DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Office of the General Counsel
Washington, DC 20201

July 22, 2024

MEMORANDUM

TO: Shelley K. Finlayson
Acting Director
U.S. Office of Government Ethics

FROM: Randall Hall Randall J. Hall -S Digitally signed by Randall J. Hall -S Date: 2024.07.22 10:44:35 -04'00'
Associate General Counsel for Ethics
Designated Agency Ethics Official

SUBJECT: Agency Comment for the Ethics Program Review of the U.S. Department of Health and Human Services Office of the Secretary

The U.S. Department of Health and Human Services (HHS) appreciates the opportunity to work with the U.S. Office of Government Ethics (OGE) review team during their comprehensive review of the HHS Office of the Secretary's (OS) government ethics program. During the review, the OGE reviewers were always professional and courteous, and we commend them for their efforts. We especially appreciate the OGE review team's effort to work with us to ensure the data and details of the content of the report are accurate. The overall findings in this review reflect the strong and enduring commitment of the HHS Secretary, OGC Ethics Division, and HHS workforce to creating and maintaining a strong ethical culture. The results demonstrate this Department's compliance with all statutory and regulatory ethics requirements and highlight specific strengths in our ethics program as noted by the model practices listed throughout the report. We would also like to highlight that HHS has continued to expand the continuous ethics learning opportunities for HHS supervisors, ethics officials, and employees since our last review in 2020. In 2023 alone, we conducted 165 live and virtual ethics training presentations for more than 7,250 supervisors, ethics officials, and employees in additional to our initial and annual ethics training.

When preparing our materials to submit for this review, we identified the issue of new entrant confidential financial disclosure report filers submitting their reports late. These included filers assigned to the Office of the General Counsel (OGC) and the Immediate Office of the Secretary (IOS), which were among the reports sampled by OGE's review staff. As noted in this report, we adopted new procedures to avoid any such delayed assignment of new entrant reports. This function is now re-centralized for these offices. OGC Ethics Division now receives a report from the Office of Human Resources each pay period that identifies all newly reporting employees. OGC Ethics Division staff confirms with each new employee's supervisor whether the employee will be required to file a confidential financial disclosure report. If the answer is yes, the employee is assigned a new entrant OGE Form 450 report in the Department's electronic financial disclosure system (EFDS). All new employees with OGC and IOS receive a welcome aboard ethics email from OGC Ethics Division. OGE Form 450 filers receive in this email instructions on how to file their confidential financial disclosure report. Since implementing this

new process in March 2024, all new employees with OGC and IOS, who have been designated as confidential financial disclosure report filers, have been timely assigned and have timely filed their OGE Form 450 reports.

We also identified the issue, as this reports highlights, that approximately one-third of employees assigned to the Office of the Secretary did not complete their Initial Ethics Training (IET) within three months of their appointment. Four component offices within the Office of the Secretary were identified as the primary source of late IET completions by their newly onboarding employees. We have implemented new procedures within each of these components to remedy this shortfall in timely IET completion. For example, in the offices OGC Ethics Division supports directly as the Deputy Ethics Counselor, we have re-centralized the monitoring of IET completion. All newly reporting employees to OGC and IOS receive an ethics welcome email which includes instructions on how to complete IET in our Learning Management System (LMS). We then monitor IET completion and send reminders to employees as the deadline approaches. Supervisors are copied on these communications. We also identified a secondary cause of delay as certain employees having problems accessing LMS, and those access problems not being resolved timely. We raised this problem to the team that manages LMS access, and they were able to identify a solution. These groups of employees should not experience any access delays in the future. Since we implemented this procedure in March 2024, all new employees with OGC and IOS have completed IET timely.

In two of the offices that we identified as experiencing shortfalls in timely IET completion by their new employees, we determined that the assigned ethics officials were not receiving regular IET completion reports from their LMS colleagues. These ethics officials are now receiving regular LMS completion reports and can now properly track IET completion. These offices have improved their IET timely completion rates in 2024.

In the fourth office that we identified this shortfall, the primary reason for untimely IET completion by new employees was insufficient staffing resources devoted to carrying out ethics functions. We identified this staffing shortage during an internal review of that program, which we recently completed. In response to a required action from that review, this office is actively consulting with our office on what staffing level is needed, and how to obtain sufficiently experienced support for the ethics functions. This program has improved its IET timely completion rate in 2024.

Finally, during this review, we had the opportunity to take a closer look at how we ensure that ethics functions are being properly carried out for Special Government Employee (SGE) members of our advisory committees. We found aspects of our ethics process for SGEs that could be improved. We are working with our committee management colleagues to streamline the ethics functions, particularly related to financial disclosure submission and review. We have recently added a capability in EFDS for confidential financial disclosure reports that allows us to manage SGE reports through that system. We are working with committee management officials to transition their SGE financial disclosure reports to that system. This will streamline the workflow by automatically routing reports to reviewing and certifying officials and improve records management by automatically retaining and then disposing records as required by the General Records Schedule. It will be easier for SGEs to update their reports for each annual

filing cycle. Additionally, we plan to establish an annual filing cycle for each committee, staggered throughout the year. This will help with timely filing and review of SGE reports, balance reviewer workloads, and ensure that reviews are completed well in advance of scheduled meetings.

Thank you for the opportunity to review the draft report prior to issuance. We appreciate OGE's support in maintaining a strong government ethics program at HHS and we look forward to continuing to work with OGE in advancing the integrity of the U.S. government.