



Ethics Program Review

United States Department of Housing and Urban Development

Report No. 23-19
March 30, 2023



The United States Office of Government Ethics (OGE) conducted a review of the United States Department of Housing and Urban Development (HUD) ethics program from August through November 2022. The following summarizes the results of that review.

Contents

Objectives, Scope and Methodology.....	2
Agency Background.....	3
Program Administration.....	3
Financial Disclosure.....	4
Education and Training.....	6
Advice and Counseling.....	10
Agency-Specific Ethics Rules.....	10
Conflict Remedies.....	11
Enforcement.....	11
Special Government Employees.....	11
Agency Comments.....	13

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 following elements of HUD’s ethics program: program administration, financial disclosure, education and training, ethics counseling, agency-specific ethics rules on outside employment, conflict remedies, and enforcement. OGE also examined the oversight and guidance the Ethics and Appeals Division (EAD), HUD’s headquarters ethics office, provides to the ethics program department-wide. OGE’s review focused on ethics program activities that occurred in 2021 and 2022.

Methodology: OGE examined a variety of materials provided by EAD ethics officials, including the agency’s response to OGE’s 2021 Annual Agency Ethics Program Questionnaire, written procedures for administering the ethics program, samples of public and confidential financial disclosure reports filed in 2022, ethics training materials, and a sample of the ethics advice and 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. § 13122 and 5 C.F.R. part 2638.

Agency Background

HUD is a cabinet-level department, created in 1965, with responsibilities that include addressing the nation's housing needs and enforcing fair housing laws. HUD's nearly 7,500 employees are assigned to its headquarters in Washington, D.C. and program offices at 10 operating regions across the country. The department is led by a Presidentially appointed, Senate-confirmed (PAS) Secretary.

Program Administration

HUD's General Counsel, a presidentially appointed, Senate-confirmed (PAS) official, serves as the Designated Agency Ethics Official (DAEO). The day-to-day activities of HUD's ethics program are managed by ethics officials within EAD, a component of the Office of General Counsel.

In addition to the DAEO, ADAEO, and Associate General Counsel for the Office of Ethics, Appeals, and Personnel Law, HUD's ethics program is managed by EAD's Assistant General Counsel and Deputy Assistant General Counsel. EAD has four Attorney Advisors who handle ethics matters on a full-time basis. In addition, EAD employs two Management Analysts. While both Analysts support the ethics training program, one Analyst's primary duties relate to administering the electronic financial disclosure systems and conducting initial reviews of confidential reports.

While EAD oversees HUD's overall ethics program, the DAEO has delegated ethics responsibilities to 10 Regional Counsel who head their respective regional legal offices. These Regional Counsel are responsible for reviewing their region's confidential reports, as well as providing ethics advice to regional employees. To support the Regional Counsel, EAD provides annual ethics training for all regional employees, as well as tracks the status of the confidential reports and provides updates. EAD also follows up with the regions to ensure the reports are reviewed and certified in a timely manner.² Before the filing season, EAD also provides a briefing to the regional offices to remind them of the filing requirements, review timelines, and provide them training videos as necessary. EAD reviews all public reports, including all regional public reports.³

EAD's oversight activities include holding bi-monthly calls with all HUD ethics officials, during which ethics information is shared with the group in an effort to create consistency, and working closely with the regional offices on complex and novel questions. The ADAEO is the first line supervisor to the Regional Counsels and handles issues requiring higher visibility and action. EAD also ensures that regional ethics offices receive information from OGE on upcoming trainings or recently released advisories.

² The timeliness of regional review of confidential financial disclosure reports is part of the Regional Counsels' performance metrics.

³ OGE did not assess the administration of the ethics program outside of headquarters as it relates to the issuance of legal advice.

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 HUD's financial disclosure systems, OGE evaluated the required written procedures for administering the systems and a sample of public and confidential financial disclosure reports that were required to be filed by HUD's employees. OGE also evaluated whether HUD has established procedures to ensure that human resources promptly notifies the ethics office of new and departing employees and whether new employees and supervisors are notified of their ethics responsibilities.

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.⁴ OGE examined HUD's written procedures and determined 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.⁵ These notices help to ensure the timely collection of financial disclosure reports.

HUD's Office of Executive Resources (OER), within the Office of the Chief Human Capital Officer, tracks the entrance and departure of senior-level employees, with the exception of those within the Office of the Inspector General.⁶ OER notifies EAD of senior-level appointments within 15 days of the appointment. OER also provides EAD weekly email notifications of incoming and outgoing individuals that are required to file public financial disclosure reports. Additionally, EAD has access to OER's tracking spreadsheet that is updated as new appointees are approved to join HUD.

⁴ See Section 402(d)(1) of the Ethics in Government Act.

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

⁶ The OIG's legal office notifies EAD of its senior-level staffing changes via email as the appointments and departures occur.

HUD's Administrative Officers (AO) within the program offices identify and inform EAD of employees who are required to file new entrant confidential financial disclosure reports. EAD has provided the AOs a job aid to assist in identifying positions which meet the criteria for determining who is required to file confidential financial disclosure reports. EAD also sends monthly emails to AOs to remind them to identify new employees entering positions with the duties and responsibilities which require the filing of a confidential report.

OGE found that there is reasonable assurance that EAD was notified in a timely manner of appointments to or departures from positions requiring public financial disclosure. OGE also found that HUD's system for tracking confidential filers is sufficient to ensure that such filers are identified in a timely manner.

Public Financial Disclosure

Within 30 days of assuming a covered public filing position, an individual must file a public financial disclosure report.⁷ 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.⁸ 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.⁹

To evaluate the administration of HUD's public financial disclosure system, OGE examined 27 new entrant, 52 annual, and 16 termination reports that were required to be filed in 2022. Table 1 below presents the results of OGE's examination.

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

	New Entrant	Annual	Termination	Total
Reports Examined	27	52	16	95
Filed Timely	22 (81%)	45 (87%)	12 (75%)	79 (83%)
Reviewed within 60 Days	27 (100%)	52 (100%)	16 (100%)	95 (100%)
Certified within 60 Days	27 (100%)	52 (100%)	16 (100%)	95 (100%)

OGE's examination of sampled reports indicated that reports were generally filed, reviewed, and certified timely. Of the five new entrant reports that were filed late, four were filed within six days of the due date while one report was filed two weeks after the due date. Seven annual reports were filed late but within the late filing fee grace period. Regarding the four late termination reports, all were filed significantly late and late fees were either collected or in the process of being collected.

⁷ See 5 C.F.R. § 2634.201(b).

⁸ See 5 C.F.R. § 2634.201(a) and (e).

⁹ See 5 C.F.R. § 2634.605.

Confidential Financial Disclosure

Within 30 days of assuming a covered confidential filing position, an individual must file a confidential financial disclosure report.¹⁰ The individual must also subsequently file an annual report by February 15 each year.¹¹ 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.¹²

To evaluate the administration of HUD's confidential financial disclosure system, OGE examined a sample of 45 new entrant and 71 annual reports that were required to be filed in 2022. Table 2 below presents the results of OGE's examination.

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

	New Entrant		Annual		Total	
Reports Examined	45		71		116	
Filed Timely	35	(78%)	67	(94%)	102	(88%)
Reviewed within 60 days	42	(93%)	71	(100%)	113	(97%)
Certified within 60 days.	39	(87%)	71	(100%)	110	(95%)

OGE's examination of sampled reports indicated that reports were generally filed, reviewed, and certified timely. As indicated in Table 2, 35 (78%) of the 45 new entrant reports OGE examined were filed timely and 39 (87%) were certified timely. Of the 10 new entrant reports that were filed after they were due, 7 were filed within 2 weeks of their respective due dates. The remaining 3 reports were filed significantly late (52, 86, and 257 days after the filers entered their respective positions) because EAD was not timely notified of the employees' appointments.

OGE also found that 67 (94%) of the 71 annual reports examined were filed timely and all were 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 to include: briefings for certain Presidentially appointed, Senate confirmed (PAS) officials; notices for prospective employees and newly appointed supervisors regarding their ethics-related obligations; initial

¹⁰ See 5 C.F.R. § 2634.903(b).

¹¹ See 5 C.F.R. § 2634.903(a).

¹² See 5 C.F.R. § 2634.605.

ethics training for new employees; and annual ethics training for public and confidential financial disclosure report filers and certain other employees.¹³ 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 Briefings 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.¹⁴ 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.¹⁵ OGE determined that all four PAS officials at HUD who were appointed during the period covered by OGE's review completed the required briefing within 15 days of the date of their appointment.

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.¹⁶

OGE's review found that HUD has established written procedures for issuing the required notices to prospective employees. OGE also determined that the notices comply with relevant requirements. However, the DAEO had not annually reviewed the procedures. HUD recently updated its policy to specify that the DAEO will review the procedures each year and the DAEO began reviewing the procedures annually in 2023.

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 the appointment. The written materials must include contact information for the agency's ethics office and the text of 5 C.F.R. § 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.¹⁷

OGE's review found that HUD has established procedures to provide new supervisors with the required written materials. OGE also determined that the notices comply with the

¹³ See 5 C.F.R. Part 2638 Subpart C.

¹⁴ See 5 C.F.R. Part 2634.201 (c) (2)

¹⁵ See 5 C.F.R. § 2638.305.

¹⁶ See 5 C.F.R. § 2638.303.

¹⁷ See 5 C.F.R. § 2638.306.

relevant requirements. However, the DAEO had not annually reviewed the procedures. HUD recently updated its policy to specify that the DAEO will review the procedures each year and the DAEO began reviewing the procedures annually in 2023.

Initial Ethics Training

Each new employee subject to the Standards of Conduct must complete initial ethics training (IET) that meets the requirements of 5 C.F.R. § 2638.304 within three months of appointment, unless excluded by the DAEO. The training must be interactive and focus on government ethics laws and regulations that the DAEO deems appropriate. The training must address: financial conflicts of interest; impartiality; misuse of position; and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and, instructions for contacting the agency's ethics office.¹⁸ Agencies must also establish written procedures for IET that the DAEO annually reviews.

OGE determined that HUD has established written procedures for IET. However, the DAEO had not annually reviewed the procedures. HUD recently instituted a policy specifying that the DAEO will review the procedures each year and the DAEO began reviewing the procedures annually in 2023.

OGE reviewed the materials HUD used to provide IET to new employees in 2021 and determined that the materials met applicable content requirements. OGE also reviewed HUD's records for tracking IET and found that 100% of the employees required to receive IET in 2021 received the training within 3 months of appointment, as required.

Annual Ethics Training for Public Filers

Generally, an agency must provide live training each calendar year to each of its employees whose pay is set at Level I or Level II of the Executive Schedule. An agency also must 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, and provide interactive training 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, whether live or interactive, must address: financial conflicts of interest, impartiality, misuse of position, and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of, or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and instructions for contacting the agency's ethics office.¹⁹

¹⁸ See 5 C.F.R. § 2638.304.

¹⁹ See 5 C.F.R. § 2638.308.

EAD conducted live annual training that was available to all HUD employees in June 2021.²⁰ A recording of this training was also available to employees who were not able to attend the June session. The recording met the criteria for interactive training because employees are asked to respond to questions during the course of the training. OGE determined that the training material met the applicable content requirements and that HUD provided its trainees the required written materials.

HUD's Secretary is at Level I of the Executive Schedule and the Deputy Secretary is at Level II. Both the Secretary and Deputy Secretary were confirmed in 2021 and received live IET, as required. They were not required to attend live annual ethics training because they received the live IET during the year. Two additional PAS officials confirmed during 2021 had been political appointees in different positions immediately prior to their 2021 confirmations. One of the two additional PAS official attended live IET and, while not required to, also attended live annual ethics training. The other PAS official attended live IET.

OGE also examined HUD's 2021 training completion records and determined that 99% of all non-PAS public filers received annual ethics training in 2021.

Annual Ethics Training for Confidential Filers and Certain Other Employees

Generally, an agency is required to provide interactive training 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 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. 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.²¹

Prior to the COVID-19 pandemic, EAD conducted annual ethics training live in HUD's auditorium and webcast the presentation for viewing by employees across the country. During the pandemic, EAD conducted virtual training sessions for the entire agency that allowed for more interaction, as employees were able to type in questions. In calendar year 2022, HUD used a hybrid approach, with limited in-person attendance and virtual attendance, given the ongoing pandemic.

OGE reviewed the materials HUD used to conduct annual training for confidential filers and determined that they met the applicable content requirements. OGE also found that 85% of HUD's confidential filers received annual ethics training in 2021.

²⁰ OGE's review field work was completed before 2022 annual ethics training was required to be completed.

²¹ See 5 C.F.R. § 2638.307.

HUD's Secretary requires all employees to take annual ethics training. However, HUD has not yet been able to obtain 100% participation. EAD officials stated that they will work more closely with supervisors to obtain compliance from their employees to improve employee participation in the training.

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.²² 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 EAD officials provided to HUD employees in 2021 and 2022. The counseling addressed a variety of issues including gift acceptance, outside activities, impartiality, and post-employment restrictions. OGE's review found the counseling to be consistent with applicable laws and regulations.

Agency-Specific Ethics Rules

An agency may modify or supplement the Standards of Conduct, with the concurrence of OGE, to meet the particular needs of that agency.²³ 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.

HUD has issued jointly with OGE a supplemental standards of conduct regulation. This supplemental regulation contains prohibitions on certain HUD employees having financial interests related to housing, real estate, mortgage banking, and related industries. It also requires HUD employees to obtain written approval prior to engaging in certain outside employment and prohibits certain other outside activities and employment.

To evaluate employees' compliance with HUD's supplemental standards of conduct regulation, OGE reviewed the outside activities that were reported on the public and confidential financial disclosure reports that were examined during the evaluation of HUD's financial disclosure systems. Twenty-two outside employment activities were disclosed in these financial disclosure reports. OGE determined that all 22 were reviewed and analyzed by ethics officials under HUD's supplemental regulation and that employees complied with the prior approval requirements. OGE also sampled a selection of five outside activity requests and determined that approvals and denials were appropriately rendered. OGE did not identify any holdings prohibited by the supplemental regulation during its examination of public and confidential financial disclosure reports.

²² See 5 C.F.R. § 2638.104 (c)(4).

²³ See Executive Order 12674 and 5 C.F.R. § 2635.105.

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 OGE's review found that HUD did not issue any such waiver in 2021 or 2022.

Additionally, PAS nominees are required to address their actual or apparent conflicts of interest by documenting the specific actions they are required to take to alleviate their conflicts of interest.²⁶ This written notice is commonly known as an "ethics agreement." Once confirmed, PAS appointees must fulfill all of their written ethics commitments. OGE's review found that the four PAS officials confirmed in 2021 certified timely that they had 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 criminal conflict of interest law to the Department of Justice (DOJ).²⁷ HUD made one such referral in 2021 and notified OGE, as required.

Additionally, OGE's review found that in 2021 there were no disciplinary actions taken based wholly or in part upon violations of the criminal conflict of interest laws. In one instance, disciplinary action was taken based wholly or in part upon violation of the Standards of Conduct.

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.²⁸ SGEs are required to file financial disclosure reports and receive ethics training.

Financial Disclosure

Each advisory committee SGE is required to file a new entrant report upon appointment and then each year thereafter upon their re-appointment or re-designation as an SGE. These SGEs must file their reports before the first committee meeting of the year.

HUD has three committees governed by the Federal Advisory Committee Act (FACA), with two of the three committees employing a total of 16 SGEs during 2021 and 2022. To evaluate the ethics program services rendered to SGEs serving on FACA committees, OGE

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).

examined the confidential reports filed by the 16 SGEs during 2021 and 2022. Table 3 below presents the results of OGE’s examination of these 16 reports.

Table 3. Examination of SGE Confidential Financial Disclosure Reports

Confidential Reports Examined	16	
Filed Timely	14	(88%)
Reviewed within 60 Days of Receipt	14	(88%)
Certified within 60 Days of Receipt	14	(88%)

As shown in Table 3, OGE found that 14 (88%) of the 16 reports were filed timely. Ethics officials reviewed and certified 14 (88%) of the 16 reports within 60 days of being filed. Of the 2 reports certified beyond 60 days of submission, one was certified after the first committee meeting. Additionally, OGE found that one report certified within 60 days was nevertheless reviewed and certified after the first committee meeting.

Regarding the two reports that were certified after the first committee meeting, OGE encourages EAD officials to review and certify all SGE reports prior to the SGEs’ first meeting. This practice ensures that potential conflicts of interest are identified and the SGE is counseled before the first meeting, as appropriate.

SGEs who are not on a FACA committee serve on an as-needed basis. OGE reviewed the confidential reports filed by the five non-FACA SGEs during 2021 and 2022 and found that all reports were filed timely and reviewed within 60 days of submission.

Ethics Training

OGE examined the training materials used by EAD ethics officials to provide ethics training to SGEs and determined the materials met applicable content requirements. OGE also confirmed that both FACA and non-FACA HUD SGEs received the required ethics training.

Agency Comments

EAD provided the following comments for inclusion into OGE's program review report:

Public Financial Disclosure (page 5)

- The HUD Ethics Staff took significant steps to ensure public financial disclosure reports were timely filed, and late filers were held accountable for their failure to comply with the ethics requirements by assessing late filing fees. In addition to the automatic Integrity reminders, EAD staff and subsequently the DAEO or ADAEO sent personal reminder emails to late filers in an effort to achieve compliance. Staff also made contact with filers' supervisors, when necessary. All the steps taken were consistent with HUD's standard operating procedures.

Confidential Financial Disclosure (page 6):

- The HUD Ethics Staff took significant steps to ensure confidential financial disclosure reports were timely filed. In addition to the automatic reminders from FDonline, the EAD management analyst was in regular contact with the Department's Administrative Officers to achieve compliance within their offices. Regional Counsel were also active in contacting the filers in their Regions. The DAEO, ADAEO and/or ethics staff also directly contacted late filers and filers' supervisors, as needed, to ensure compliance. All the steps taken were consistent with HUD's standard operating procedures.
- When EAD recognized it was not being timely notified of employees' appointments, EAD implemented a process in which it receives all ascension and promotion reports from the Office of the Chief Human Capital Officer in order to provide EAD with prompt notification of any employee who enters a filing position.

Annual Ethics Training for Confidential Filers and Certain Other Employees (page 9):

- HUD ethics staff took significant steps to ensure timely completion of annual ethics training by all HUD employees, including issuance of email notices from EAD, the Regional Counsels, and the ADAEO, as well as reminders on the HUD@work intranet page.