory, the OGE Form 202 has three distinct parts that correspond to each stage of the reporting process. Part 3 is sent to the DAEO for completion once a case investigation is closed and the referring office (usually the Office of Inspector General) has made an adverse finding regarding the employee involved related to the Standards of Conduct or agency supplemental standards of conduct.

Special Government Employees

A special government employee (SGE) is an officer or employee of the executive or legislative branch retained, designated, appointed or employed to perform official duties, full-time or intermittently, for not more than 130 days in any 365-day period.³² SGEs are required to file financial disclosure reports and receive ethics training.

According to Commerce's response to the 2017 Annual Agency Ethics Program Questionnaire, Commerce had 26 federal advisory committees in 2017. At the time of OGE's review, the Ethics Division had determined that 391 Commerce advisory committee members were SGEs.

OGE selected four of these committees for examination: 1) the Patent Public Advisory Committee, 2) the Sea Grant Advisory Committee, 3) the Board of Overseers of the Malcolm Bridge National Quality Award, and 4) the Judges Panel of the Malcolm Bridge National Quality Award. To evaluate the ethics program services rendered to these committees, OGE examined the collection of confidential financial disclosure reports and the provision of annual ethics training for the SGE committee members in 2017. The following is a summary of the findings of OGE's evaluation.

Patent Public Advisory Committee

Nine SGE members served on this committee in 2017. OGE examined all 9 of the confidential reports that were required to be filed by members of this committee 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 2017 and the training met applicable content requirements.

Sea Grant Advisory Committee

Eleven SGE members served on this committee in 2017. OGE examined all 11 confidential reports that were required to be filed by members of this committee 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 2017 and the training met applicable content requirements.

Board of Overseers of the Malcolm Bridge National Quality Award

Eleven SGE members served on this committee in 2017. OGE examined the confidential reports filed by four members in 2017 and determined that although all four reports were filed timely, they were all certified late, in February 2018. Reports for the seven remaining SGE members were not made available to OGE at the time of the review fieldwork. Training records indicated that ethics training was provided to all 11 committee members in 2017.

³² See 18 U.S.C. § 202(a).

Judges Panel of the Malcolm Bridge National Quality Award

Twelve SGE members served on this committee in 2017. OGE examined the confidential reports filed by four members in 2017 and determined that although all four reports were filed timely, they were all certified late. As with the Board of Overseers, all four reports examined by OGE were certified in February 2018. The reports for the eight remaining SGE members were not made available to OGE at the time of the review fieldwork. Training records indicated that ethics training was provided to all committee members in 2017.

Recommendation

7. Ensure that confidential reports filed by advisory committee members serving on the Board of Overseers and the Judges Panelist of the Malcolm Bridge National Quality Award are certified in a timely manner in 2018.

Agency Comments

Thank you for providing a draft of the report for the program review conducted by the Office of Government Ethics that covered the ethics programs and operations of the Department of Commerce for 2017. We appreciate the recognition of several best practices we have implemented and that your report did not find any substantive problems regarding the advice and guidance Commerce ethics officials provided to employees during the period of the review. The report included recommendations in some administrative and technical areas. We accept the recommendations as helpful and will take steps to implement them.