UNITED STATES OFFICE OF
GOVERNMENT ETHICS

Ethics Program Review

U.S. Department of Health and Human Services
Office of the Secretary

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The United States Office of Government Ethics (OGE) conducted a review of the United States Department of Health and Human Services (HHS) Office of the Secretary ethics program from March through June 2024. The review covered program activities for calendar year 2023. The following summarizes the results of that review.

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Objectives, Scope and Methodology

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

Scope: OGE focused its review on the administration of the ethics program within the HHS Office of the Secretary[2] and on the ethics functions performed by the Office of General Counsel (OGC) Ethics Division, which is responsible for overseeing the HHS ethics program department wide. Specifically, this review examined program administration, financial disclosure, education and training, ethics counseling, agency-specific ethics rules on outside employment, conflict remedies, enforcement, and special government employees.

[1] *See* 5 U.S.C. app. § 13122 and 5 C.F.R. part 2638.

[2] For purposes of this report, the Office of the Secretary refers to the Immediate Office of the Secretary, the Office of the Assistant Secretary for Financial Resources, the Departmental Appeals Board, the Office of the Inspector General, the Office of Medicare Hearings and Appeals, the Office of the National Coordinator for Health Information Technology, the HHS Chief Information Officer, the Office of the Assistant Secretary of Health, the Office of Civil Rights, the Office of Global Affairs, the Office of the Assistant Secretary for Planning and Evaluation, the Office of the Assistant Secretary for Administration, the Office of the Assistant Secretary for Legislation, the Office of the Assistant Secretary for Public Affairs, the Office of Intergovernmental and External Affairs, the Office of Health Reform, and the Office of the General Counsel.

Methodology: OGE examined a variety of documents provided by the Ethics Division, including the HHS response to OGE's 2023 Annual Agency Ethics Program Questionnaire (Annual Questionnaire), written procedures for administering the ethics program, samples of public and confidential financial disclosure reports filed in 2023, ethics training materials, and a sample of the ethics counseling provided to employees. In addition, OGE clarified with Ethics Division ethics officials the information gathered and followed up on issues identified during the review.

Agency Background

HHS is a federal Cabinet-level department whose mission is to enhance the health and well-being of all Americans. It has 12 operating divisions, including 9 agencies in the U.S. Public Health Service and 3 human service agencies. The Secretary, HHS's chief policy officer and general manager, administers and oversees the department, its programs, and its activities. The Secretary is supported by the Deputy Secretary and a number of Assistant Secretaries.

Program Administration

The Ethics Division directly administers the HHS ethics program. The HHS Designated Agency Ethics Official (DAEO) leads the Ethics Division and serves as the Associate General Counsel for Ethics. The Alternate Designated Agency Ethics Official (ADAEO) is the primary deputy to the DAEO and assists the DAEO in the administration of the ethics program. The Ethics Division staff currently consists of 37 full-time ethics officials. Since 2020, the last time OGE issued a report on the HHS ethics program, five additional attorney positions were added, including two new positions in the National Institutes of Health Satellite Office, a new position in the Food and Drug Administration Satellite Office, a new Program Counsel position, and a Program Counsel position converted from a management analyst position. According to HHS officials, these additions were in response to the establishment of new HHS components and programs and increased work originating from other HHS divisions.

Deputy Ethics Counselors

The administration of the HHS ethics program department-wide is decentralized. Therefore, in addition to the staff in the Ethics Division, responsibility for providing ethics services to the employees of most of the HHS operating and staff divisions rests with a network of Deputy Ethics Counselors (DECs) located within each HHS operating and staff division. These DECs are generally senior-level management officials appointed as ethics officials by the DAEO, in consultation with the head of each operating or staff division.[3] Employees serving as Ethics Coordinators assist each DEC in carrying out their ethics-related duties. The Ethics Division conducts training for DECs and Ethics Coordinators and maintains a procedural manual, referred to as the DEC Green Book, which details DEC ethics functions, responsibilities, and authorities.

[3] OGE notes that in addition to establishing policies and procedures for the overall administration of the HHS ethics program, the Ethics Division also serves as a DEC to employees in several divisions within the Office of the Secretary.

Senior Leadership Support

According to Ethics Division officials, shortly after the current Secretary was appointed in 2021, the Secretary demonstrated his support for ethics by issuing a statement on the importance of a strong ethical culture and making ethics a priority when discharging duties at the department. Ethics officials include the Secretary's statement at the beginning of live political appointee initial ethics training and annual ethics training. The statement is also included in the career employee online annual ethics training module.

Model Practices

OGE identifies model practices and shares them when it appears they may benefit other executive branch agency ethics programs. OGE considers the following to be model practices implemented at HHS.

- The Ethics Division's longstanding practice of maintaining a detailed written guide (DEC Green Book) for HHS ethics officials to assist them in ensuring consistency and continuity within HHS's decentralized ethics program.
- The Secretary of HHS visibly demonstrating support for the department's ethics program by stressing the importance of a strong ethical cultures a making ethics a priority.

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 financial disclosure systems at the Office of the Secretary, OGE evaluated the required written procedures for administering the systems and a sample of public and confidential financial disclosure reports required to be filed by Office of the Secretary employees. OGE also evaluated whether the Ethics Division has established procedures to ensure that human resources officials promptly notify the ethics office of new and departing employees and notify new employees and supervisors of their ethics responsibilities.

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.[4] OGE examined the HHS written procedures, which are posted on the HHS intranet, and determined that the procedures met applicable requirements.

[4] *See* 5 U.S.C. § 13122.

Notices to the DAEO

Agency human resources offices play a vital role in ensuring the effective administration of the ethics program. Without necessary information about agency employees, ethics officials cannot successfully carry out their important work. Among other things, 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.[5] This helps to ensure the timely collection of financial disclosure reports.

Public Financial Disclosure Filers

To ensure the timely collection of public financial disclosure reports, Ethics Division officials stated that they work in conjunction with the HHS Office of the White House Liaison (WHL) in conducting a pre-appointment clearance review for incoming political appointees in order to identify and, as appropriate, resolve any potential conflicts of interest. Additionally, WHL timely notifies the Ethics Division of the departure dates of political appointees.

The Ethics Division also conducts a pre-appointment review of all newly selected or hired career SES and equivalent appointees. An Office of Human Resources (OHR) specialist notifies the Ethics Division of all appointments and terminations of career SES employees.

Confidential Financial Disclosure Filers

Some divisions of HHS Office of the Secretary have human resources officials who are also ethics officials supporting their division's ethics programs. These officials process incoming appointees for their division and ensure covered new employees complete the confidential filing requirement. Other divisions' ethics officials have established relationships with OHR and work with OHR officials to identify employees entering confidential filing positions and collect their new entrant reports.

Based on its evaluation of the Ethics Division's procedures, OGE determined there is reasonable assurance that employees appointed to or departing from Office of the Secretary positions requiring the filing of public or confidential financial disclosure reports are timely identified.

Public Financial Disclosure

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

[5] *See* 5 C.F.R. § 2638.105(a)(1) and (2).
[6] *See* 5 C.F.R. § 2634.201(b).

position.[7] 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.[8]

To evaluate the administration of the Office of the Secretary's public financial disclosure system, OGE examined a sample of 118 public reports that were required to be filed by Office of the Secretary employees in 2023. This sample included 38 new entrant, 40 annual, and 40 termination reports. Table 1 below presents the results of OGE's examination.

Table 1. OGE's Examination of HHS Office of the Secretary Public Financial Disclosure Reports

	New Entrant	Annual	Termination	Total
Reports Examined	38	40	40	118
Filed Timely	38 (100%)	40 (100%)	39 (98%)	117 (99%)
Reviewed Timely	38 (100%)	40 (100%)	39 (98%)	117 (99%)
Certified within 60 Days	32 (84%)	39 (98%)	39 (98%)	110 (93%)

As noted in Table 1, OGE's examination found that the vast majority of the reports were 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.[9] The individual must also subsequently file an annual report by February 15 each year.[10] The reports are required to be reviewed for potential conflicts of interest and certified within 60 days of receipt by the ethics office. Final certification may, of necessity, occur later, when additional information is being sought from the filer or remedial action is being taken.[11]

To evaluate the administration of the Office of the Secretary's confidential financial disclosure system, OGE examined a sample of 73 confidential reports that were to be filed by Office of the Secretary employees in 2023. This sample consisted of 26 new entrant and 47 annual confidential reports. Table 2 below presents the results of OGE's examination.

Table 2. OGE's Examination of Office of the Secretary Confidential Financial Disclosure Reports

[7] *See* 5 C.F.R. § 2634.201(a) and (e).
[8] *See* 5 C.F.R. § 2634.605.
[9] *See* 5 C.F.R. § 2634.903(b).
[10] *See* 5 C.F.R. § 2634.903(a).
[11] *See* 5 C.F.R. § 2634.605.

	New Entrant		Annual		Total	
Reports Examined	26		47		73	
Filed Timely	18	(69%)	46	(98%)	64	(88%)
Reviewed Timely	22	(85%)	46	(98%)	68	(93%)
Certified within 60 Days	21	(81%)	46	(98%)	67	(92%)

As indicated in Table 2, OGE found that only 18 (69%) of the 26 new entrant reports it examined were filed within 30 days. Ethics Division officials explained that this late filing was due to a failure to assign the reports to the new employees. Upon recognizing this failure, the Ethics Division immediately took pro-active steps and adopted new procedures to avoid such an oversight in the future. OGE will conduct a follow-up review in 2025 to assess the effectiveness of these new procedures.

Recommendation

1. Ensure that new entrant confidential financial disclosure reports are filed 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 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.[12] 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.[13]

According to Ethics Division officials, there were no new PAS employees appointed to the Office of the Secretary in 2023. However, the Ethics Division provided in-person live briefings to the three PAS employees appointed in 2023 to other HHS offices within 15 days of

[12] *See* 5 C.F.R. Part 2638 Subpart C.
[13] *See* 5 C.F.R. § 2638.305.

their appointment. OGE reviewed the material covered in the briefings and determined that it met the applicable content requirements.

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.[14]

OGE examined the procedures established by the Ethics Division to provide notices to prospective employees and a sample of notices that were sent in 2023. Based on this examination, OGE determined that there was reasonable assurance that prospective Office of the Secretary employees receive the required information along with their written offers of employment.

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;[15] 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.[16]

OGE examined the procedures established by the Ethics Division to provide notices to new supervisors and a sample of notices that were sent in 2023. Based on this examination, OGE determined that there was reasonable assurance that new Office of the Secretary supervisors timely receive the required information upon their appointment to a supervisory position.

Initial Ethics Training

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

[14] *See* 5 C.F.R. § 2638.303.
[15] *See* 5 C.F.R. § 2638.103.
[16] *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.[17]

Initial ethics training at HHS is completed and tracked using the online IET training module located on the HHS Learning Management System (LMS)[18]. OGE determined that of the 465 new Office of the Secretary employees required to receive IET in 2023, 357 or 77% received the training within the three months of their appointment, as required. According to Ethics Division officials, technological issues with accessing the LMS made it difficult for some employees to complete IET within the three-month time requirement. They also conceded that their administrative oversight in tracking completion of IET for new employees was carried out infrequently.

Upon recognizing an issue with IET, the Ethics Division took pro-active steps and adopted new procedures to avoid this oversight in the future. OGE will conduct a follow-up review in 2025 to assess the effectiveness of these new procedures.

Recommendation

2. Ensure all new employees are provided initial ethics training within three months of appointment as required by 5 C.F.R. § 2638.304(b).

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 every other year to other employees who are required to file public financial disclosure reports, 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 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.[19]

According to Ethics Division officials, the HHS Secretary and Deputy Secretary, as the two Level I and Level II Executive Schedule employees, received live training in 2023. The live training consisted of discussions on the topics of recusals, conflicts of interests, impartiality, misuse of positions, and gifts. All the other political appointees viewed a PowerPoint presentation to meet the annual ethics training requirement in 2023. OGE's review of the training

[17] *See* 5 C.F.R. § 2638.304.
[18] The HHS Learning Portal-Learning Management System is a software application for the administration, documentation, tracking, and reporting of training programs, classroom and online events e-learning programs, and training content.
[19] *See* 5 C.F.R. § 2638.308.

materials used to train all political appointees in 2023 found that they met the content requirements.

To satisfy the training requirement for non-political public filers within the Office of the Secretary in 2023, the Ethics Division presented these employees live training or required them to view an interactive, computer-based ethics training presentation that was made available to them on HHS' Learning Portal. OGE examined the training materials for both types of training and determined they met applicable content requirements. OGE also examined HHS's 2023 training completion records and confirmed that all non-political public filers whose reports OGE examined during its evaluation of the public financial disclosure system received the required annual ethics training in 2023.

Annual Ethics Training for Confidential Filers and Certain other Employees

Generally, interactive training is required to be provided each calendar year to employees who are required to file a confidential financial disclosure report pursuant to 5 C.F.R. § 2634.904; employees appointed by the President and employees of the Executive Office of the President; contracting officers; 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.[20]

According to Ethics Division officials, confidential filers receive live annual ethics training or the interactive annual training similar to the public filers using the HHS' Learning Portal. OGE determined that the live annual training presentation and the interactive training met applicable content requirements. Moreover, OGE evaluated HHS's 2023 training completion records and was able to verify that each employee in the Office of the Secretary whose confidential financial disclosure report OGE examined as part of this review received the required training.

Additional Ethics Outreach Efforts

In addition to conducting the requisite initial and annual ethics trainings for covered employees, the Ethics Division offers continuous learning opportunities throughout the year for all HHS supervisors and ethics officials, including those within the Office of the Secretary. Some of these training opportunities in 2023 included:

- Ethics basics for new supervisors: a 90-minute training on issues that arise in a supervisory context on the topics of conflicts of interest, misuse of positions, gifts between employees, and impartiality.

[20] *See* 5 C.F.R. § 2638.307.

- Training for newly appointed DECs and ECs who are responsible for administration of ethics programs including the certifying of public and confidential reports in the HHS operating and staff divisions.
- The Ethics Basic Series: a training series for new ethics officials and DECs and ECs or as a refresher on pertinent ethics topics.

Model Practice

- The Ethics Division provides continuous learning opportunities throughout the year for HHS supervisors and ethics officials.

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-employment restrictions applicable to them.[21] 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 HHS ethics officials provided to Office of the Secretary employees in 2023. The counseling addressed conflicts of interest/impartiality, gifts, speaking engagements, awards, and post-government employment restrictions. OGE found the counseling to be consistent with applicable statutes 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. 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.

HHS has issued jointly with OGE a supplemental standards of conduct regulation.[22] This regulation imposes requirements applicable to employees HHS-wide, as well as requirements applicable only to employees at certain HHS components.[23] According to this supplemental regulation, employees who wish to engage in outside employment for which advanced authorization is needed must obtain written approval from HHS ethics officials.

To determine compliance with HHS's supplemental regulation, OGE examined a sample of outside activity approval memoranda issued to Office of the Secretary employees and found that they had been issued in accordance with the supplemental regulation.

[21] *See* 5 C.F.R. § 2638.104 (c)(4).
[22] *See* 5 C.F.R. part 5501.
[23] The HHS supplement imposes additional requirements on employees at the Food and Drug Administration, the National Institutes of Health, the Office of the General Counsel, and the Office of the Inspector General.

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.[24] 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.[25] According to Ethics Division officials, no waivers were issued in 2023 for any Office of the Secretary employees.

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.[26] This written notice is commonly known as an "ethics agreement." In 2023, there were no new PAS nominees at the Office of the Secretary. However, three PAS officials from other HHS offices were required to submit their Certification of Ethics Agreement Compliance forms, certifying that they had complied with all elements of their ethics agreements. OGE received timely certifications of ethics agreement compliance from all three of these officials.

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).[27] HHS' Office of the Inspector General is responsible for referring potential violations of the criminal conflict of interest statutes to DOJ and concurrently notifying OGE of the referral. According to HHS officials, the department made no such referrals to DOJ in 2023.

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.[28]

According to the HHS' Office of the Secretary response to the 2023 Annual Questionnaire, 192 SGEs served at the Office of the Secretary in some capacity in 2023. To evaluate the ethics-related services provided to SGEs, OGE selected three advisory committees comprised of SGEs for examination. These committees consisted of the: 1) Dietary Guidelines Advisory Committee; 2) National Vaccine Advisory Committee; and 3) Presidential Advisory Council on HIV/AIDS.

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[24] *See* 18 U.S.C. § 208.
[25] *See* Executive Order 12674.
[26] *See* 5 U.S.C. app. § 110.
[27] *See* 5 C.F.R. § 2638.206.
[28] *See* 18 U.S.C. § 202(a).

Financial Disclosure

Dietary Guidelines Advisory Committee

The Dietary Guidelines Advisory Committee included 20 SGE members in 2023, all of whom are required to file the OGE Form 450 confidential report. OGE examined the 20 reports filed by members in 2023 and determined that all 20 were filed and certified timely.

National Vaccine Advisory Committee

The National Vaccine Advisory Committee included 12 SGE members in 2023. OGE's examination of their confidential reports determined 8 of the 12 reports were filed timely by the agency deadline and all 12 reports were certified timely in 2023. The four reports which were not filed by the agency deadline were filed and certified before the first committee meeting.

Presidential Advisory Council on HIV/AIDS

The Presidential Advisory Council on HIV/AIDS included 24 SGE members in 2023. OGE examined the 24 reports filed by members in 2023 and determined that 21 reports were filed timely and 22 were certified timely.

Ethics Training

In 2023, SGE advisory committee members received live ethics training by an HHS ethics attorney or completed interactive online ethics training. OGE determined that the training met the applicable content and format requirements.

OGE determined that all SGE members of the three committees it examined received the required ethics training timely in 2023.

Agency Comments