



Ethics Program Review

U.S. Environmental Protection Agency

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The United States Office of Government Ethics (OGE) conducted a review of the U.S. Environmental Protection Agency (EPA) ethics program during March and April 2024. The following summarizes the results of that review.

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Objectives, Scope and Methodology

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

Scope: OGE’s review examined all elements of the EPA ethics program including program administration, financial disclosure, education and training, ethics advice and counseling, agency-specific ethics rules, conflict remedies, enforcement, and special government employees.

Methodology: OGE examined a variety of documents provided by EPA’s ethics officials, including EPA’s response to OGE’s 2023 Annual Agency Ethics Program Questionnaire (Questionnaire), written procedures for administering the ethics program, samples of public and confidential financial disclosure reports filed in 2023, ethics training materials, and documents related to SGE financial disclosure and training. Additionally, OGE contacted agency ethics officials to clarify the information gathered and follow up on issues identified during the review.

¹ See title IV of the Ethics in Government Act, 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

Agency Background

EPA is headed by a presidentially appointed, Senate-confirmed (PAS) Administrator. The Administrator is supported by a Deputy Administrator, a General Counsel and 10 Assistant Administrators. There are also 10 EPA Regional Offices located throughout the United States, each led by a Regional Administrator. EPA has approximately 15,000 employees who carry out the agency's mission to protect human health and the environment.

Program Administration

The EPA ethics program is highly decentralized. The DAEO, who performs ethics duties on a part-time basis, is the Deputy General Counsel for Environmental Media and Regional Law Offices in the Office of General Counsel (OGC). Organizationally located within the Office of the General Counsel in Washington, DC, the EPA Ethics Office has seven full-time employees: a Director who is also the Alternate Designated Agency Ethics Official (ADAE), three attorneys, two ethics officers, and one ethics specialist. The EPA Ethics Office provides ethics advice and counseling to all senior agency leaders, oversees the public financial disclosure system and acceptance of travel from non-federal sources, and provides training and program guidance to the Agency's ethics officials. In addition to the Ethics Office officials, EPA has approximately 120 Deputy Ethics Officials (DEO) located throughout the country. Each EPA region and program office has a DEO and an Alternate DEO (ADEO), who are responsible for managing the ethics program, including implementing the confidential financial disclosure systems for their respective region or office using training and guidance provided by the Ethics Office.

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 EPA's financial disclosure systems, OGE examined the required written procedures for administering the systems, EPA's processes for notifying the DAEO when employees entered or departed filing positions, and a sample of public and confidential financial disclosure reports.

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.² OGE examined EPA's written procedures and determined they met applicable requirements.

² See Section 402(d)(1) of the Ethics in Government Act.

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.³

EPA's Executive Services Branch (ExSB) within the Office of Human Capital Operations (OHCO) notifies the Ethics Office of appointments to and terminations from public filing positions on a biweekly basis. The ExSB does not, however, provide notifications for the Office of the Inspector General (OIG). The OIG Human Resources Directorate notifies the Ethics Office by email when an employee enters or leaves a public financial disclosure filing position. OGE examined a sample of appointment and termination notifications for public filers and found them to be in compliance with applicable requirements.

Because the ethics program is decentralized, EPA relies on their 120+ DEOs to be directly responsible for implementing the confidential financial disclosure program. This arrangement abrogates the need for human resources to provide the Ethics Office with new entrant confidential filer information. Rather, DEOs rely on EPA's Business Application Platform (BAP), a software application that is updated with new employee information every two weeks, to identify when new employees join their organizations. The DEO then determines whether a new employee meets the definition of confidential filer and, if so, assigns that person a report. DEOs use the Ethics Program Management Dashboard, which is populated through information from BAP, to track new employees' confidential filing status and assign reports.

Public Financial Disclosure

Within 30 days of assuming a covered public filing position, an individual must file a public financial disclosure report.⁴ 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.⁵ Ethics officials are required to review the reports for potential conflicts of interest and certify them within 60 days of receipt by an agency's ethics office, unless additional information is being sought from the filer or remedial action is being taken.⁶

To evaluate the administration of EPA's public financial disclosure system, OGE examined a sample of 30 new entrant, 30 annual, and 30 termination reports that were required to be filed in 2023. Table 1 below presents the results of OGE's examination.

³ See 5 C.F.R. § 2638.105(a)(1) and (2).

⁴ See 5 C.F.R. § 2634.201(b).

⁵ See 5 C.F.R. § 2634.201(a) and (e).

⁶ See 5 C.F.R. § 2634.605.

Table 1. OGE’s Examination of EPA’s Public Financial Disclosure Reports

	New Entrant	Annual	Termination	Total
Reports Examined	30	30	30	90
Filed Timely	29 (97%)	30 (100%)	27 (90%)	86 (96%)
Certified Timely	27 (90%)	30 (100%)	29 (97%)	86 (96%)

OGE’s examination of the sampled reports indicated that a high percentage were filed, reviewed, and certified timely.

Confidential Financial Disclosure

Within 30 days of assuming a covered confidential filing position, an individual must file a confidential financial disclosure report.⁷ The individual must also subsequently file an annual report by February 15 each year.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 EPA’s confidential financial disclosure system, OGE reviewed a sample of 30 new entrant and 30 annual reports that were required to be filed in 2023 by employees throughout EPA. Table 2 below presents the results of OGE’s examination.

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

	New Entrant	Annual	Total
Reports Examined	30	30	60
Filed Timely	28 (93%)	27 (90%)	55 (92%)
Certified Timely	29 (97%)	25 (83%)	54 (90%)

As indicated above, a significant percentage of confidential reports filed at EPA during 2023 were filed and certified timely. OGE determined that EPA’s confidential financial disclosure system is well-administered and in substantial compliance with applicable requirements.

Education and Training

An ethics training 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

⁷ See 5 C.F.R. § 2634.903(b).

⁸ See 5 C.F.R. § 2634.903(a).

⁹ See 5 C.F.R. § 2634.605.

ethics counseling. Each agency's ethics training program is required to include at least initial ethics training for all new employees and annual ethics training for covered employees.¹⁰

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.¹¹ 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 There were no new PAS employees appointed during the period covered by the review; therefore, OGE could not assess this aspect of the program.

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 3 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.¹³

OGE reviewed the training presentation and written materials EPA used to provide IET to new employees in 2023 and determined that they met applicable content requirements. EPA's written procedures for providing IET met content requirements as well. Data provided to OGE demonstrated that 85% of the employees hired in 2023 received IET within three months of appointment. According to Ethics Office officials, all but 15 of these new employees eventually received IET as of February 1, 2024. Reasons cited for the delay or failure to receive IET included the individual departing EPA within the first three months, being called up for military service, or having a medical or other emergency. In cases of employees who have still not completed IET, the Ethics Office continues to remind the affected DEOs about this compliance requirement.

Annual Ethics Training

To meet the annual ethics training requirements, covered employees must receive annual training consisting of a review of: (1) the 14 Principles; (2) the Standards of Conduct; (3) any agency supplemental standards of conduct; (4) the criminal conflict of interest statutes; and (5)

¹⁰ See 5 C.F.R. §§ 2638.704 and 705 for definition of covered employees.

¹¹ See 5 C.F.R. Part 2634.201 (c) (2)

¹² See 5 C.F.R. § 2638.305.

¹³ See 5 C.F.R. § 2638.304.

ethics official contact information. Training length and delivery method may vary by an employee's financial disclosure filing status.¹⁴

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 pursuant to 5 C.F.R. § 2634.201(a) 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.

According to Ethics Office officials, EPA provides the Administrator, an Executive Schedule Level II employee, live training every year. Other PAS public filers receive live training every other year, as required. In 2023, three of nine PAS public filers received live training, including the Administrator. The other six received live training in 2022. EPA provided the remaining public filers with either live, PowerPoint-based training or interactive online annual training. OGE reviewed all versions of the EPA training presentations and determined that the live versions met applicable requirements. However, the 2023 interactive online training failed to address concepts related to impartiality and gifts.

OGE determined that the written materials provided to public filers met applicable requirements. A review of data provided by Ethics Office officials indicated that 100% of public filers received annual training in 2023. EPA officials elaborated that 96% received interactive training and 4% received live training.

Annual Ethics Training for Confidential Filers and Certain other Employees

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

¹⁴ See 5 C.F.R. §§ 2638.704 and 705.

determined appropriate by the DAEO; and, instructions for contacting the agency's ethics office.¹⁵

In 2023, EPA provided confidential filers with the same live and interactive training available to public filers, as well as the same written materials. As stated previously, the interactive online training did not meet content requirements. OGE examined data provided by EPA ethics officials and determined that 99% of confidential filers received training; 98% received interactive training and 1% received live training.

Recommendation:

1. Ensure that all versions of annual ethics training fully meet content requirements.

Notices to Prospective Employees

Written offers of employment for positions covered by the 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 Agencies must also establish written procedures for issuing notices to prospective employees, which the DAEO annually reviews.

OGE examined 10 samples of notices sent to prospective employees in 2023 and determined that they met all relevant content requirements.

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 CFR § 2638.103; a copy of, a hyperlink to, or the address of a website containing the Principles of Ethical Conduct; and such other information as the DAEO deems necessary for new supervisors. Agencies must also establish written procedures for issuing notices to new supervisors that the DAEO annually reviews.

OGE examined five samples of notices sent to new supervisors in 2023 and determined that the notices did not contain a copy of, a hyperlink to, or the address of a web site containing the 14 Principles. All other relevant requirements were met.

¹⁵ See 5 C.F.R. § 2638.307.

¹⁶ See 5 C.F.R. § 2638.303.

Recommendation:

2. Ensure that notices to new supervisors contain all required content as specified in 5 C.F.R. § 2638.306

Advice and Counseling

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and Standards of Conduct matters, including post-employment matters, is developed and conducted.¹⁷ The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program.¹⁸

OGE reviewed a sample of counseling and advice ethics officials provided by Ethics Office officials to EPA employees agency-wide. The advice examined addressed criminal conflict-of-interest statutes, impartiality, misuse of position, outside activities, post-employment restrictions, and gifts. The advice appeared to be responsive to the questions asked, timely, and 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.¹⁹ 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.

EPA has a supplemental standards of conduct regulation.²⁰ This regulation prohibits employees from certain offices or who perform certain functions from having outside employment with or holding certain financial or other interests in particular companies, industries, or operations. EPA's supplemental standards of conduct regulation also requires employees to receive approval from their DEO before engaging in outside employment that involves:

- consulting services;
- the practice of a profession as defined in the Standards of Conduct;
- holding State or local public office;
- subject matter that deals in significant part with the policies, programs or operations of EPA or any matter to which the employee presently is assigned or to which the employee has been assigned during the previous one-year period; or
- the provision of services to or for an EPA contractor or subcontractor, the holder of an EPA assistance agreement or sub agreement, or a firm regulated by the EPA office or region in which the employee serves.

¹⁷ See 5 C.F.R. § 2638.203.

¹⁸ See 5 C.F.R. § 2638.204.

¹⁹ See Executive Order 12674 and 5 C.F.R. § 2635.105.

²⁰ See 5 C.F.R. part 6400

As part of its examination of a sample of EPA public and confidential financial disclosure reports as discussed earlier in this report, OGE evaluated filer compliance with the financial interest restrictions of the EPA supplemental standards of conduct regulation. OGE did not identify any filers holding prohibited financial interests during this examination.

To evaluate employee compliance with EPA's outside employment prior approval requirement, OGE examined the advice and counsel ethics officials provided to employees seeking approval for outside activities (as well as the forms employees used to request approval) and found it to be consistent with EPA's supplemental standards of conduct.

Conflict Remedies

The 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.²¹ 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.²² According to Ethics Office officials and as confirmed by EPA's 2023 Questionnaire response, EPA did not issue any waivers in 2023.

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,²³ commonly known as an "ethics agreement." According to Ethics Office officials and OGE's internal tracking mechanisms, no PAS officials onboarded at EPA or were required to enter into an ethics agreement in 2023.

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)²⁴ and concurrently notify OGE of any such referrals. OGE uses the OGE Form 202 (Notification of Conflict-of-Interest Referral) to collect these notifications and information regarding the disposition of the matter. EPA made no such referrals in 2023.

EPA reported no disciplinary actions based wholly or in part upon violations of the criminal conflict of interest statutes (18 U.S.C. §§ 203, 205, 207, 208, and 209) and two disciplinary actions based wholly or in part upon violations of the Standards (5 C.F.R. part 2635).

²¹ See 18 U.S.C. § 208.

²² See Executive Order 12674.

²³ See 5 U.S.C. app. § 110.

²⁴ See 5 C.F.R. § 2638.206.

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.²⁵ SGEs are required to file financial disclosure reports and receive ethics training.

EPA administers 23 advisory committees which are largely comprised of SGEs. OGE selected the Clean Air Scientific Advisory Committee (CASAC) and the National Environmental Education Advisory Council (NEEAC) for review to evaluate the ethics program services rendered to EPA advisory committee SGEs.

Alternative Financial Disclosure

As allowed by OGE regulation,²⁶ SGEs serving on advisory committees at EPA file the EPA Form 3110-48, an OGE-approved alternative confidential financial disclosure form, in lieu of the OGE Form 450. The alternative form collects the financial disclosure and outside activity information necessary for EPA to identify potential conflicts of interest. DEOs and ADEOs are primarily responsible for reviewing and certifying these forms, although in some instances committee Designated Federal Officers (DFOs) are also involved in the review.

OGE examined all 17 confidential financial disclosure reports required to be filed in 2023 by SGE members of CASAC and NEEAC. All of the CASAC reports were filed timely and 5 out of 7 (71%) of these reports were certified timely. All of the NEEAC reports were filed timely as well. However, just 3 out of 10 (30%) of their reports were certified timely.

Ethics Training

OGE examined the ethics training received by SGEs serving on CASAC and NEEAC in 2023. Through a review of training data provided by EPA, OGE determined that ethics training was provided to all 17 SGEs as required and that it met relevant content and format requirements.

Recommendation:

3. Certify SGE advisory committee confidential financial disclosure reports in a timely manner.

Agency Comments

The U.S. Environmental Protection Agency (EPA) appreciates the time and effort that OGE expended to review its ethics program and welcomed the opportunity to work with OGE and to provide information about this Agency's ethics program. We appreciate the favorable program review. We have considered

²⁵See 18 U.S.C. § 202(a).

²⁶See 5 C.F.R. § 2634.905

carefully your three targeted process recommendations and assure you that we are already implementing them.

- **ANNUAL TRAINING** – In late October 2023, we learned that our 2023 annual interactive online training, which met the requirements of 5 C.F.R. § 2638.307(e) and 2636.308(f), did not meet Section 508 compliance of the Rehabilitation Act, so could not be launched. In order to provide ethics training, even at a very late date, we recycled a prior training course training that was Section 508 compliant though did not completely meet the content needs. We have instituted very clear measures for the future to ensure that all of our annual training will fully meet content needs.
- **SUPERVISORY NOTICES** –The email messages sent to new supervisors inadvertently did not include the necessary working hyperlinks. EPA Ethics has identified all of the employees who received this email, and we have now sent them a corrected version with the active hyperlinks. We appreciate OGE’s vigilance.
- **CONFIDENTIAL REPORTING FOR SGEs** – We are providing OGE with the certified confidential report for the CASAC and recognize that we had provided an incorrect form earlier. With respect to the NEEAC, we have previously explained this particular FACA never met in CY 2022 or CY 2023. We note that the proposed members were identified over the course of nearly a year and their forms were not consistently sent to EPA Ethics for review and certification. We have now established more clear communication lines with the designated federal officer. Most significantly, though, EPA Ethics sought and has now received funding to automate the EPA 3110-48 that will be used for all Special Government Employees. We will use the same BAP platform as the e450 system, so we anticipate similar productive results in terms of technical completion by filers, as well as timely review and certification by ethics officials. We will begin development of the automated 3110-48 in FY 2025 and will, of course, coordinate with OGE as we did for our automated e450 system.

Moving forward, EPA Ethics remains committed to continuous improvement of our ethics program services in order to effectively promote the highest ethical standards for our employees and ensure that the public has the utmost confidence in the integrity of the work of the Agency. We look forward to continuing a productive and collaborative relationship with OGE.