

**United States Office of Government Ethics**

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Compliance Division

**Ethics Program Review**

U.S. Department of the Treasury  
Departmental Offices

The United States Office of Government Ethics (OGE) conducted a review of the U. S. Department of the Treasury (Treasury) Departmental Offices ethics program during May and June 2014. The scope of the review included data covering calendar year 2013.

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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 Treasury’s Departmental Offices, ethics program, OGE examined a variety of documents including, among other things, the 2013 Agency Ethics Program Questionnaire (Questionnaire), written procedures for administering the program, samples of the public and confidential financial disclosure reports filed in 2013, ethics training materials and a sample of the ethics advice and counseling rendered to employees. OGE also met with Treasury headquarters ethics officials to discuss the information gathered, clarify issues identified during the review, and discuss ethics program operations in further detail.

**Program Administration**

Established as an executive department by the First Session of Congress in 1789, Treasury activities include providing advice to the President on the economy and oversight over financial institutions. Treasury is led by a Presidentially appointed and Senate-confirmed (PAS) Secretary and is organized into two major components: the Departmental Offices and the operating bureaus. The Departmental Offices are primarily responsible for policy formulation and overall management of the Department, while the operating bureaus have

specialized responsibilities. Treasury employs nearly 2,000 employees at its Washington, D.C. headquarters and over 100,000 employees Department-wide.

Treasury's ethics program is decentralized. Headquarters ethics officials are primarily responsible for providing ethics services to employees at the Departmental Offices and managing the ethics-related requirements of all PAS officials. The headquarters ethics office also provides overall leadership on Department-wide ethics matters. Ethics officials at the operating bureaus and at Offices of Inspectors General are responsible for the day-to-day operations of their respective ethics programs. OGE's review focused primarily on the administration of the Departmental Offices ethics program by headquarters ethics officials. OGE has recently conducted individual reviews of two other Treasury ethics programs: The Bureau of Engraving and Printing and the Treasury Inspector General for Tax Administration.

The ethics program for the Treasury Departmental Offices is administered within the Office of the General Counsel. The Assistant General Counsel for General Law, Ethics, and Regulation is the Department's Designated Agency Ethics Official (DAEO), while the Deputy Assistant General Counsel for Ethics is the Alternate DAEO (ADAEO). The ethics office consists of three full-time attorneys and one non-attorney Ethics Program Manager who review financial disclosure reports, provide ethics training, and render advice and counseling. The office currently employs one support staff member to assist in the processing of incoming financial disclosure reports and advice requests, and recording the ethics training received by employees, although in calendar year 2013 the office also had the assistance of a part-time ethics program specialist. Additionally, two Treasury attorneys outside the ethics office provide support on financial disclosure report review and ethics advice and counseling. The headquarters ethics office employs written standard operating procedures to manage multiple areas with ethics program implications including procedures for acceptance of foreign gifts, scheduling and providing post-employment briefings, and processing potential PAS nominees.

#### Model Practice

- Treasury's headquarters ethics office employs written standard operating procedures for multiple ethics program areas including, but not limited to, acceptance of foreign gifts, scheduling and providing post-employment briefings and processing potential PAS nominees.

### **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. 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. Treasury's written procedures for its public and confidential financial disclosure systems included within Treasury Directive 61-01 generally meet the requirements of the Ethics in Government Act. However, the Directive does not include guidance on the collection, review, evaluation, and public availability of the periodic transaction reports (OGE Form 278-T) required by the Stop Trading on Congressional Knowledge Act of 2012, Pub. L. No. 112-105 (2012) (STOCK Act).

### Recommendation

- Update Treasury Directive 61-01 to include guidance on the collection, review, evaluation, and public availability of the OGE Form 278-T.

Although Treasury Directive 61-01 does not currently include guidance regarding STOCK Act periodic transaction reports, the headquarters ethics office has issued a variety of guidance on the STOCK Act requirements through other means. The office issued a memorandum to all public filers on enactment of the STOCK Act before the new requirements took effect and issues monthly STOCK Act reminders by email to all public filers. In addition, written instructions to public filers contain information on STOCK Act transaction reporting and a section on the Departmental Offices ethics intranet site is devoted to explaining STOCK Act requirements and providing the necessary forms. Finally, the STOCK Act has been repeatedly featured in the headquarters ethics office's training and newsletters.

## **Public Financial Disclosure**

The Treasury headquarters ethics office oversees 294 Departmental Office public financial disclosure filers, including 42 PAS officials. The ethics office tracks these employees utilizing a master list that is updated when the Treasury White House Liaison or the Departmental Offices' Office of Human Resources (HR) provides new information on incoming and departing public filers. In addition, the Enterprise Data Management Office provides a bi-weekly report of accessions and separations of public filers. The master filer list is also reconciled annually against an HR report of all senior Departmental Offices employees. Incoming career Senior Executive Service or equivalent employees and all political appointees undergo a "pre-vetting" process to resolve any financial conflicts prior to entering their positions while prospective PAS officials are processed in coordination with the White House and OGE.

Upon entrance on duty, if not sooner, or departure, an employee is notified by the ethics office of the requirement to file a financial disclosure report and is provided a public financial disclosure form to complete. The completed financial disclosure report is collected and reviewed by the ethics office.

During the start of the annual filing season, the ethics office sends reminders to the annual filers at the Departmental Offices, along with blank electronic forms, filing instructions, and contact information for ethics officials. The ethics office collects and reviews the reports submitted by Departmental Office employees, Treasury Bureau heads, Bureau Chief Counsel and all PAS officials.

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

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

	<b>New Entrant</b>	<b>Annual</b>	<b>Termination</b>	<b>Total</b>
<b>Reports Sampled</b>	40	40	40	120
<b>Filed Timely</b>	39 (98%)	40 (100%)	40 (100%)	119 (99%)
<b>Certified Timely</b>	35 (88%)	32 (80%)	38 (95%)	105 (88%)

While the results of OGE’s examination indicate that public reports were generally filed, reviewed, and certified in a timely manner, OGE noted that 12% of the public reports were certified in excess of 60 days after receipt by the headquarters ethics office. Ethics officials stated that initial reviews of public reports, except in exceptional circumstances, are completed within 30 days and that the ethics office attempts to ensure accurate substantive and technical disclosure prior to final certification of a report. In addition, ethics officials stated that in the majority of instances where a report was identified by OGE as not being certified in a timely manner, it was because the filer did not promptly provide technical information requested as a result of ethics officials’ initial review.

Ethics officials also cited some atypical staffing challenges, including detail of a senior ethics attorney to the White House, and competing office priorities in 2013 that were encountered by the ethics office as contributing to the lack of timely certification of some of the annual reports. These challenges have since been addressed.

OGE also reviewed the sample of annual reports to identify transactions that would have required the filing of periodic transaction reports (OGE Form 278-T). OGE identified 10 transactions that occurred between July 2012 and December 2012 involving four filers where an OGE Form 278-T was potentially required. OGE confirmed that 278-Ts were collected for all 10 transactions.

Model Practice

- Incoming career Senior Executive Service or equivalent employees and all political appointees undergo a “pre-vetting” process to resolve any financial conflicts prior to entering their positions.

## Confidential Financial Disclosure

Treasury's headquarters ethics office oversees 869 Departmental Office confidential filers. The processes for identifying and tracking confidential report-filing employees are similar to those utilized for non-PAS public report filers where the Treasury Departmental Offices' Office of Human Resources and senior administrative contacts within each Departmental Office division update the ethics office of new and departing employees. According to the DAEO, prospective hires in certain offices where the risk of conflicts is greatest must file a preliminary disclosure report as part of a pre-appointment vetting process. For incoming employees who are not subject to pre-appointment vetting, the supervisor makes coverage determinations in accordance with guidance from the ethics office. The ethics office then notifies new employees of the filing requirement upon entrance on duty. The ethics office also updates its master list of confidential report filers by requiring supervisors at the Departmental Offices to annually verify whether the filing designations for positions under their oversight are accurate.

Similar to the process for the public system, the headquarters ethics office reminds Departmental Office annual filers of their requirement to file and provides the filers blank electronic financial disclosure forms, filing instructions, and ethics official contact information. The filers' supervisors collect, review, and certify the reports. The ethics office provides regular training to supervisors on designating confidential filers and reviewing confidential financial disclosure reports.

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

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

	New Entrant	Annual	Total
<b>450 Reports Sampled</b>	30	30	60
<b>Filed Timely</b>	21 (70%)	27 (90%)	48 (80%)
<b>Certified Timely</b>	29 (97%)	27 (90%)	56 (93%)

OGE determined that confidential reports were generally filed and certified in a timely manner and properly reviewed. However, improvements in filing timeliness are needed for new entrant reports. According to the DAEO, the ethics office relies on confidential filers to submit their reports to their supervisors and the ethics office is only able to confirm that a report has been submitted when it is received from the supervisor. The current electronic database does not enable the ethics office to track when a report is submitted to the supervisor. However, the system is currently being upgraded to improve the tracking of new entrant confidential reports.

Ethics officials added that some filers appeared to not be taking the filing requirement seriously. In an effort to collect confidential reports from delinquent filers, the ethics office routinely alerts filers' supervisors and senior officials if it does not timely receive reports from supervisors.

OGE recommends that Treasury ethics officials reassess new entrant filing timeliness subsequent to upgrading the database and continue its engagement with senior officials to consider administrative remedies to encourage timely filing. OGE will conduct its own assessment of new entrant report filing timeliness as part of its standard follow-up review process.

#### Recommendation

- Reassess new entrant filing timeliness after upgrading the tracking database and re-engage with senior officials to consider administrative remedies to encourage timely filing.

## **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.

Treasury's initial ethics orientation content for Departmental Office employees covers the Standards, the Principles, and the Department's supplemental regulations and includes ethics official contact information. There is also a review of the criminal conflict of interest statutes and the Hatch Act. PAS officials receive initial ethics orientation through one-on-one sessions while non-PAS senior employees receive verbal training that is offered in group sessions. Headquarters ethics officials utilize a checklist-type job aid to ensure they cover all the required topics during the verbal briefings. Non-senior new employees complete their initial ethics orientation online.

Headquarters ethics officials also take advantage of the new employee orientation process to identify potential ethics issues among new employees who are entering into confidential financial disclosure positions. New employees arriving immediately from private sector positions in which they had clients (e.g., law firms) are asked to identify themselves at new employee orientation so that ethics officials can immediately touch base with them individually on potential covered relationship concerns.

In its 2013 Agency Ethics Program Questionnaire, Treasury indicated that all new employees received initial ethics orientation, as required. OGE reviewed the receipt of initial ethics orientation by the 70 new entrant public and confidential Departmental Office filers sampled in the financial disclosure section above. OGE confirmed that all but two new employees (97 percent) in the sample received ethics orientation within 90 days of beginning work for the agency.

## **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 include a brief description of the agency's annual training and include estimates of the number of employees who will receive verbal and written training. Treasury's annual ethics training plan for 2013 complies with the regulatory requirements of 5 C.F.R § 2638.706. The plan includes a description of how the ethics office planned to deliver the training to covered employees, the number of public and non-public filers who will receive annual training, and the number of filers who will receive written training.

## **Annual Ethics Training**

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

Treasury's annual training season for Departmental Office employees generally begins in May, with PAS officials receiving one-on-one training. The ethics office maintains a tracking spreadsheet to ensure that all PAS have received their annual ethics training. The non-PAS public report filers receive email notifications of the requirement to take in-person training and the available training sessions. Completed training by these senior officials is tracked through sign-in sheets. Confidential filers complete an online training presentation, and ethics officials are available for consultation. The online training system provides verification of whether the confidential filers completed training.

The annual ethics training material includes reviews of the Standards, the Department's supplemental regulations, the conflict of interest statutes, and ethics official contact information. While the printed material provided to OGE for review did not appear to include a review of the Principles, ethics officials informed us that the Principles are covered during the introduction portion of the in-person annual training sessions for public filers. However, confidential filers who complete online training would not have received a review of the Principles. OGE therefore recommends that Treasury ensure coverage of the Principles in its annual training material for confidential filers.

OGE noted that Treasury headquarters ethics officials have developed and provide several education and training materials and resources that go beyond the regulatory requirements. These materials include the Ethics Handbook that is provided to every employee and is accessible electronically on Treasury's intranet, quarterly Ethics Newsletters that are distributed to all employees, global ethics-related emails that are disseminated at regular intervals throughout the year, periodic Q&A briefing sessions on special topics open to all employees, and training for supervisors responsible for reviewing OGE Form 450 confidential reports. Moreover, ethics officials maintain an ethics website on the Departmental Offices

intranet that provides access to guidance on numerous topics, policies and procedures; ethics regulations; important memoranda and forms; and ethics officials' contact information.

To assess whether covered employees received annual ethics training in 2013 as required, OGE reviewed the sign-in sheets and online system verifications, and followed up with ethics officials to confirm all annual public and confidential filers sampled in the previous section had completed training. OGE confirmed that all required employees received annual training.

#### Model Practices

- New employees arriving immediately from private sector positions in which they had clients (e.g., law firms) are asked to identify themselves at new employee orientation so that ethics officials can immediately touch base with them individually on potential covered relationship concerns.
- Treasury's headquarters ethics office's outreach extends beyond the initial and annual training requirements through the provision of a variety of education and training materials and resources.

#### Recommendation

- Ensure coverage of the Principles in annual ethics training provided to confidential filers.

### **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 headquarters ethics office attorneys and the Ethics Program Manager provide advice and counseling to Departmental Office employees. Ethics counseling may be requested via email, in-person, or by phone. Email requests are submitted to an ethics mailbox where questions are evenly distributed and answered on a rotational basis by either the ethics office attorneys or the Ethics Program Manager. Requests for guidance may also be submitted directly to ethics officials. A secondary review of counseling provided is done on an as-needed basis, such as when counseling is provided to a very senior employee or addresses a complex matter. Important ethics counseling is memorialized in a database on a shared drive, to which all ethics officials have access. The ethics office also maintains emails and paper records of certain instances of counseling provided.

Ethics officials stated that all departing employees receive written guidance on post-employment conflicts when notice of their departure is received by the ethics office and in-

person post-employment briefings are provided upon request. Moreover, in-person exit briefings are required and documented for all public filers.

The headquarters ethics office responded to approximately 1,560 requests (30 per week average) for advice and counseling in 2013. OGE's review of 20 samples of advice and counseling indicated that the guidance was provided in a timely manner and was supported by detailed citations to statutory and regulatory criteria. The sample covered a broad range of ethics topics including financial conflicts of interest, impartiality, post-employment, gifts, financial disclosure, 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 published in title 5 of the Code of Federal Regulations. Treasury's supplemental regulation requires that all Treasury employees receive prior written approval before engaging in any outside employment or business activities, unless the employing bureau issues instructions exempting an activity or class of activities from this requirement. The Legal Division's attorneys are prohibited from engaging in the outside practice of law that would require the attorney to: (1) take a position that is or appears to be in conflict with the interests of the Department of the Treasury; or (2) interpret any statute, regulation or rule administered or issued by the Department.

OGE's examination of the samples of public and confidential financial disclosure reports determined that the reported outside activities either received appropriate approvals or were exempt from the approval requirement, based on internal Departmental guidance. Additionally, OGE did not find any instances of the outside practice of law prohibited by Treasury's supplemental regulations or activities that appeared to be in conflict with the interests of the Department.

### **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 prohibition in individual cases. Under Executive order 12674, agencies must consult with OGE, where practicable, prior to issuing a waiver under section 208. In 2013, Treasury issued six waivers under the provisions of 18 U.S.C. § 208(b)(1) and consulted with OGE on each of the waivers.

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. In addition, OGE regulations at 5 C.F.R. part 2634 provide guidance on compliance deadlines for taking actions to alleviate conflicts of interest and the notification requirements for affirming compliance. Treasury has a structured system for processing PAS nominees, where each

nominee is assigned to an attorney within the headquarters ethics office with oversight by the DAEO and ADAEO. The attorney assists in the processing of the nominee's financial disclosure report and tracking actions related to compliance with his or her ethics agreement. OGE confirmed that Treasury'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.

## **Enforcement**

Treasury reported no disciplinary actions 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 no disciplinary actions based wholly or in part upon violations of the Standards (5 C.F.R. part 2635).

Treasury'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 headquarters ethics office is responsible for notifying OGE of any referrals made to Justice. Treasury did not have any referrals to Justice in 2013.

## **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.

In 2013, the headquarters ethics office supported 3 of the then 14 Federal Advisory Committee Act committees under Treasury. Only one of the three committees included a member who was designated as an SGE. That member was later re-designated as a representative in 2013 and was not required to file a financial disclosure report.

The headquarters ethics office also oversees the ethics responsibilities of the Internal Revenue Service Oversight Board where two members were designated as SGEs. OGE confirmed the timely filing and review of these officials' financial disclosure reports and also their completion of annual ethics training during 2013.

## **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 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. OGE examined both semiannual reports submitted by Treasury during 2013 and determined that both reports were submitted in a timely manner.