



Ethics Program Review

U.S. Department of Energy

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The United States Office of Government Ethics (OGE) conducted a review of the United States Department of Energy’s (DOE) ethics program between February and July 2024.

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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 examined the administration of DOE’s ethics program by the Office of General Counsel (OGC). This administration includes managing the public and confidential financial disclosure systems, providing ethics training and counseling, ensuring required notices are sent to prospective employees and new supervisors, resolving conflicts of interest, enforcing ethics-related restrictions, and providing ethics services to special government employees (SGE).

Methodology: OGE examined a variety of documents provided by DOE ethics officials, including the department’s response to OGE’s 2023 Annual Agency Ethics Program Questionnaire, written procedures for administering the program, samples of public and confidential financial disclosure reports filed in 2023, ethics training materials provided to staff in 2023, and documents related to SGE financial disclosure and training from 2023. In addition, OGE contacted agency ethics officials to clarify the information gathered and to follow up on issues identified during the review.

¹ See 5 U.S.C. § 13122 and 5 C.F.R. part 2638.

Agency Background

DOE was established in 1977 by the Department of Energy Organization Act. The Secretary of Energy is a Presidentially appointed, Senate-confirmed (PAS) official who is responsible for advancing the department's efforts to build a clean energy future and for overseeing DOE's core missions. According to DOE's website, these missions include, "promoting American leadership in scientific discovery, maintaining the nuclear deterrent and reducing nuclear danger, and remediating environmental harms caused by legacy defense programs."

DOE consists of over 17,000 employees across 17 program offices, 20 staff offices, 21 labs and technology centers, 4 power marketing administrations, 13 operations offices, the Energy Information Administration, and the National Nuclear Security Administration.

Program Administration

DOE's ethics program is managed by the OGC at the department's headquarters in Washington, DC. The Deputy General Counsel for General Law serves as the Designated Agency Ethics Official (DAEO). The Assistant General Counsel for Ethics and Personnel Law serves as the Alternate DAEO (ADAEO). The DAEO and ADAEO administer the ethics program at headquarters with the support of eleven other ethics officials.

With a few exceptions, the ethics office at DOE headquarters provides ethics services to DOE employees stationed in the Washington, DC commuting area and to all employees of the Office of Legacy Management, the Office of Scientific and Technical Information, regardless of duty station, and certain employees at the Nevada Field Office. The ethics office at DOE headquarters also administers the public financial disclosure program across the entire department and the confidential system for SGE FACA committee members regardless of duty station. In addition, this office provides ethics briefings and ethics training to all PAS officials.

DOE also employs 77 additional ethics officials who provide ethics services to most DOE employees stationed outside of the Washington, DC commuting area. These services include managing the confidential financial disclosure program, providing ethics training and counseling, and issuing required ethics notices to new employees and supervisors.

To help ensure all DOE ethics programs operate effectively and consistently, the DAEO holds quarterly meetings with all DOE ethics officials department wide. In addition, the ethics office at DOE headquarters plans to resume site visits in 2025 to review these separate ethics programs, which stopped due to COVID-19 pandemic.

Financial Disclosure

Title I of the Ethics in Government Act requires that agencies administer public and confidential financial disclosure systems. Financial disclosure serves to prevent, identify, and resolve conflicts of interest by providing for a systematic review of the financial interests of

officers and employees. The financial disclosure process also offers an opportunity for ethics officials to provide ethics-related counseling to report filers.

To evaluate DOE's financial disclosure systems, OGE examined the required written procedures for administering the systems and sample sets of public and confidential financial disclosure reports that were required to be filed by DOE employees covered by the ethics office at DOE headquarters.

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.² OGE examined DOE's written procedures and determined that they met applicable requirements.

Notices to 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.³ 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.⁴ These notifications help to ensure the timely collection of financial disclosure reports.

DOE has a system to ensure the DAEO receives notification of all appointments and terminations involving public financial disclosure filers. Before a candidate is appointed to a covered public filing position, the Chief Human Capital Officer (CHCO) or relevant field office sends the ethics office at headquarters a conflict-of-interest review request that includes the candidate's information, the proposed position, and any relevant documents. OGC then conducts a conflict-of-interest review before granting clearance for the candidate's appointment. Every two weeks, CHCO further provides the ethics office with a list of all new employees, which includes appointments to public financial disclosure filing positions. This list serves as both an additional means of notice to the DAEO and ensures accuracy between CHCO or the relevant field office and the ethics office at headquarters. In addition, OGC maintains an Ethics Dashboard that tracks compliance with all financial disclosure and ethics training requirements department wide. The ethics office also receives a bi-monthly list of all separations involving public financial disclosure filers.

OGE reviewed DOE's written procedures covering notices to the DAEO, samples of conflicts of interest review reports and bi-monthly separation lists and determined that DOE's notification system is sufficient.

² See 5 U.S.C. § 13122.

³ See 5 C.F.R. § 2638.105(a)(1).

⁴ See 5 C.F.R. § 2638.105(a)(2).

Public Financial Disclosure

Within 30 days of assuming a covered public filing position, an individual must file a public financial disclosure report.⁵ 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.⁶ 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.⁷

To evaluate the administration of DOE's public financial disclosure system, OGE examined a sample of 32 new entrant, 36 annual, and 32 termination reports that were required to be filed in 2023. Table 1 below presents the results of OGE's examination.

Table 1. OGE Examination of Public Financial Disclosure Reports

	New Entrant		Annual		Termination		Total	
Reports Examined	32		36		32		100	
Filed Timely	26	(81%)	36	(100%)	28	(88%)	90	(90%)
Reviewed Timely	28	(88%)	30	(83%)	27	(84%)	85	(85%)
Certified Within 60 Days	28	(88%)	30	(83%)	27	(84%)	85	(85%)

OGE's examination of the sampled reports indicated that they were generally filed, reviewed, and certified timely.

Confidential Financial Disclosure

Within 30 days of assuming a covered confidential filing position, an individual must file a confidential financial disclosure report.⁸ The individual must also subsequently file an annual report by February 15 each year.⁹ 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.¹⁰

To evaluate the administration of DOE's confidential financial disclosure system, OGE examined a sample of 31 new entrant and 35 annual reports that were required to be filed with the ethics office in 2023. Table 2 below presents the results of OGE's examination.

⁵ See 5 C.F.R. § 2634.201(b).

⁶ See 5 CFR § 2634.201(a) and (e).

⁷ See 5 CFR § 2634.605.

⁸ See 5 C.F.R. § 2634.903(b).

⁹ See 5 C.F.R. § 2634.903(a).

¹⁰ See 5 C.F.R. § 2634.605.

Table 2. OGE Examination of Confidential Financial Disclosure Reports

	New Entrant		Annual		Total	
Reports Examined	31		35		66	
Filed Timely	30	(97%)	31	(89%)	61	(92%)
Reviewed Timely	27	(87%)	34	(97%)	61	(92%)
Certified Within 60 Days	27	(87%)	34	(97%)	61	(92%)

OGE’s examination of the sampled reports indicated that they were generally filed, reviewed, and certified timely.

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 required to include: briefings for certain presidentially appointed, Senate-confirmed (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.¹¹ 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

Certain PAS officials 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.¹²

The DOE ethics office provides a customized one-on-one ethics briefing tailored to each new PAS official, which also serves as initial ethics training. According to DOE’s written procedures, each briefing is scheduled for one hour, but must continue until all required information is covered. As part of the briefing, the PAS official is provided written materials that include the Standards of Conduct, DOE’s supplemental standards of conduct regulations, and instructions for contacting DOE ethics officials. According to DOE ethics office officials, there were three PAS officials who required an ethics briefing in 2023. OGE’s review of relevant documentation found that DOE provided the PAS officials with briefings, as required.

¹¹ See 5 C.F.R. Part 2638 Subpart C.

¹² See 5 C.F.R. § 2638.305.

Notices to Prospective Employees

Written offers of employment for positions covered by the 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.¹³ Agencies must also establish written procedures for issuing notices to prospective employees, which the DAEO annually reviews.

OGE examined several samples of notices sent to prospective employees in 2023 and determined that most relevant content requirements were met. However, only 70% of the notices included the required language covering the need to complete initial ethics training within three months.

Recommendation

1. Ensure that notices to prospective employees include notice that initial ethics training must be completed within three months.

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 appointment. The written materials must include contact information for the agency's ethics office and the text of 5 CFR § 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.¹⁴ Agencies must also establish written procedures for issuing notices to new supervisors that the DAEO annually reviews.

OGE examined several samples of notices sent to new supervisors in 2023 and determined that all relevant content requirements were met.

Initial Ethics Training

Each new employee subject to the Standards of Conduct must complete initial ethics training 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

¹³ See 5 C.F.R. § 2638.303.

¹⁴ See 5 C.F.R. § 2638.306.

the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and, instructions for contacting the agency's ethics office.¹⁵

As noted above, DOE provides a customized one-on-one initial ethics training session to all PAS officials. In addition, all political appointees receive live initial ethics training based on a standard training course. All other employees take an interactive training course online through the Learning Nucleus portal. OGE reviewed the training content and materials for each training format and found that they met applicable requirements.

OGE also reviewed training records for a sample of new entrant public and confidential filers and determined that 99% of these employees received initial ethics training in 2023 but only 25% received the training within three months of appointment, as required. According to DOE ethics officials, DOE experienced technical issues with the training portal in 2023 that resulted in training delays. These issues have been resolved.

Recommendation

2. Ensure all new employees receive initial ethics training within three months of appointment.

Annual Ethics Training for Public Filers

Generally, an agency must provide live training each calendar year to each employee whose pay is set at Level I or Level II of the Executive Schedule. The agency must also provide live training 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 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.¹⁶

In 2023, DOE conducted live annual ethics training for PAS officials and all other public financial disclosure filers. OGE reviewed the training content and materials for each training format and found that they met applicable requirements.

OGE reviewed training records for all PAS officials along with a sample of public financial disclosure filers and found that 100% of PAS officials and 99% of public financial disclosure filers received annual ethics training in 2023.

¹⁵ See 5 C.F.R. § 2638.304.

¹⁶ See 5 C.F.R. § 2638.308.

Annual Ethics Training for Confidential Filers

Generally, interactive training is required to be provided each calendar year to employees who are required to file a confidential financial disclosure report;¹⁷ 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 and 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.¹⁸

In 2023, DOE made available interactive annual ethics training for all confidential filers through an online course on the Learning Nucleus portal. OGE reviewed the training content and materials for this training format and found that they met applicable requirements.

OGE reviewed training records for a sample of confidential filers and found that 97% received annual ethics training in 2023.

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.¹⁹ A robust ethics counseling program is necessary to ensure that employees receive the guidance they need to comply with the ethics rules.

OGE reviewed a sample of the ethics-related counseling that DOE ethics office officials provided in 2023. The counseling addressed a variety of issues including gifts, outside activities and events, post-government employment, impartiality, 208 waivers, and outside employment. OGE's review found the counseling to be consistent with applicable laws and regulations.

Conflict Remedies

The criminal conflict of interest law prohibits an employee from participating in an official capacity in a particular matter in which they have a financial interest.²⁰ 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.²¹

¹⁷ See 5 C.F.R. § 2634.904.

¹⁸ See 5 C.F.R. § 2638.307.

¹⁹ See 5 C.F.R. § 2638.104 (c)(4).

²⁰ See 18 U.S.C. § 208.

²¹ See Executive Order 12674.

OGE examined the waivers issued by DOE and found that DOE consulted OGE on each of the six waivers it issued in 2023.

Additionally, the Ethics in Government Act expressly recognizes the need for PAS nominees to address actual or apparent conflicts of interest by requiring written notice of the specific actions to be taken in order to alleviate the conflict of interest,²² commonly known as an “ethics agreement.” In 2023, three PAS officials were required to submit to OGE their Certification of Ethics Agreement Compliance forms, certifying they had complied with all elements of their ethics agreement. OGE received certification of ethics agreement compliance from two officials by the required deadlines. OGE received the third certification seven days after the deadline.

Enforcement

Executive branch offices are required to concurrently notify OGE when they refer a potential violation of a conflict-of-interest law to the Department of Justice (DOJ).²³ OGE uses the OGE Form 202 (Notification of Conflict-of-Interest Referral) to collect these notifications and information regarding the disposition of the matter.

In 2023, DOE made six referrals to DOJ and notified OGE of each referral as required.

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. SGEs are required to file financial disclosure reports and receive ethics training.²⁴

DOE charts and maintains advisory committees under the Federal Advisory Committee Act (FACA). Eighteen of these committees had members and were active in 2023. OGE reviewed a sample of three FACA committees to assess whether DOE was in compliance with requirements relevant to SGEs. The committees selected for review were the Advanced Scientific Computing Advisory Committee (ASCAC), Basic Energy Sciences Advisory Committee (BSEAC), and Nuclear Energy Advisory Committee (NEAC).

Financial Disclosure

Advanced Scientific Computing Advisory Committee

ASCAC included 25 SGE members in 2023. The SGE members file an OGE-approved alternative confidential financial disclosure report. OGE examined all 25 reports filed by SGE members in 2023 and determined that 84% (21 out of 25) were filed timely but only 80% (20 out of 25) were certified timely. Four reports provided did not include the filer’s signature along with

²² See 5 U.S.C. § 13111.

²³ See 5 C.F.R. § 2638.206.

²⁴ See 18 U.S.C. § 202(a).

the associated submission date. Without the filer's signature and date of submission, these reports are considered incomplete.

Recommendation

3. Collect the filer signatures for four reports provided and include a separate note with each report that explains the signatures and dates were collected after the original submission date. These notes should also include the original submission date. In addition, ensure that all future SGE reports contain the required information.
4. Ensure that all SGE FACA committee reports are certified timely

Basic Energy Sciences Advisory Committee

BESAC included 32 SGE members in 2023. The SGE members file an OGE-approved alternative confidential financial disclosure report. OGE examined all 32 reports filed by SGE members in 2023 and determined that 100% (32 out of 32) were filed timely and, similar to the ASCAC reports, only 81% (26 out of 32) were certified timely.

Nuclear Energy Advisory Committee

NEAC included 11 SGE members in 2023. The SGE members file an OGE-approved alternative confidential financial disclosure report. OGE examined all 11 reports filed by SGE members in 2023 and determined that 100% (11 out of 11) were filed timely and 100% (11 out of 11) were certified timely.

Ethics Training

DOE provides live initial ethics training to all SGEs serving on FACA committees.

Advanced Scientific Computing Advisory Committee

ASCAC included 25 SGE members in 2023. OGE reviewed training records and determined that 100% of SGEs on this committee received initial ethics training in 2023 and that 100% received their ethics training before the first committee meeting of the year as required.

Basic Energy Sciences Advisory Committee

BESAC included 32 SGE members in 2023. OGE reviewed training records and determined that 100% of SGEs on this committee received initial ethics training in 2023 and that 100% received their ethics training before the first committee meeting of the year as required.

Nuclear Energy Advisory Committee

NEAC included 11 SGE members in 2023. OGE reviewed training records and determined that 100% of SGEs on this committee received initial ethics training in 2023 but

none/0% received their ethics training before the first committee meeting of the year as required. NEAC's first meeting in 2023 was held on January 30, but the SGEs did not receive initial ethics training until February 2023.

Recommendation

5. Ensure that NEAC's SGE members receive initial ethics training before the first meeting of the year.

Agency Comments
