



# Ethics Program Review

## Commodity Futures Trading Commission

Report No. 20-46  
September 24, 2020



The United States Office of Government Ethics (OGE) conducted a review of the Commodity Futures Trading Commission (CFTC) ethics program from April through July 2020. The review covered program activities for calendar year 2019. The following summarizes the results of that review.

## Contents

Objectives, Scope and Methodology.....	2
Program Administration.....	3
Financial Disclosure.....	3
Education and Training.....	6
Ethics Counseling.....	8
Agency-Specific Ethics Rules.....	9
Conflict Remedies.....	9
Enforcement.....	10
Special Government Employees.....	10
Agency Comments.....	11

## 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.<sup>1</sup> 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 all elements of the ethics program administered by the Ethics Program Office (EPO) within CFTC. These elements include program administration, financial disclosure, education and training, ethics counseling, agency-specific ethics rules, conflict remedies, enforcement, and special government employees. OGE also examined the oversight and guidance EPO provides for CFTC’s ethics program agency-wide.

**Methodology:** OGE examined a variety of documents provided by CFTC ethics officials, including CFTC’s response to OGE’s Annual Agency Ethics Program Questionnaire for 2019, written procedures for administering the ethics program, samples of public and confidential financial disclosure reports filed in 2019, ethics training materials, and a sample of the ethics counseling provided to employees. In addition, OGE met with agency ethics officials to clarify the information gathered, follow up on issues identified during the review, and discuss ethics program operations in further detail.

<sup>1</sup> See 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

## **Program Administration**

CFTC's supplemental standards of conduct regulations specify that the agency's General Counsel, or his or her designee, will serve as the agency's DAEO.<sup>2</sup> The current General Counsel was appointed CFTC's DAEO under that authority and, as DAEO, provides oversight of CFTC's centralized ethics program. The DAEO also directly manages some of the ethics program's more complex issues and is the primary point of contact between the ethics program and the CFTC's other senior leaders.

The Deputy General Counsel (General Law) served as the Alternate DAEO (ADAEO) until June 2020, when a Supervisory Ethics Attorney was appointed to that position. EPO ethics officials advised OGE that they intend to amend their supplemental regulations to specify that the Deputy General Counsel (General Law) will also serve as CFTC's DAEO.

EPO is located in the General Law Group, Office of General Counsel. There are currently four full-time and one part-time ethics officials, aside from the DAEO. The ADAEO, two Deputy Ethics Counselors (DECs), and an Ethics Program Paralegal Specialist are full-time ethics officials and a Deputy General Counsel serves part-time. The ADAEO supervises the program, while the DECs and Deputy General Counsel are responsible for ethics training, counseling, and financial disclosure review. Among other tasks, the Ethics Program Paralegal Specialist tracks annual training completion and performs first-line review of financial disclosures.

CFTC has regional offices in New York, Chicago, and Kansas City. Each has a Regional Ethics Counselor (REC) to whom employees may report ethical issues. The REC would then refer the issue to EPO.

## **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.

### **Financial Disclosure Written Procedures**

Each executive branch agency must establish written procedures for collecting, reviewing, evaluating, and (where applicable), making available to the public financial disclosure reports filed by the agency's officers and employees.<sup>3</sup> OGE examined CFTC's written procedures and determined that they meet applicable requirements.

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<sup>2</sup> See 17 C.F.R. § 140.735-8.

<sup>3</sup> See 5 U.S.C. app. § 402(d)(1).

## 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. 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.<sup>4</sup> This helps to ensure the timely collection of financial disclosure reports.

EPO receives bi-weekly reports from CFTC's human resources (HR) office. Based on EPO's written procedures, an examination of samples of the bi-weekly notifications, and the timely collection of both new entrant and termination financial disclosure reports, OGE determined that ethics officials are provided the notifications as required.

## Public Financial Disclosure

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

To evaluate the administration of CFTC's public financial disclosure system, OGE examined a sample of 25 new entrant, 45 annual, and 21 termination public reports that were required to be filed in 2019. The sample was drawn from consolidated master list of CFTC employees who file public financial disclosure reports. Table 1 below presents the results of OGE's examination.

**Table 1. OGE's Examination of CFTC Public Financial Disclosure Reports**

	New Entrant		Annual		Termination		Total	
<b>Reports Examined</b>	22		45		21		88	
<b>Filed Timely</b>	20	(91%)	45	(100%)	20	(95)	85	(97%)
<b>Reviewed Timely</b>	17	(77%)	20	(44%)	21	(100%)	58	(66%)
<b>Certified Timely</b>	17	(77%)	19	(42%)	21	(100%)	57	(65%)

As indicated in Table 1, OGE found that less than half of the annual reports examined were reviewed and certified timely. EPOs official stated that, in calendar year 2019, there were

<sup>4</sup> See 5 C.F.R. § 2638.105(a)(1) and (2).

<sup>5</sup> See 5 C.F.R. § 2634.201(b).

<sup>6</sup> See 5 C.F.R. § 2634.201(a) and (e).

<sup>7</sup> See 5 C.F.R. § 2634.605.

only two DEC's supporting the Agency DAEO and ADAEO. Prior to February 2019, two other attorneys on the ethics team had only performed first-line financial disclosure review. During 2019, these other attorneys developed their relative ethics experience.

EPO officials added that CFTC is in the process of revising their supplemental standards of conduct regulations to exempt from conflict-of-interest review mutual funds and other kinds of managed funds that would have previously required such a review. They believe this revision will greatly improve the timeliness of their financial disclosure review and certification.

### Recommendation

1. Timely review and certify public financial disclosure reports.

## **Confidential Financial Disclosure**

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

To evaluate the administration of CFTC's confidential financial disclosure system, OGE examined a sample of 9 new entrant and 20 annual confidential reports that were required to be filed in 2019. The sample was drawn from consolidated master list of CFTC employees who file confidential financial disclosure reports. Table 2 below presents the results of OGE's examination.

**Table 2. OGE's Examination of CFTC Confidential Financial Disclosure Reports**

	New Entrant		Annual		Total	
<b>Reports Examined</b>	9		20		29	
<b>Filed Timely</b>	8	(89%)	18	(90%)	26	(90%)
<b>Certified Timely</b>	9	(100%)	20	(100%)	29	(100%)

Based on the examination of the sample of confidential reports, CFTC's written procedures, and discussions with EPO ethics officials, OGE concluded that the CFTC's confidential financial disclosure system is in substantial compliance with applicable requirements.

<sup>8</sup> See 5 C.F.R. § 2634.903(b).

<sup>9</sup> See 5 C.F.R. § 2634.903(a).

<sup>10</sup> See 5 C.F.R. § 2634.605.

## 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.<sup>11</sup> 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 Senate-confirmed Presidential appointees 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.<sup>12</sup>

CFTC gives ethics briefings to PAS officials within two days of their appointment. OGE determined that the one CFTC PAS official appointed in 2019 completed the required briefing the same day the official was appointed. The DAEO and a DEC addressed all required topics during the briefing, including the recusal requirements outlined in the official's ethics agreement.

### **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.<sup>13</sup>

Based on a review of the procedures established by EPO to provide notices to all prospective CFTC employees and an examination of a sample of notices that were sent to prospective employees in 2019, OGE determined that there was reasonable assurance that prospective employees received the required ethics-related information along with their written offers of employment.

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<sup>11</sup> See 5 C.F.R. Part 2638 Subpart C.

<sup>12</sup> See 5 C.F.R. § 2638.305.

<sup>13</sup> See 5 C.F.R. § 2638.303.

## **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 the regulation specifying the government ethics responsibilities of supervisors; 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.<sup>14</sup>

Based on a review of the procedures established by EPO to provide notices to all new CFTC supervisors and an examination of a sample of notices that were sent to new supervisors in 2019, OGE determined that there was reasonable assurance that new supervisors received the required information during the period under review.

## **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.<sup>15</sup>

EPO provided live training to all its new employees in 2019. The majority of training was conducted in-person, while training for employees in the regional offices was provided over the phone or by video teleconference. In addition, employees were provided with instructions for accessing the required written materials on CFTC's ethics website.

OGE reviewed the presentation EPO used to provide initial ethics training in 2019 and determined that the presentation met applicable content and format requirements. OGE also reviewed training records and determined that EPO officials provided the training to each new employee within three months of the employees' appointment, as required.

## **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 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

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<sup>14</sup> See 5 C.F.R. § 2638.306.

<sup>15</sup> See 5 C.F.R. § 2638.304.

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.<sup>16</sup>

EPO's principal method of delivering annual ethics training to public filers in 2019 was through its online interactive training presentation, although some public filers received live, in-person training. Moreover, EPO tracks the training of PAS officials to ensure they receive live training at least once every two years.

OGE reviewed the materials EPO used to provide annual ethics training for public filers in 2019 and determined that the materials met applicable content and format requirements. OGE also examined CFTC's training records and determined that 100% of public filers received annual training.

### **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, employees appointed by the President and employees of the Executive Office of the President; contracting officers; 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.<sup>17</sup>

CFTC's confidential filers were trained through the same online interactive training presentation used to provide annual training to public filers in 2019. OGE determined that this training met applicable content requirements and that 100% of required confidential filers received the training.

### **Ethics 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-

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<sup>16</sup> See 5 C.F.R. § 2638.308.

<sup>17</sup> See 5 C.F.R. § 2638.307.



employment restrictions applicable to them.<sup>18</sup> 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 EPO ethics officials provided to CFTC employees throughout the agency. The counseling addressed financial conflicts of interest, impartiality, CFTC's supplemental standards of conduct regulation, fundraising, misuse of position, gifts from outside sources, and post-employment restrictions. OGE found the counseling to be consistent with applicable laws and regulations.

### **Agency-Specific Ethics Rules**

An agency may modify or supplement the Standards of Conduct, with the concurrence of OGE, to meet the particular needs of that agency.<sup>19</sup> A supplemental standards of conduct regulation is issued jointly by the agency and OGE and is published in title 5 of the Code of Federal Regulations.

The CFTC supplemental regulations require employees to obtain prior approval, before engaging in outside employment, from his or her division or office head and the Executive Director, who may seek the concurrence of EPO.<sup>20</sup> For those employees who wish to engage in outside employment, requests for approval must be submitted using CFTC's Request for Approval of Outside Employment form.

OGE identified outside employment activities listed on several employees' financial disclosure reports and requested the associated written prior approval documentation. CFTC provided the requested documentation in each instance. OGE examined the documentation provided and determined that approval was granted in accordance with the CFTC supplemental regulations.

### **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.<sup>21</sup> 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.<sup>22</sup> CFTC did not issue any such waivers in 2019.

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.<sup>23</sup> This written notice is commonly known as an "ethics agreement." One PAS official at CFTC was confirmed in 2019.

<sup>18</sup> See 5 C.F.R. § 2638.104 (c)(4).

<sup>19</sup> See Executive Order 12674 and 5 C.F.R. § 2635.105.

<sup>20</sup> See 5 CFR § 5101.103(c)

<sup>21</sup> See 18 U.S.C. § 208.

<sup>22</sup> See Executive Order 12674.

<sup>23</sup> See 5 U.S.C. app. § 110.

The official provided timely certification of compliance with all terms of his ethics agreement to OGE.

## 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 (DOJ).<sup>24</sup> CFTC did not refer any potential violations to DOJ in 2019. Furthermore, CFTC reported no disciplinary actions based wholly or in part upon violations of the criminal conflict of interest statutes and no disciplinary actions based wholly or in part upon violations of the Standards of Conduct in 2019.

## 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.<sup>25</sup>

CFTC has four advisory committees established under the Federal Advisory Committee Act (FACA). These committees are the Agricultural Advisory Committee, Global Markets Advisory Committee, Market Risk Advisory Committee, and Technology Advisory Committee. A total of 13 SGEs serving as members of these committees and an additional 13 working as subject-matter experts and consultants were required to file confidential financial disclosure reports in 2019.

OGE evaluated the processes and procedures for the collection and review of confidential financial disclosure reports and the provision of ethics training for all SGEs that served at CFTC during calendar year 2019. The following is a summary of OGE's findings.

### Financial Disclosure

OGE examined 25 of the 26 reports filed by SGEs in 2019.<sup>26</sup> The results of this examination are summarized in Table 3 below.

**Table 3. OGE's Examination of CFTC SGE Confidential Financial Disclosure Reports**

Reports Examined	25	
Filed Timely	22	(88%)
Reviewed Timely	25	(100%)
Certified Timely	25	(100%)

<sup>24</sup> See 5 C.F.R. § 2638.206.

<sup>25</sup> See 18 U.S.C. § 202(a).

<sup>26</sup> The remaining report was inaccessible due to the COVID-19 pandemic-related office closures.

As indicated in Table 3 above, the vast majority of the reports OGE examined were filed timely and all reports were reviewed and certified timely.

### Ethics Training

In 2019, EPO provided live ethics training to all SGEs remotely. While 26 SGEs were required to file confidential reports, only 22 were required to be trained in 2019.<sup>27</sup> OGE verified that the ethics training provided by EPO met applicable requirements and was provided to 21 of the 22 covered SGEs in 2019.

### **Agency Comments**

The CFTC concurs with OGE's assessment on the need to conduct timely review and certification of public financial disclosure reports. The Commission has already undertaken a number of steps during the calendar year 2020 filing season to expedite the timely review and certification of reports, including hiring a new Supervisor Ethics Attorney and streamlining the review process to minimize delays in review. As a result of these changes, the CFTC has already improved timely certification of public financial disclosure reports, and we will continue to improve our process to improve timely reviews and certification in the future.

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<sup>27</sup> Two SGEs came onboard late enough in 2019 that their three-month deadline to receive IET extended into 2020 and thus they were not required to receive IET in 2019. Additionally, two SGEs terminated employment before the December 31 deadline to receive training.