



# Ethics Program Review

U.S. Department of Transportation  
Office of the Secretary

Report No. 20-47  
September 25, 2020



The United States Office of Government Ethics (OGE) conducted a review of the ethics program within the U.S. Department of Transportation’s (DOT) Office of the Secretary (OST) from June through September 2020. The review primarily examined program activities occurring in 2019. The following summarizes the results of the 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.<sup>1</sup> 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’s review examined all elements of the ethics program administered within OST including: program administration, financial disclosure, education and training, ethics counseling, conflict remedies, enforcement, and special government employees.

**Methodology:** OGE conducted the review of the OST ethics program from June through September 2020. As part of its review, OGE examined a variety of documents provided by OST ethics officials, including DOT’s response to OGE’s 2019 Annual Agency Ethics Program Questionnaire, written procedures for administering the 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 met with OST ethics officials to clarify the information gathered, follow up on issues identified during the review, and discuss ethics program operations in further detail.

<sup>1</sup> See 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

## **Program Administration**

DOT's Designated Agency Ethics Official (DAEO) and Alternate DAEO (ADAEO), along with the OST Ethics Office, administer the overall DOT ethics program. The DAEO, a career civil service employee, is the department's Deputy General Counsel. The DAEO also serves as DOT's Dispute Resolution Specialist and Chief FOIA Officer. The ADAEO, also a career civil service employee, is the Assistant General Counsel for General Law. The OST Ethics Office consists of seven ethics officials<sup>2</sup> and is located within the Office of the General Counsel (OGC), which is organizationally part of OST.

In addition to OST, DOT has Operating Administrations (OA), each of which has its own Office of Chief Counsel (OCC). There is a Deputy Ethics Official in each OA OCC, who is supported by at least one staff-level ethics official. These officials administer certain aspects of the ethics program for their respective OA, including collecting, reviewing, and certifying financial disclosure reports and conducting annual ethics training.

## **Financial Disclosure**

Title I of the Ethics in Government Act requires that agencies administer public and confidential financial disclosure systems. Financial disclosure serves to prevent, identify, and resolve conflicts of interest by providing for a systematic review of the financial interests of officers and employees. The financial disclosure process also offers an opportunity for ethics officials to provide ethics-related counseling to report filers.

The public financial disclosure system within DOT is decentralized. Except for a limited number of public financial disclosure filers (e.g., PAS officials and a limited number of other non-career officials) whose reports are directly administered by OST ethics officials, DOT components administer the public financial disclosure system for their respective filers under the general direction of the OST Ethics Office. To evaluate the public financial disclosure system, as administered within OST, OGE examined the required written procedures and a sample of reports required to be filed in 2019.

DOT's confidential financial disclosure system is also decentralized. DOT components administer the confidential system for their respective filers under the general direction of the OST Ethics Office. OGE examined the administration of the confidential financial disclosure system directly administered by the OST Ethics Office. As part of its examination, OGE evaluated the required written procedures and a sample of reports required to be filed by OST employees in 2019.

### **Financial Disclosure Written Procedures**

Each executive branch agency must establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available financial disclosure

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<sup>2</sup> This team of seven ethics officials consists of six attorneys who work on ethics part time and one staff assistant who supports several offices within OGC.

reports filed by the agency's officers and employees.<sup>3</sup> OGE examined DOT's written procedures and determined that they meet applicable requirements.

## **Notices to DAEO**

The lead human resources official is required to notify the DAEO of all appointments to positions that require incumbents to file public or confidential financial disclosure reports no later than 15 days after the appointment. 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.<sup>4</sup> This helps to ensure the timely collection of financial disclosure reports.

The OST Ethics Office conducts initial ethics training for incoming OST employees on the first Monday of each pay period. Prior to each initial ethics training session, the OST Office of Human Resources Management (OHR) sends the OST Ethics Office a list of new employees. Ethics officials use the list to identify incoming public and confidential report filers. OHR also issues a checkout list to terminating public filers requiring them to receive an exit briefing from an ethics official. Terminating public filers are also advised to file a termination report in *Integrity* within 30 days of leaving DOT.

Based on an examination of DOT's written procedures, samples of the biweekly notifications the OST Ethics Office receives from OHR, and the fact that both new entrant and termination financial disclosure reports were generally filed timely, OGE determined that DOT's ethics officials receive the required notifications in a consistent and timely manner.

## **Public Financial Disclosure**

Within 30 days of assuming a covered public filing position, an individual must file a public financial disclosure report.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

To evaluate the administration of DOT's public financial disclosure system by the OST Ethics Office, OGE examined a sample of 34 new entrant, 50 annual and 22 termination reports that were required to be filed department-wide in 2019. Table 1 below presents the results of OGE's examination.

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<sup>3</sup> See 5 U.S.C. app. § 402(d)(1).

<sup>4</sup> See 5 C.F.R. § 2638.105(a)(1) and (2).

<sup>5</sup> See 5 C.F.R. § 2634.201(b).

<sup>6</sup> See 5 C.F.R. § 2634.201(a) and (e).

<sup>7</sup> See 5 C.F.R. § 2634.605.

**Table 1. OGE’s Examination DOT Public Financial Disclosure Reports**

	New Entrant		Annual		Termination	Total	
<b>Reports Examined</b>	34		50		22	106	
<b>Filed Timely</b>	31	(91%)	50	(100%)	19 (86%)	100	(94%)
<b>Reviewed Timely</b>	34	(100%)	50	(100%)	22 (100%)	106	(100%)
<b>Certified Timely</b>	34	(100%)	49	(98%)	20 (91 %)	103	(97%)

Based on its examination of the sample of public reports, OGE determined that DOT’s public financial disclosure system, as administered within OST, is in substantial compliance with applicable requirements.

### Confidential Financial Disclosure

Within 30 days of assuming a covered confidential filing position, an individual must file a confidential financial disclosure report.<sup>8</sup> The individual must also subsequently file an annual report by February 15 each year.<sup>9</sup> 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.<sup>10</sup>

To evaluate the administration of the confidential financial disclosure system within OST, OGE examined a sample of 12 new entrant and 40 annual confidential reports that were required to be filed by OST employees in 2019. Table 2 below presents the results of OGE’s examination.

**Table 2. OGE’s Examination of OST Confidential Financial Disclosure Reports**

	New Entrant		Annual		Total	
<b>Reports Examined</b>	12		40		52	
<b>Filed Timely</b>	10	(83%)	39	(98%)	49	(94%)
<b>Reviewed Timely</b>	11	(92%)	39	(98%)	50	(96%)
<b>Certified Timely</b>	11	(92%)	39	(94%)	50	(96%)

Based on its examination of the sample of confidential reports, OGE determined that DOT’s confidential financial disclosure system, as administered within OST, is in substantial compliance with applicable requirements.

<sup>8</sup> See 5 C.F.R. § 2634.903(b).

<sup>9</sup> See 5 C.F.R. § 2634.903(a).

<sup>10</sup> See 5 C.F.R. § 2634.605.

## 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.<sup>11</sup> 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 presidentially appointed, Senate-confirmed (PAS) appointees 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.<sup>12</sup>

OGE determined that all three DOT PAS employees confirmed in 2019 received the required ethics briefing within 15 days of their respective appointments.

### **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.<sup>13</sup>

The OST Ethics Office and OHR established procedures to provide notices to prospective employees. OGE determined that OHR issued offer letters to career employees which included the required notices, but no notice was provided to non-career employees in 2019. The OST Ethics Office explained that because it was not the practice of OHR's Executive and Political Resources Center to issue offer letters to non-career employees, the Center did not provide the required notices to those prospective employees. The OST Ethics Office has advised that OHR has modified their practice to ensure that all prospective employees are notified of the ethical obligations associated with their positions.

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<sup>11</sup> See 5 C.F.R. Part 2638 Subpart C.

<sup>12</sup> See 5 C.F.R. § 2638.305.

<sup>13</sup> See 5 C.F.R. § 2638.303.

## **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; 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.<sup>14</sup>

Based on its review of the procedures established by DOT to provide notices to new supervisors and its review of a sample of notices that were sent in 2019, OGE determined that there was reasonable assurance that new supervisors received the required information during the period under review.

## **Initial Ethics Training**

Each new employee of the agency 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 the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and, instructions for contacting the agency's Ethics Office.<sup>15</sup>

New OST employees attend DOT's First-Day New Employee Orientation, which is held on the first Monday of each pay period. According to OST Ethics Office officials, in 2019 the OST Ethics Office provided live IET to all attendees as part of this orientation. OGE examined the presentation and materials the OST Ethics Office uses during the IET and found that it met all applicable requirements. IET is provided to PAS, non-career, and SES employees separately.

## **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. 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

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<sup>14</sup> See 5 C.F.R. § 2638.306.

<sup>15</sup> See 5 C.F.R. § 2638.304.

summary thereof, as determined appropriate by the DAEO; and, instructions for contacting the agency's Ethics Office.<sup>16</sup>

According to OST Ethics Office officials, in order to meet the annual ethics training requirements, the OST Ethics Office conducts live, in-person training for public and confidential filers within OST. In 2019, they offered this training in a Jeopardy-style game format. The OST Ethics Office also offered two lecture-style presentations for OST filers who preferred not to participate in a game.

OGE examined OST's training records and determined that 100% of public filers received annual training and that the training met all format requirements. However, trainees did not receive a written summary of the Standards of Conduct, as required. OST explained that they will include written instructions for accessing the summary of the Standards of Conduct distributed by OGE as part of all future annual trainings.

### **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; employees appointed by the President and employees of the Executive Office of the President; contracting officers described in 41 U.S.C. § 2101; and, other employees designated by the head of the agency. The training presentation must focus on government ethics laws and regulations that the DAEO deems appropriate and must address financial conflicts of interest, impartiality, misuse of position, and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and, instructions for contacting the agency's Ethics Office.<sup>17</sup>

OGE determined that 100% of OST's confidential filers required to receive training did receive the training in 2019 and, as noted above, the training met format requirements. However, confidential filers did not receive a written summary of the Standards of Conduct, as required. OST explained that they will include written instructions for accessing the summary of the Standards of Conduct distributed by OGE as part of all future annual trainings.

### **Recommendations**

1. Ensure that all prospective employees receive the required notice of the ethical obligations associated with the position for which they're being considered.
2. Ensure that all employees required to receive annual training are provided with written copies of or written instructions for accessing materials that fully meet content requirements.

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<sup>16</sup> See 5 C.F.R. § 2638.308.

<sup>17</sup> 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.<sup>18</sup> 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 OST Ethics Office officials provided to DOT employees. The counseling addressed financial conflicts of interest, impartiality, gifts, post-employment, and misuse of position. OGE found the counseling to be consistent with applicable laws and regulations.

## Conflict Remedies

The primary criminal conflict of interest law prohibits an executive branch employee from participating in an official capacity in a particular matter in which he or she has a financial interest.<sup>19</sup> 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. OGE's review found that DOT 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.<sup>20</sup> This written notice is commonly known as an "ethics agreement." OGE found that all four DOT 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).<sup>21</sup> DOT made no such referrals involving OST employees in 2019.

Additionally, there were no ethics-related disciplinary actions taken against employees within OST in 2019 based wholly or in part upon violation of either the criminal conflict of interest laws or the Standards of Conduct. DOT did report that department-wide, one disciplinary action based wholly or in part upon violations of the criminal conflict of interest laws and two disciplinary actions based wholly or in part upon violations of the Standards of Conduct were taken in 2019.

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<sup>18</sup> See 5 C.F.R. § 2638.104 (c)(4).

<sup>19</sup> See 18 U.S.C. § 208.

<sup>20</sup> See 5 U.S.C. app. § 110.

<sup>21</sup> See 5 C.F.R. § 2638.206.

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.<sup>22</sup>

OGE evaluated the collection and review of confidential financial disclosure reports and the provision of annual ethics training for SGE members of two of DOT's seven committees established under the Federal Advisory Committee Act (FACA). These committees were the Air Carrier Access Act Advisory Committee (ACAA Advisory Committee) and the Special Committee to Review the FAA's Aircraft Certification Process.

### Financial Disclosure

In accordance with OGE's financial disclosure regulation, executive branch SGEs are required to file a new entrant confidential financial disclosure report not later than 30 days after assuming a new position. They must also file a new report each year upon reappointment or re-designation. These reports must be filed before any advice is rendered by the SGE and in the case of FACA committee SGEs, before the first committee meeting.<sup>23</sup>

OGE examined all six of the confidential reports filed by SGE members of ACAA Advisory Committee and the Special Committee to Review the FAA's Aircraft Certification Process in 2019. Table 3 below summarizes the results of OGE's examination.

**Table 3. OGE's Examination of SGE Confidential Financial Disclosure Reports**

<b>Reports Examined</b>	6	
<b>Filed Timely</b>	5	(83%)
<b>Certified Timely</b>	5	(83%)

As noted in Table 3 above, all but one of the reports OGE examined were filed and certified timely.

### Ethics Training

In 2019, DOT provided live annual ethics training for the two FACA committees OGE selected for review. OGE verified that all SGE members of these two committees received the required training and that it met all applicable requirements.

<sup>22</sup>See 18 U.S.C. § 202(a).

<sup>23</sup> See 5 C.F.R. § 2634.903(b).

## Agency Comments

OGE invites agency comments on its ethics program review reports. DOT's comments were provided in the attached letter.



U.S. Department  
of Transportation  
Office of the General Counsel

1200 New Jersey, S.E.  
Washington, D.C. 20590

September 24, 2020

The Honorable Emory A. Rounds, III  
Director  
Office of Government Ethics  
1201 New York Avenue NW, Suite 500  
Washington, DC 20005

Dear Mr. Rounds:

Thank you for the opportunity to review and comment on the U.S. Office of Government Ethics (OGE) Ethics Program Review Report (Report) for the U.S. Department of Transportation (Department) Office of the Secretary (OST). We appreciate the efforts of your team.

The Department is committed to ensuring that all of its employees uphold the highest standards of ethical conduct. Our dedicated OST ethics team leads this effort for OST employees with the full support of Secretary of Transportation Elaine L. Chao. In my capacity as the Department's Designated Agency Ethics Official (DAEO), I meet several times each week with the Department's Alternate DAEO and members of the OST ethics team to discuss and provide advice on ethics matters. We, in turn, also meet with the Secretary's leadership team to discuss ethics issues each week. We are proud of our efforts to maintain the integrity and responsiveness of the OST ethics program.

We are pleased that OGE has confirmed that the OST Ethics Office is in substantial compliance with applicable requirements. OGE determined that the Department's written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available financial disclosure reports filed by officers and employees, meet all requirements. In addition, OGE found that the Department's public and confidential financial disclosure systems, as administered within OST, is in substantial compliance with applicable requirements. The review also confirmed that the OST ethics team provides all required initial and annual ethics training to financial disclosure filers, as well as ethics advice and counseling to all employees, consistent with the ethics regulations.

We have reviewed and concur with the two recommendations in your Report, and we have already implemented corrective actions to address them fully. We have worked with the Department's Office of Human Resource Management and the Executive and Political Resources Center to ensure that all prospective employees receive the required notice of the ethical obligations associated with the position for which they are being considered. In addition, we are providing to all employees required to receive annual training either written copies of or written instructions for accessing the summary of the Standards of Conduct distributed by OGE.

Thank you for your support of the OST ethics program. We appreciate OGE's continued assistance and guidance as we help the Department's employees prevent and resolve conflicts of interest.

Sincerely,

JUDITH SUE  
KALETA

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JUDITH SUE KALETA  
Date: 2020.09.24  
10:43:35 -04'00'

Judith S. Kaleta  
Designated Agency Ethics Official  
Deputy General Counsel