



Ethics Program Review

U.S. Department of Homeland Security Headquarters

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The U.S. Office of Government Ethics (OGE) conducted a review of the U.S. Department of Homeland Security (DHS) Headquarters ethics program from January through March 2022. 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 focused on DHS’s ethics program as administered within DHS Headquarters.

Methodology: OGE examined a variety of documents provided by DHS ethics officials, including DHS’s response to OGE’s 2021 Annual Agency Ethics Program Questionnaire, written procedures for administering the financial disclosure program, samples of public and confidential financial disclosure reports filed in 2021, ethics training materials, and a sample of the ethics advice and counseling provided to employees. In addition, OGE met with 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.

Agency Background

DHS was formed as part of a determined national effort to safeguard the United States against terrorism. It became the third-largest federal department, bringing together 22 different federal agencies, each with a role in this effort and a combined total workforce of 229,000 employees. DHS operates under the leadership of its Secretary, a Presidentially appointed, Senate-confirmed official. DHS headquarters had 4,889 full-time employees as of December 2021.

Program Administration

DHS's ethics program is administered by the Ethics Law Division (ELD), a part of the Office of the General Counsel (OGC) at DHS Headquarters. ELD is headed by the Principal Deputy General Counsel, who serves as the Designated Agency Ethics Official (DAEO), while the Associate General Counsel for Ethics serves as the Alternate DAEO (ADAEO). The DAEO and ADAEO are assisted by seven full-time staff: five attorney-advisors, who are designated deputy ethics officials, and two management analysts.

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 DHS's financial disclosure systems, OGE evaluated the required written procedures for administering the systems, DAEO notification requirements, and a sample of public and confidential financial disclosure reports that were required to be filed by DHS headquarters employees in 2021.

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 DHS's written procedures and determined that they have not been updated to reflect current DHS practices for administering either the public or confidential financial disclosure systems. For example, the procedures do not address the use of *Integrity*, the OGE-managed electronic filing system for public financial disclosure reports, or the Army's Financial Disclosure Management System (FDM) for electronic filing of confidential financial disclosure reports. Ethics officials explained that the procedures are under revision and require coordination with components as well as

² See 5 U.S.C. app. § 402(d)(1).

DHS's publications office. Ethics officials expect the procedures to be finalized in approximately six months. OGE encourages DHS to expedite efforts to finalize the written procedures for administering the public and confidential financial disclosure systems, as written procedures ensure uniformity in the administration of the financial disclosure systems throughout the department. They also provide a critical source of information for ensuring continuity in the event experienced ethics officials are not available to lead the ethics program.

Notices to the 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.³

According to ethics officials at DHS, the Chief Human Capital Office (CHCO) is responsible for providing ELD with these notifications. The majority of new filers are newly hired employees identified through the bi-weekly notices of new employee orientation that ELD receives from CHCO. However, ethics officials indicated that identifying incumbent employees who become filers due to changes in their individual duties, promotions, demotions, and other internal personnel changes that effect filing status is more difficult than identifying new employees entering covered positions. Therefore, ethics officials explained that ELD uses ethics program liaisons in each Headquarters office to supplement the information from CHCO. Ethics program liaisons receive training, periodic reminders of ethics program requirements, and data calls to bridge the reporting gap for internal personnel changes. For personnel identified on the bi-weekly notices of new employee orientation (new employee rosters) who are not public filers, ELD transmits an OGE Form 450 job aid to supervisors to verify whether the individual is in a covered position.

Ethics officials indicated that CHCO attempts to provide timely notification when both new and current employees enter covered positions. However, CHCO relies on a notification from the Department of Agriculture's National Finance Center which is not generated until after an employee has already entered a covered position. As a result, the notification to ELD occurs approximately three weeks after an individual onboards, which OGE observed in the sample of notifications examined during our review. OGE encourages DHS to continue to seek ways to streamline the process for notifying ELD of all appointments to positions that require incumbents to file public or confidential financial disclosure reports no later than 15 days after the appointment.

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

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 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.⁶

To evaluate the administration of the DHS Headquarters public financial disclosure system, OGE examined a sample of 30 new entrant, 30 annual, and 30 termination reports that Headquarters employees were required to file in 2021. Table 1 below presents the results of OGE's examination.

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

	New Entrant	Annual	Termination	Total
Reports Examined	30	30	30	90
Filed Timely	26 (87%)	30 (100%)	24 (80%)	80 (89%)
Reviewed within 60 Days of Receipt	26 (87%)	29 (97%)	28 (93%)	83 (92%)
Certified within 60 Days of Receipt	6 (20%)	11 (37%)	20 (67 %)	37 (41%)

As noted in Table 1 above, 80 (89%) of the public reports OGE examined were filed timely. However, Table 1 also shows that only 37 (41%) of the public reports examined were certified within 60 days of receipt. OGE notes that ethics officials completed the initial review of 83 (92%) of the reports it examined within 60 days of receipt.

As noted in OGE's Public Financial Disclosure Guide, if additional information or a remedy is required, agencies must contact the filer for the information or begin the process of implementing a remedy before the 60-day period expires. Requests for additional information must require a response within 30 days of the request, unless the agency grants a written extension. Agencies must then make reasonable efforts to complete the review process as soon as practicable following the expiration of the 60-day period. OGE found evidence in *Integrity's* audit trail of revisions and reviewer annotations that demonstrates that in many instances ethics officials were seeking additional information from filers in order to certify the reports. However, OGE found that 29 (32%) of the reports examined were still certified 90 days or more after the

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.

date of receipt. The late certification of financial disclosure reports increases the risk that employees might take official actions that affect their financial interests, in violation of criminal conflict of interest law.

OGE reminds ELD that reasonable efforts to complete the review process within 60-day period may include actively following up with filers, *and escalating instances of non-responsiveness as appropriate*. In cases for which remedial action is required, such remedial action must be completed no later than 3 months from the date on which the filer receives notice that the action is required.

Recommendations

1. Ensure that public financial disclosure reports are certified within 60 days of receipt by actively following up with filers and escalating instances of non-responsiveness as appropriate.
2. Finalize the written procedures to reflect current DHS practices for administering the public and confidential financial disclosure systems.

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

DHS Headquarters uses the Army's electronic Financial Disclosure Management System (FDM) to collect and review the confidential financial disclosure reports filed by DHS employees.

To evaluate the administration of the confidential financial disclosure system within DHS Headquarters, OGE examined a sample of 35 new entrant and 35 annual reports that Headquarters employees were required to file in 2021. Table 2 below presents the results of OGE's examination.

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.

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

	New Entrant	Annual	Total
Reports Examined	35	35	70
Filed Timely	33 (94 %)	34 (97%)	67 (96%)
Reviewed within 60 Days of Receipt	35 (100%)	35 (100 %)	70 (100 %)
Certified within 60 Days of Receipt	24 (69%)	32 (91%)	56 (80%)

Table 2 shows that 67 (96%) of the 70 reports OGE examined were filed timely and 56 (80%) were certified timely. Moreover, all reports OGE examined were reviewed within 60 days of receipt, as required.

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 ethics training for new employees; and annual ethics training for public and confidential financial disclosure report filers and certain other employees.¹⁰ 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 extension¹¹. 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 OGE determined that all four PAS officials at DHS headquarters who were appointed during the period covered by OGE’s review completed the required briefing within 15 days of the date of their appointment.

¹⁰ See 5 C.F.R. Part 2638 Subpart C.

¹¹ See 5 C.F.R. Part 2634.201 (c) (2)

¹² See 5 C.F.R. § 2638.305.

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

DHS has established written procedures for issuing the notice to prospective employees. The procedures are reviewed annually by the DAEO, as required. OGE examined samples of DHS's notices and determined that they comply with relevant requirements.

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.¹⁴

OGE reviewed the materials DHS used to provide initial ethics training to new Headquarters employees in 2021 and determined that the materials met applicable content requirements. OGE reviewed ELD's records for tracking IET and found that all of the required Headquarters employees received IET within three months of appointment.

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. The training, whether live or interactive, must address: financial conflicts of interest; impartiality; misuse of position; and gifts. In addition to

¹³ See 5 C.F.R. § 2638.303.

¹⁴ See 5 C.F.R. § 2638.304.

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.¹⁵

OGE examined DHS's 2021 training completion records and determined that all required Headquarters public filers received live annual ethics training in 2021. However, OGE reviewed the content of the presentation that DHS provided as annual ethics training and determined training did not cover the concept of gifts, as required. The written materials met applicable content requirements.

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. 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

At DHS Headquarters, OGE determined that annual ethics training was provided to the majority of confidential filers in 2021 using an interactive ethics training module via the DHS Performance and Learning Management System (PALMS). However, OGE's examination of the training content determined that it did not cover the concept of gifts.

OGE also determined that the remaining confidential filers received annual training through the Ethics and Procurement Integrity for the Acquisition Workforce (FAC043) interactive online training module. OGE examined the FAC043 module and determined that it met all annual ethics training content requirements.

OGE also reviewed DHS's training completion records and determined that all confidential filers required to receive annual ethics training in 2021 received the training.

¹⁵ See 5 C.F.R. § 2638.308.

¹⁶ See 5 C.F.R. § 2638.307.

Recommendation

3. Ensure that annual ethics training includes all required content.

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.¹⁷ 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 ethics officials provided to DHS Headquarters employees. The counseling addressed a variety of issues including gift acceptance, outside activities, impartiality, and post-employment restrictions. OGE 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.¹⁸ 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.

The DHS supplemental standards of conduct regulation requires all DHS employees, except special government employees, to obtain written approval prior to engaging in certain outside employment.¹⁹ To evaluate employees' compliance with DHS's prior approval requirement, OGE reviewed the outside activities that were reported on the public and confidential financial disclosure reports while examining the DHS Headquarters financial disclosure systems. There were 31 outside employment activities disclosed in these financial disclosure reports. OGE found evidence that 22 of these outside activities were approved as required. OGE determined that the remaining nine outside activities did not require approval.

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.²⁰ Congress included two provisions that permit an agency to issue a waiver of this prohibition in individual

¹⁷ See 5 C.F.R. § 2638.104 (c)(4).

¹⁸ See Executive Order 12674 and 5 C.F.R. § 2635.105.

¹⁹ See 5 CFR Part 4601.103

²⁰ See 18 U.S.C. § 208.

cases. Agencies must consult with OGE, where practicable, prior to issuing such a waiver.²¹ DHS did not issue any waivers in 2021.

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.²² This written notice is commonly known as an “ethics agreement.” OGE reviewed ethics agreement records for the seven DHS PAS officials who were confirmed in 2021 and were required to comply with their ethics agreements by January 31, 2022. All seven of these officials certified that they had complied with the terms of their 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).²³ DHS’s Office of Inspector General (OIG) is responsible for conducting investigations of potential violations of the criminal conflict of interest laws, making any necessary referrals to DOJ, and concurrently notifying OGE of any such referrals. In 2021, DHS’s OIG notified OGE of its referral to DOJ of four potential violations, none involving employees at Headquarters. Additionally, DHS reported no disciplinary actions based wholly or in part upon violations of the Standards of Conduct in 2021.

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.²⁴

Advisory Committee SGEs

DHS charts and maintains five advisory committees under the Federal Advisory Committee Act (FACA). Only the Data Privacy and Integrity Advisory Committee (DPIAC) committee was active in 2021 and had SGE members. OGE evaluated the ethics services provided to DPIAC SGE advisory committee members.

²¹ See Executive Order 12674.

²² See 5 U.S.C. app. § 110.

²³ See 5 C.F.R. § 2638.206.

²⁴ See 18 U.S.C. § 202(a).

Financial Disclosure

OGE examined the confidential financial disclosure reports filed by the 12 SGE members who attended the only DPIAC committee meeting in May 2021. All 12 reports were filed in the fall of 2020, as required, and were certified timely. The ADAEO vetted the agenda and scope of work for the FACA SGEs for potential conflicts of interest prior to their meeting.

Ethics Training

All 12 DPIAC members who attended the committee meeting in 2021 received live ethics training. OGE determined that this training met applicable content requirements.

Expert and Consultant SGEs

In order to evaluate the ethics services provided to non-FACA committee SGE experts and consultants, OGE reviewed the financial disclosure and ethics training services provided to the 11 SGEs serving as experts and consultants at DHS Headquarters in 2021.

Financial Disclosure

OGE examined the financial disclosure reports filed by the 11 SGE experts and consultants in 2021. One filed a public financial disclosure report, which was filed timely. However, the report was certified 63 days after it was filed.

The remaining 10 SGEs filed confidential financial disclosure reports. One confidential report was certified timely but filed late. The remaining 9 financial disclosure reports were filed and certified timely.

Ethics Training

Ten expert and consultant SGEs received ethics training in 2021. The remaining SGE was appointed in December and was not required to receive training in 2021. Non-FACA SGEs are provided the same ethics training received by regular confidential filers. Therefore, as discussed earlier on this report, the ethics training did not cover the topic of gifts.

Agency Comments

OGE invites agency comments on its ethics program review reports. DHS's comments are below.

1. Ensure that public financial disclosure reports are certified within 60 days of receipt by actively following up with filers and escalating instances of non-responsiveness as appropriate.

The 2021 public filing season was also a presidential transition year during which we received a higher volume than normal of New Entrant and Termination reports, as well as a much higher volume of ethics work overall due to the transition. New Entrants were mostly first time filers (with extensive reportable assets and outside positions) that required additional time to certify. Some Termination reports required OCHCO assistance to track down alternate contact information for non-responsive filers as they had left the agency. ELD strives to certify all reports within 60 day and continues the practice of frequent follow-up and escalation after 30 days to ensure timely certification.

2. Finalize the written procedures to reflect current DHS practices for administering the public and confidential financial disclosure systems.

Revisions to DHS Financial Disclosure Policy are underway and estimated to be signed/implemented by the DAEO in calendar year 2022.

3. Ensure that annual ethics training includes all required content.

ELD confirms that 2022 annual training material contains all required contents.