



Ethics Program Review

U.S. Department of Labor Headquarters

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The United States Office of Government Ethics (OGE) conducted a review of the United States Department of Labor (DOL) headquarters ethics program from April to August 2020. The review covered program activities primarily for calendar year 2019. The following summarizes the results of this 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 examined the administration of the ethics program within DOL headquarters. 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, and enforcing ethics-related restrictions.

OGE's review focused primarily on ethics program activities that occurred in 2019. This general scope was expanded when necessary to provide context.

Methodology: OGE examined a variety of documents provided by DOL ethics officials, including DOL'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 interviewed agency ethics officials to clarify the information gathered, follow up on issues identified during the review, and discuss ethics program operations in further detail.

¹ See 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

Program Administration

DOL's ethics program is administered by the Office of Legal Counsel (OLC) within the Office of the Solicitor (SOL). The DOL Solicitor serves as the Designated Agency Ethics Official (DAEO). The Associate Solicitor, who heads OLC, serves as the Alternate DAEO (ADAEO). The ADAEO oversees the day-to-day operations of DOL's ethics program with the assistance of a team of five ethics officials, in addition to the DAEO.

The administration of DOL's ethics program is centralized with the exception of the confidential financial disclosure system.² OLC is responsible for administering the public financial disclosure system and for providing ethics training and advice DOL-wide. In addition, OLC provides ethics guidance and programmatic oversight to the Regional Solicitors who act as ethics officials for their respective regions.

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.³ OGE examined DOL's written procedures and determined that they meet applicable requirements.

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.⁴ This helps to ensure the timely collection of financial disclosure reports.

² The confidential system is decentralized and is administered by DOL's component agencies. OLC is directly responsible for the confidential system for SOL employees only.

³ See 5 U.S.C. app. § 402(d)(1).

⁴ See 5 C.F.R. § 2638.105(a)(1) and (2).

DOL ethics officials provided OGE with examples of the reports they receive from the Division of Executive Resources, a component of DOL's Office of Human Resources (OHR). OGE determined that these reports provide the required information concerning appointments to and terminations from positions whose incumbents are required to file public financial disclosure reports. However, one of the two examples ethics officials provided to OGE was to report that a new employee had entered a covered position 22 days before the date of the report. Ethics officials were encouraged to work with OHR to refine the process for notifying the DAEO of arriving and departing employees.

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 DOL's public financial disclosure system, OGE examined a sample of 147 of the approximately 400 non-PAS public reports that were required to be filed in 2019. This sample included 31 new entrant, 95 annual, and 21 termination reports. Table 1 below presents the results of OGE's examination.

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

	New Entrant	Annual	Termination	Total
Reports Examined	31	95	21	147
Filed Timely	29 (94%)	95 (100%)	18 (86%)	142 (97%)
Certified within 60 Days	25 (81%)	81 (85%)	17 (81%)	123 (84%)

As noted in Table 1, OGE's review found that 142 (97%) of the public reports were filed timely and 123 (84%) of the public reports were certified timely.

Confidential Financial Disclosure

Within 30 days of assuming a covered confidential filing position, an individual must file a confidential financial disclosure report.⁸ The individual must also subsequently file an annual report by February 15 each year.⁹ The reports are required to be reviewed for potential conflicts

⁵ See 5 C.F.R. § 2634.201(b).

⁶ See 5 C.F.R. § 2634.201(a) and (e).

⁷ See 5 C.F.R. § 2634.605.

⁸ See 5 C.F.R. § 2634.903(b).

⁹ See 5 C.F.R. § 2634.903(a).

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

OGE typically evaluates the administration of an agency's confidential financial disclosure system, in part, by examining a sample of confidential reports; however, OGE was not able to independently examine confidential reports during this review. DOL's ethics officials advised OGE that, consistent with guidance from the Office of Management and Budget, all staff were working remotely during the COVID-19 pandemic and could not access the confidential reports from these remote locations. SOL staff would have been required to physically enter their offices to retrieve and transmit the reports to OGE. OGE's policy during the COVID-19 pandemic prohibits asking agencies to send staff to their offices or otherwise violate social-distancing or other mitigation policies to retrieve requested materials. OGE will examine a sample of confidential reports when circumstances permit.

As an interim measure, OGE examined internal tracking data provided by DOL ethics officials. The data regarding confidential report filing by SOL employees in 2019 is reflected in Table 2 below.

Table 2. DOL's Internal Tracking of SOL employee's Confidential Financial Disclosure Reports

	New Entrant		Annual		Total
Reports Examined	4		58		62
Filed Timely	3	(75%)	54	(93%)	57 (92%)
Certified within 60 Days	4	(100%)	58	(100%)	62 (100%)

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.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.

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 SOL, ethics officials provided in-person live training to each of the five DOL PAS employees appointed in 2019 within 15 days of their appointment date, as required. 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.¹³

SOL provided OGE with the OHRCO's Standard Operating Procedure No. 29 which instructs human resources professionals to use the templates attached to the procedures when issuing notices to prospective employees. However, the templates in the procedures did not contain the required ethics-related information. In addition, SOL provided OGE with a sample of five letters sent to new DOL employees in 2019. Only one of the five letters contained the required information.

Recommendations

1. Update written procedures and associated templates for issuing notices to prospective employees to include the required ethics-related information.
2. Ensure that prospective employees receive the required notice of their ethics responsibilities with their written offer 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;¹⁴ a copy of, a hyperlink to, or

¹² See 5 C.F.R. § 2638.305.

¹³ See 5 C.F.R. § 2638.303.

¹⁴ See 5 C.F.R. § 2638.103.

the address of a web site containing the Principles of Ethical Conduct; and such other information as the DAEO deems necessary for new supervisors.¹⁵

DOL had no written procedures for providing the required notices to new supervisors at the time OGE conducted its review. SOL and OHR were coordinating the effort to establish the required written procedures for supervisory ethics notices as OGE's concluded. As a result of its review, OGE determined that DOL provided the required notice of ethical obligations to each employee upon initial appointment to a supervisory position. All four of the notices to new supervisors OGE examined contained the required information.

Recommendations

3. Update written procedures and associated templates for issuing notices to new supervisors to include the required ethics-related information.

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.¹⁶

According to information provided by SOL ethics officials, initial ethics training at DOL is provided via an online training program called *Learning Link*, and optional live training conducted by ethics officials on a monthly basis. OGE reviewed the *Learning Link* training module and determined that it met the relevant standards to qualify as interactive training. OGE also determined that the training met applicable content requirements.

New employees confirm completion of the initial ethics training using the self-certification function of *Learning Link*. According to DOL's 2019 Annual Agency Ethics Program Questionnaire and follow-up conducted by OGE during this review, 691 new employees received the required initial ethics training in 2019, and only 6 of these employees received the training beyond the three-month deadline.

¹⁵ See 5 C.F.R. § 2638.306.

¹⁶ See 5 C.F.R. § 2638.304.

Written Procedures for Initial Ethics Training

Agencies are required to establish written procedures for, among other things, initial ethics training, which the DAEO must review each year.¹⁷ Further, in agencies with 1,000 or more employees, any office that is not under the supervision of the DAEO, but has been delegated responsibility for issuing notices or conducting training, must submit the following materials to the DAEO by January 15 each year: a written summary of procedures that office has established to ensure compliance with initial ethics training requirements; and written confirmation that there is a reasonable basis for concluding that the procedures have been implemented.¹⁸ According to SOL, DOL's procedures are overseen by OHR. OGE requested the written procedures, but SOL has not been able to provide them. As a result, OGE is recommending that DOL establish written procedures for initial ethics training and that the DAEO review the written procedures on an annual basis, as required.

Recommendations

4. Establish written procedures for initial ethics training.
5. Ensure that the DAEO reviews the initial ethics training procedures annually.

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 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 information provided to OGE, SOL provided live annual training supplemented with written materials for public filers in 2019. OGE determined that the live presentation combined with the written materials met applicable content requirements.

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 pursuant; employees appointed by the President and employees of the Executive Office of the President; contracting officers;

¹⁷ See 5 C.F.R. § 2638.304.

¹⁸ See 5 C.F.R. § 2638.310.

¹⁹ See 5 C.F.R. § 2638.308.

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 SOL ethics officials, DOL confidential filers and other covered non-filing employees received virtual live annual ethics conducted through WebEx in 2019. The presentation featured a chat function allowing attendees to interact with presenters. Additional written materials were provided to supplement the live presentation. OGE determined that the presentation combined with the written materials met applicable content requirements.

In 2019, 21 public filers and 259 confidential filers within DOL's SOL were required to receive annual ethics training. Table 3 below reflects the number and percentage of these public and of confidential filers who completed annual ethics training in 2019 and the type of training completed.

Table 3. OGE's Examination of Annual Ethics Training for Financial Disclosure Report Filers

DATA ANALYSIS	Training Format		Total
	Live	Interactive	
Percentage of public filers who completed annual ethics training before the end of the calendar year. <i>See</i> 5 C.F.R. § 2638.308(a).			
• Executive Schedule Level I and Level II. <i>See</i> 5 C.F.R. § 2638.308(e)(1).	2 (100%)	-0-	2 (100%)
• Other PAS and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(2).	1 (100%)	-0-	1 (100%)
• SES and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(3).	16 (88%)	-0-	16 (88%)
Total			19 (96%)
Percentage of confidential filers and certain other employees who completed annual ethics training before the end of the calendar year. <i>See</i> 5 C.F.R. § 2638.307(a)(d).			
• Employees required to file an annual confidential financial disclosure report. <i>See</i> 5 C.F.R. § 2638.307(a)(1).	255 (98%)	-0-	255 (98%)

As indicated in the table above, 96% of public filers and 98% of confidential filers and other covered employees received live annual ethics training in 2019.

²⁰ *See* 5 C.F.R. § 2638.307.

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 SOL ethics officials provided to DOL employees in 2019. The counseling addressed seeking employment, gifts, post-employment restrictions, conflicts of interests, and outside activities. OGE found the counseling to be consistent with applicable statutes and 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.²² 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.²³ DOL issued no 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.²⁴ This written notice is commonly known as an “ethics agreement.” All five PAS officials confirmed in 2019 provided timely certification to OGE that they had complied with all terms of their respective 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).²⁵ DOL did not make any such referrals to DOJ 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.²⁶

²¹ See 5 C.F.R. § 2638.104 (c)(4).

²² See 18 U.S.C. § 208.

²³ See Executive Order 12674.

²⁴ See 5 U.S.C. app. § 110.

²⁵ See 5 C.F.R. § 2638.206.

²⁶ See 18 U.S.C. § 202(a).

OGE evaluated the collection and review of confidential financial disclosure reports and the provision of annual ethics training for SGE members of one of DOL's advisory committees established under the Federal Advisory Committee Act: the Advisory Committee on Veterans' Employment, Training, and Employer Outreach (ACVETEO).

Financial Disclosure

OGE requested the confidential reports filed in 2019 by ACVETEO's SGEs for examination. However, ACVETEO's Designated Federal Officer (DFO) stated that the committee's SGEs were exempt from filing confidential reports. In response to OGE's inquiry, SOL advised OGE that a misunderstanding had led ACVETEO's DFO to believe the SGEs were not required to file reports and that the collection, review, and certification of confidential reports was progressing at the time OGE was completing its review. OGE will examine the confidential reports from ACVETEO's SGEs as part of its follow-up review.

Recommendations

6. Ensure that SGEs file confidential disclosure reports, as required.

Ethics Training

In 2019, DOL provided live annual ethics training for ACVETEO SGEs. OGE verified that all SGE members of this committee received the required training and that the training met content requirements.

Agency Comments

Regarding Recommendations 4 and 5, DOL does have procedures in place for Initial Ethics Training (IET). As is mentioned in this report, DOL provides IET to all new employees through its Learning Link system. LearningLink is the Department's electronic training system which provides employees access to a one-stop portal of training programs and services. It provides DOL staff with single-site access for the management, delivery, and development of learning and knowledge. Once a training module such as IET is "built" and placed into that system, there are no further procedures required. The system itself ensures the delivery of the training to all employees, ensures that they take the training, and requires no further processing by OHR. The courseware checklist ensures delivery of the course to all employees, and was reviewed and requested by SOL, under the delegated authority of the DAEO. SOL reviews the training and the process annually to ensure compliance. DOL also notes that OGE indicates that nearly 700 people took the training, which demonstrates that DOL's procedures regarding this training are in place, and functioning at high level. DOL will review OGE's recommendations and develop additional written procedures as necessary to clarify this process.

OGE Response to Agency Comments

OGE acknowledges that DOL has instituted an effective process for providing IET. OGE's concerns are based on the apparent lack of comprehensive stand-alone written procedures

that are clearly recognizable as the prescribed method for providing IET. Such documents are critical for the continuity of any program. This is particularly true in large organizations in which multiple offices have various roles in meeting specific requirements. Should someone who is not familiar with DOL's processes have to administer this component of the ethics program for any reason, the availability of comprehensive written guidance would clearly be an advantage. OGE encourages DOL to contact its Desk Officer should they wish to discuss how similarly situated agencies have met the relevant requirements.