



Ethics Program Review

U.S. Department of State

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The United States Office of Government Ethics (OGE) conducted a review of the United States Department of State (State) ethics program between December 2023 and May 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 State’s ethics program by the Office of Ethics and Financial Disclosure. 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 (SGEs).

Methodology: OGE conducted the review of State’s ethics program from December 2023 to May 2024. As part of its review, OGE examined a variety of documents provided by State 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, and documents related to SGE financial disclosure and training. Additionally, OGE contacted agency ethics officials to clarify the information gathered and follow up on issues identified during the review.

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

Agency Background

The Department of State is the lead U.S. foreign affairs agency within the executive branch and the lead institution for the conduct of American diplomacy. Established by Congress in 1789 and headquartered in Washington, DC, State is the oldest agency of the U.S. government. The Secretary of State is the President's principal foreign policy advisor and implements the President's foreign policy worldwide through the department and its over 26,000 employees.

Program Administration

State's ethics program is managed by the Office of Ethics and Financial Disclosure (L/EFD) at its Washington, DC headquarters. The Principal Deputy Legal Adviser serves as State's Designated Agency Ethics Official (DAEO). An Assistant Legal Adviser manages the day-to-day operations of L/EFD and serves as the Alternate DAEO (ADAEO). L/EFD is responsible for providing ethics counseling, conducting training, certifying all financial disclosure reports, and performing other duties necessary to administer State's ethics program.

L/EFD is comprised of 18 employees. In addition to the ADAEO, it employs eight attorney advisers, a financial disclosure program manager, five ethics program specialists, an office management specialist, an ethics program assistant, and one contract administrative assistant.

Additional Support

State's decentralized organizational structure requires many management functions to be handled at the bureau or post level. Thus, L/EFD relies on other portions of the department to provide critical support to the ethics program. Accordingly, the Bureau of Global Talent Management (GTM) and human resources officers in bureaus and at posts abroad have important responsibilities with regard to the department's financial disclosure and ethics training program. Additionally, executive directors at the bureaus and overseas management counselors or officers have significant ethics responsibilities. Their duties include approving attendance at widely attended gatherings, providing information to employees on gift rules, consulting with L/EFD attorneys on non-routine and complex ethics matters, identifying employees who need to file financial disclosure reports, conducting an initial review of financial disclosure reports, and ensuring that filers are notified of their obligation to complete annual ethics training.

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 the State's financial disclosure systems, OGE examined the required written procedures for administering the systems, including the required written notices, and a sample of public and confidential financial disclosure reports that were required to be filed by State employees.

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 State's written procedures and determined that they generally met applicable requirements. However, the written procedures do not specifically address the requirement to certify reports within 60 days of receipt by the ethics office, unless additional information is being sought from the filer or remedial action is being taken. Ethics officials indicated that the written procedures are primarily intended to provide guidance to management officials about the department's financial disclosure program. They are not intended to capture all of the requirements set forth in 5 CFR part 2634. Moreover, ethics officials stated that everyone in the ethics office is keenly aware of the need to certify reports within 60 days when possible; it is a regular point of emphasis in L/EFD. Nonetheless, in response to OGE's finding, L/EFD has amended the procedures to address the 60-day certification requirement.

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.

State has established written procedures to ensure that L/EFD is notified of new personnel appointments and departures. The procedures for new appointments require that the applicable post or bureau management official or human resources official request that L/EFD perform a pre-employment ethics review ("pre-clearance"). The purpose of the review is to identify and resolve conflicts of interest prior to employment and allows most new individuals who will be joining the department in a filing position to complete their new entrant financial disclosure reports before entering on duty. L/EFD also receives notification for departing employees from the appropriate management official for each bureau or post. Finally, GTM provides L/EFD with access to the Knowledge Center Personnel Report (the department's HR database) for both appointments and separations.

OGE reviewed State's written procedures and a sample of the notifications of promotions and clearance requests for new public filers. Additionally, OGE reviewed samples of

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).

notifications of separations and a copy of the separations report obtained through the Knowledge Center. OGE determined there is reasonable assurance that L/EFD can promptly identify appointments to and terminations from public and confidential filing positions, as appropriate.

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 State’s public financial disclosure system, OGE examined a sample of 50 new entrant, 65 annual, and 65 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	50	65	65	180
Filed Timely	45 (90%)	58 (89%)	60 (92%)	163 (91%)
Reviewed Timely	44 (88%)	56 (86%)	59 (91%)	159 (88%)
Certified Within 60 Days	44 (88%)	56 (86%)	59 (91%)	159 (88%)

OGE’s examination of the sampled reports indicated that they were generally filed, reviewed, and certified timely. However, OGE identified three instances where departing public filers filed an annual report instead of a termination report as required. OGE also notes that 2 of these 3 reports were filed 30 days or more before the filers’ termination dates. If these reports were intended to be termination reports, they were filed too early. An employee in a covered position may file a termination report no more than 15 days prior to their termination date, provided that they agree to update the report if there are changes between the filing date and the termination date. The agreement must be noted on the face of the report. This is to ensure that any financial interests acquired between the date of filing and the date of termination are reported and ethics officials can determine if the interests created an apparent or actual conflict of interest. According to ethics officials, all three filers confirmed that there were no changes needed to their reports after their departure. OGE reminds State to assign the correct type of public report—new entrant, annual, termination, or combination—because the type of report being filed determines the reporting period covered by the report.

⁵ See 5 C.F.R. § 2634.201(b).

⁶ See 5 CFR § 2634.201(a) and (e).

⁷ See 5 CFR § 2634.605.

OGE’s examination of the sampled reports also identified eight instances where late filing fees could have been assessed because of delayed filing. The fee was assessed in five instances and fee waivers were granted in the remaining three instances.

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 State’s confidential financial disclosure system, OGE examined a sample of 47 new entrant and 50 annual reports that were required to be filed in 2023. Table 2 below presents the results of OGE’s examination.

Table 2. OGE Examination of Confidential Financial Disclosure Reports

	New Entrant		Annual		Total	
Reports Examined	47		50		97	
Filed Timely	45	(96%)	45	(90%)	90	(93%)
Reviewed Timely	47	(100%)	50	(100%)	97	(100%)
Certified Within 60 Days	44	(94%)	45	(90%)	89	(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.

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.

¹¹ See 5 C.F.R. Part 2638 Subpart C.

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

According to State officials, an ethics attorney meets individually with State PAS appointees within 15 days of appointment and discusses the ethics rules, as well as the additional required material. OGE confirmed that all covered PAS employees who were confirmed in 2023 received the ethics briefing within 15 days of appointment.

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.

State has established written procedures to notify new employees of their ethics responsibilities in their written offers of employment. OGE examined samples of the notices State sent to prospective employees in 2023 and determined that they comply with relevant requirements.

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.

State has established written procedures to provide notices to new supervisors. OGE reviewed a sample of notices that were sent to new supervisors in 2023 and determined that they comply with relevant requirements.

¹² See 5 C.F.R. § 2638.305.

¹³ See 5 C.F.R. § 2638.303.

¹⁴ See 5 C.F.R. § 2638.306.

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 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

According to State officials, new employees were required to take the online module "*Ethics Orientation*" offered through the Foreign Service Institute (FSI). In addition, L/EFD provides live ethics orientation to Foreign Service and Civil Service Officers through the FSI's Orientation Programs and through GTM's virtual on-boarding program.

OGE reviewed the *Ethics Orientation* online module State used to provide initial ethics training in 2023 and determined that it met applicable content requirements. OGE also reviewed training records and determined that State provided the training to 90% of new employees. Additionally, 82% of the new employees received IET within three months, as required.

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

OGE reviewed the materials that State used to provide annual ethics training in 2023 and determined that the materials met applicable content requirements. The Secretary of State received a personalized in-person briefing from ethics officials. State conducted its annual training to its other public filing officials, including its PAS officials, through its online interactive training module. State's officials indicated that the ethics office provides live, in-person training for domestic PAS officials in alternating calendar years. (State provided such training in 2022 and expects to provide live annual ethics training to public filers in 2024.)

¹⁵ See 5 C.F.R. § 2638.304.

¹⁶ See 5 C.F.R. § 2638.308.

State reported in its 2023 Agency Ethics Program Questionnaire that it provided annual ethics training to approximately 85% of its public filers in 2023. OGE reviewed training records to determine whether State provided annual ethics training to those employees who's public (and confidential) annual financial disclosure reports OGE examined. All PAS officials and 91% of the required non-PAS public filers in the sample of employees that OGE reviewed received annual ethics training in 2023. This contrasts with the findings of OGE's most recent previous report (Report No. 20-34) of its review of State's ethics program in 2019. That review found that in 2018 only 70% of required PAS employees received training, while 59% of required non-PAS public filers received training.

Ethics officials indicated that over the last two years they have made a concerted effort to remind filers to take annual training in their communications during the annual financial disclosure seasons. Additionally, filers were reminded through email notifications and department notices to complete the annual training. Finally, in December 2023, ethics officials contacted each bureau's Executive Director and asked them to reach out to filers who had not yet taken annual training and encourage them to do so before the end of the year. OGE recognizes the improvement in annual training completion rate and encourages State to continue its efforts to improve annual training completion rates as required to all public filers.

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

State's confidential filing employees were trained through its online interactive training module. As previously stated, OGE's review of State's annual training material determined that they met applicable content requirements. State reported that it provided annual ethics training to approximately 82% of its confidential filers in 2023 in its Annual Agency Ethics Program Questionnaire. During this review, OGE determined that 86% of the confidential filers in the sample of filers that OGE examined received annual ethics training in 2023. This is also a significant improvement to the annual ethics training completion rate for confidential filers that OGE found in its last review. Then, only 48% of confidential filers required to receive the training completed it.

¹⁷ See 5 C.F.R. § 2634.904.

¹⁸ 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.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 L/EFD officials provided to State employees. The counseling addressed a variety of issues including gift acceptance, widely attended gatherings, letters of recommendation, 18 USC. Sections 203 & 205, impartiality, and post-employment restrictions. 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 he or she has 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 State consulted OGE on each of the four 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." All 34 State PAS officials who were confirmed in 2023 notified OGE timely that they complied with the terms of their ethics agreements.

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)²³ and concurrently notify OGE of any such referrals. OGE has long used the OGE Form 202 (Notification of Conflict-of-Interest Referral) to collect these notifications and information regarding the disposition of the matter.

State made three referrals to DOJ in 2023 but did not concurrently notify OGE. Ethics officials explained that two of the referrals to DOJ were for failure to file public financial disclosure reports and their understanding was that the notification requirement to OGE did not include referrals of this kind. However, OGE does expect agencies to notify OGE when the DOJ

¹⁹ See 5 C.F.R. § 2638.104 (c)(4).

²⁰ See 18 U.S.C. § 208.

²¹ See Executive Order 12674.

²² See 5 U.S.C. § 13111.

²³ See 5 C.F.R. § 2638.206.

referral is because of a failure to file a financial disclosure report, and L/EFD has now provided the appropriate notification to OGE.

Additionally, OGE found that State had reported an incorrect number of referrals to DOJ on its 2023 Annual Agency Ethics Program Questionnaire. OGE reviewers met with L/EFD and OIG officials to clarify the requirements for the OGE notification and the process of reporting such referrals on the Questionnaire. Subsequently, State OIG provided L/EFD with notification of one referral made to DOJ in 2023 and L/EFD amended State's 2023 Questionnaire response based on this information.

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

State charters and maintains advisory committees under the Federal Advisory Committee Act (FACA). Seven of these committees were active in 2023 and had SGE members. OGE selected the Cultural Property Advisory Committee (CPAC) and a sample of the financial disclosure reports and training records of nine SGEs not affiliated with any advisory committee for review to evaluate the ethics program services rendered to SGEs.

Financial Disclosure

Table 3 below presents the results of OGE's examination of the SGE financial disclosure reports.

Table 3. OGE Examination of SGE Financial Disclosure Reports

	CPAC ²⁵	Non-Affiliated	Total
Reports Selected for Examination	11	9	20
Filed Timely	5 (45%)	8 (89%)	13 (65%)
Reviewed Timely	10 (91%)	9 (100%)	19 (95%)
Certified Within 60 Days	10 (91%)	9 (100%)	19 (95%)

²⁴See 18 U.S.C. § 202(a).

²⁵ The CPAC met three times in 2023: in January, June, and September. CPAC SGEs file new entrant confidential financial disclosure reports in conjunction with their initial appointment to the department, prior to their service on the committee.

OGE found that only 5 of the 11 members of the CPAC appeared to have submitted timely confidential financial disclosure reports. L/EFD officials explained that the new entrant reports for sitting committee members were assigned in September and due in October for the 2023 filing year. Additionally, L/EFD officials indicated that three of the SGEs who appeared to have filed late confidential reports had filed their new entrant reports in the fall of 2022, prior to any committee service. Subsequently, they filed their reports in the fall of 2023. Moreover, there were no committee meetings in October, November, or December 2023.

However, one member appointed in September 2022 attended the first two meetings in 2023 without having filed his new entrant report. The member filed his new entrant report in August 2023; however, the report was incomplete and therefore could not be certified at that time. The ADAEO contacted the managing bureau to document the member's lack of compliance with his ethics obligations. L/EFD officials reminded the bureau that the financial disclosure report and ethics training acknowledgment are both essential for appointees to submit to CPAC prior to their onboarding and any participation as a member of the committee.

OGE also found that eight of nine required filings by the SGEs not on any advisory committees were timely. OGE also found that 19 of the 20 reports (95%) were certified timely.

Ethics Training

State provided ethics training to all CPAC members and the unaffiliated SGEs in 2023. OGE determined that this training met applicable format and content requirements.

Agency Comments

The U.S. Department of State appreciates the time and care that the Office of Government Ethics put into this review of the State Department's ethics program, as well as the open communication throughout the review process. This review provides an opportunity to take stock, measure progress, and refocus our efforts to continually improve the agency's ethics program.

The State Department remains committed to maintaining a strong culture of ethics and an agency ethics program that meets regulatory requirements and effectively supports State Department employees in complying with their ethics obligations. We are proud of the progress reflected in this program review. This is a testament to the commitment and hard work of the talented staff in the Ethics and Financial Disclosure Office. The ethics program also continues to rely on teamwork with management officers in bureaus and posts around the world, as well as the Department's Global Talent Management bureau and other key partners. We also appreciate the example and support provided by the State Department's leadership.

There is also still room for improvement. There are always challenges—limited resources, a decentralized global presence, multiple personnel systems, a rotational assignment system for the Foreign Service, and a significant number of non-career appointees and PAS officials. Nonetheless, with this program review and data from our annual questionnaires as a guide, we

will deepen our efforts to further boost efficiency and effectiveness within the State Department's ethics program. In that regard, we appreciate OGE's commitment to supporting agency ethics programs and look forward to continued collaboration in the future.