



Ethics Program Review

U.S. Department of Defense
Office of the Secretary

Report No. 23-34
July 19, 2023

The United States Office of Government Ethics (OGE) conducted a review of the United States Department of Defense (DoD) Office of the Secretary (OSD) ethics program from January to May 2023. The following summarizes the results of this review.

Contents

Objectives, Scope, and Methodology.....	2
Agency Background.....	3
Program Administration	3
Financial Disclosure.....	4
Education and Training	8
Ethics Counseling.....	12
Conflict Remedies	12
Enforcement.....	12
Special Government Employees.....	13
Agency Comments.....	14

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 OSD’s ethics program: program administration, financial disclosure, education and training, ethics counseling, agency-specific ethics rules, conflict remedies, enforcement, and special government employees (SGE).² OGE’s review examined the ethics program administered throughout OSD and focused on ethics program activities that occurred in 2022 and 2023.

Methodology: OGE examined a variety of documents provided by the DoD Standards of Conduct Office’s (SOCO) ethics officials, including DoD’s response to OGE’s Annual Agency Ethics Program Questionnaire for 2022, written procedures for administering the ethics program, samples of public and confidential financial disclosure reports filed in 2022, ethics training materials, a sample of the ethics counseling provided to employees, data analysis for financial disclosures, and ethics training for SGEs. In addition, OGE interviewed and corresponded with agency ethics officials, designated federal officials (DFO), and an ethics official from the DoD

¹ See 5 U.S.C. app. § 13122 and 5 C.F.R. part 2638.

² OGE monitors other elements of agency ethics programs for compliance on an ongoing basis. These include compliance with Ethics Pledge requirements, reporting acceptance of travel and related expenses from non-federal sources under the authority of 31 U.S. Code § 1353, and other program elements.

Office of the Inspector General (OIG) to clarify the information gathered, follow up on issues identified during the review, and discuss ethics program operations in further detail.

Agency Background

DoD's mission is to provide the military forces to deter war and ensure the Nation's security. The Department provides combat-credible military forces that are capable of defending against aggression that undermines the security of both the United States and its allies.

The Secretary of Defense, a presidentially appointed, Senate-confirmed (PAS) official is the principal defense policy advisor to the President in all matters relating to the Department and exercises authority, direction, and control over DoD.

The Office of the Secretary of Defense (OSD) is responsible for policy development, planning, resource management, and program evaluation. OSD includes the offices of top civilian defense decision-makers with regard to personnel, weapons acquisitions, research, intelligence and fiscal policy, as well as offices the Secretary establishes to assist in carrying out assigned responsibilities.

Program Administration

OSD's ethics program structure has not changed significantly since OGE's September 2019 ethics program review report. DoD's General Counsel, a PAS official, serves as DAE0 for both OSD and the subordinate DoD components that do not have their own DAE0s. The Director of SOCO, a member of the Senior Executive Service, serves as the Alternate DAE0 (ADAE0) for OSD and the subordinate components without DAE0s.

Standards of Conduct Office

SOCO sets agency-level policy throughout DoD and directly administers the ethics program within OSD and DoD components which do not have their own DAE0s. SOCO is an office within the DoD Office of General Counsel, Defense Legal Services Agency. The DoD General Counsel is the DAE0. The SOCO office consists of the Director/ADAE0, the Ethics and Financial Disclosure Program Manager, senior attorneys, paralegals, detailees, and administrative support personnel.

Senior Leadership Support

According to SOCO officials, DoD's senior leadership takes an active role in supporting the ethics program and engaging DoD employees in ethics-related issues. This support included the Secretary of Defense facilitating annual ethics training with senior leadership at DoD. In addition, a memorandum from the Secretary posted on SOCO's website lays out the Secretary's expectations. These expectations include covered DoD personnel completing annual ethics training by November 30 and that leaders at every level remain personally involved in leading ethics training. Moreover, SOCO's website contains a video from the Secretary which is often included in the annual ethics training presentation

and in which the Secretary reminds viewers about the importance of ethical decision-making and being a role model for the department.

Model Practice

OGE identifies model practices and shares them when it appears they may benefit other executive branch agency ethics programs. OGE considers the following to be a model practice implemented at OSD.

- DoD's senior leadership actively supports OSD's ethics program to help raise employee awareness of ethics-related responsibilities.

The Joint Ethics Regulation

The Joint Ethics Regulation (JER)³ governs the application and procedural implementation of the executive branch-wide Standards of Conduct for Employees of the Executive Branch and the Supplemental Standards of Ethical Conduct for Employees of the Department of Defense.⁴ The JER was issued to ensure that the Standards of Conduct and DoD supplemental regulation are applicable to enlisted personnel, as well as to give the rules the force and effect of a general order for applicability to military personnel. Thus, the JER generally serves as the ethics program standard operating procedures for all DoD components.

Ethics officials stated that SOCO is in the final stages of a wholesale revision to the JER, which has not been updated since 2011. The revisions will remove restatements of law and regulation that are no longer necessary given ease of internet access to these materials, replace manual processes with electronic processes, and incorporate changes to laws and regulations enacted since 2011. According to SOCO officials, the updated JER will be issued in a new format that will facilitate timely updates.

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 OSD's financial disclosure systems, OGE evaluated the required written procedures for administering the systems and a sample of public and confidential financial disclosure reports required to be filed by OSD employees. OGE also evaluated whether OSD 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.

³ DoD 5500.07-R, is authorized by DoD Directive 5500.07, Standards of Conduct

⁴ See 5 C.F.R. part 3601

Financial Disclosure Written Procedures

Each executive branch agency must establish written procedures for collecting, reviewing, evaluating, and where applicable, making available to the public financial disclosure reports filed by the agency's officers and employees.⁵ OGE examined OSD's written procedures and determined that they meet applicable requirements.

Notices to the DAEO

Agency human resources offices play a vital role in ensuring the effective administration of the ethics program. Without necessary information about agency employees, ethics officials cannot successfully carry out their important work. Among other things, the lead human resources official is required to notify the DAEO of all appointments to positions that require incumbents to file public or confidential financial disclosure reports no later than 15 days after the appointment. The lead human resources official must also notify the DAEO of terminations of employees in positions that require incumbents to file public financial disclosure reports no later than 15 days after termination.⁶ This helps to ensure the timely collection of financial disclosure reports.

Based on its evaluation of OSD's notification procedures and a sample of notices, OGE determined there is reasonable assurance that human resources promptly notifies SOCO of appointments to OSD positions whose incumbents are required to file financial disclosure reports. OGE also determined that there is reasonable assurance that human resources timely notifies SOCO when OSD employees who are required to file public financial disclosure reports leave their positions.

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 OSD's public financial disclosure system, OGE examined a sample of 143 of the more than 800 public reports that were required to be filed in 2022. This sample included 48 new entrant, 60 annual, and 35 termination reports. Table 1 below presents the results of OGE's examination.

⁵ See 5 U.S.C. § 13122.

⁶ See 5 C.F.R. § 2638.105(a)(1) and (2).

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.

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

	New Entrant	Annual	Termination	Total
Reports Examined	48	60	35	143
Filed Timely	45 (94%)	60 (100%)	33 (94%)	138 (97%)
Reviewed Timely	48 (100%)	60 (100%)	35 (100%)	143 (100%)
Certified within 60 Days	40 (83%)	52 (87%)	33 (94%)	125 (87%)

As noted in Table 1, OGE’s review found that 138 (97%) of the public reports were filed timely, 143 (100%) were reviewed timely, and 125 (87%) were certified within 60 days.

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. Final certification may, of necessity, occur later, when additional information is being sought from the filer or remedial action is being taken.¹²

To evaluate the administration of OSD’s confidential financial disclosure system, OGE examined a sample of 26 new entrant and 34 annual confidential 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 OSD Confidential Financial Disclosure Reports

	New Entrant	Annual	Total
Reports Examined	26	34	60
Filed Timely	21 (81%)	32 (94%)	53 (88%)
Reviewed Timely	26 (100%)	34 (100%)	60 (100%)
Certified within 60 Days	15 (58%)	31 (91%)	46 (77%)

As indicated in Table 2, OGE found that only 15 (58%) of the 26 new entrant reports examined were certified within 60 days of submission. Of the 11 remaining reports, 6 had not been certified at the time OGE initially examined them on March 15, 2023. All six reports were certified subsequent to the completion of OGE’s fieldwork.

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.

OSD employees who are required to file confidential financial disclosure reports must submit their reports electronically using the Financial Disclosure Management system (FDM). FDM independently creates audit trail log entries for each action taken throughout the report review process. Log entries begin with the creation of each report and end with its final certification. OGE examined the logs associated with new entrant confidential financial disclosure reports that were certified more than 60 days after submission. The logs documented apparent gaps between the various stages of review. For example, one log indicated that the report was not initially reviewed until 47 days after it was submitted. Another log indicated the second level review of a report didn't take place until 60 days after the supervisor completed their review. A third log indicated there was a 52 day delay between the supervisor's review and the first review by an ethics official. Logs for the other reports that were certified more than 60 days after submission included similar gaps.

According to SOCO officials, the filer's supervisor is generally responsible for conducting the first review of each report. A supervisors' knowledge of their employees' duties often puts them in the best position to identify real or potential conflicts of interest. The supervisor's review is typically followed by a series of reviews conducted by two to three SOCO ethics officials to increase internal controls for the prevention of conflicts of interest. SOCO ethics officials explained that certification of new entrant confidential reports may take more than 60 days because they send confirmatory emails to all new entrant filers to verify that the filers have not omitted items from their report which often lead to further communication and amendments. Moreover, they stated that OSD has experienced significant email issues on and off throughout the 2022 calendar year. Some emails are not delivered or are recognized as junk email. Therefore, communicating with filers has delayed the process of gathering information in order to certify confidential reports.

The prompt review and certification of financial disclosure reports is critical to the prevention of conflicts of interest. This is particularly true of new entrant reports as the interests disclosed have not been previously examined relevant to the particular filer and their duties. It is also often the case that new entrant filers have not received the training that would allow them to recognize real or potential conflicts on their own prior to their appointment.

OGE acknowledges that regulations permit the final certification of a report, when necessary, to occur more than 60 days after submission if additional information is being sought or remedial action is being taken. However, allowing in excess of 40 days to pass before an ethics official reviews a report or the initial request for additional information is sent to the filer creates unnecessary risk. It should also be recognized that, notwithstanding the plain reading of the relevant regulation, exceeding the 60 day standard for certification should only occur in cases involving the most complex interests or extraordinary circumstances. The 60 day standard should not be exceeded either routinely nor because required additional information wasn't requested until long after a report was submitted.

Recommendation

1. Ensure that new entrant confidential financial disclosure reports are reviewed promptly after submission to identify any reported interests that could create a real or potential conflict of interest. The review should be conducted early enough that filers can be counseled and requested to provide any additional information necessary and reports can, in all but the most complex cases, be certified within 60 days of submission.

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.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 Briefing for Certain Agency Leaders

Certain PAS officials must complete an ethics briefing to discuss their immediate ethics obligations no later than 15 days after their appointment, unless the DAEO grants an extension. Any extension of more than 15 days requires the DAEO to make a written determination that extraordinary circumstances make it necessary to provide the briefing at a later date.¹⁴ SOCO requires PAS officials to receive their briefing within one week of their appointment, and this requirement is documented in each PAS official's Ethics Agreement.

OGE reviewed the material covered in the briefings and initial ethics training (IET) and determined it met relevant content requirements. According to SOCO, the ethics attorney who advises a PAS officials in completing their nominee public financial disclosure report will also be the ethics attorney who provides the official with the required ethics briefing so that the attorney can best tailor the training for each official. Additionally, the Director, SOCO will typically partipate in the initial briefing and IET for new PAS officials. All PAS officials required to receive the briefing in 2022 received the briefing and IET within seven 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.¹⁵

OGE examined the procedures established by SOCO to provide notices to prospective employees and a sample of notices that were sent to prospective employees in 2022. Based on

¹³ See 5 C.F.R. Part 2638 Subpart C.

¹⁴ See 5 C.F.R. § 2638.305.

¹⁵ See 5 C.F.R. § 2638.303.

this examination, OGE determined that there was reasonable assurance that prospective OSD employees receive the required information along with their written offers of employment.

Notices to New Supervisors

An agency must provide each employee upon initial appointment to a supervisory position with certain written materials within one year of appointment. The written materials must include: contact information for the agency's ethics office and the text of the regulation specifying the government ethics responsibilities of supervisors;¹⁶ 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 examined the procedures established by SOCO to provide notices to new supervisors and a sample of notices that were sent to new supervisors in 2022. Based on this examination, OGE determined that there was reasonable assurance that new OSD supervisors received the required information along with their written offers of employment during the period under review.

Initial Ethics Training

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

According to SOCO's Ethics and Financial Disclosure Program Manager, Human Resources (HR) provides a copy of the "Employee Guide to the Standards of Conduct" (Guide) to new employees during the HR orientation they receive on their first day. The Guide contains instructions for contacting ethics officials at SOCO and how to navigate to SOCO's website. The Guide also addresses financial conflicts of interest, impartiality, misuse of position, and gifts and lists the 14 General Principles. The Guide serves to provide new employees valuable ethics information that they can later use when taking the mandatory interactive new employee training.

Once an employee begins work at OSD, their information is uploaded into the iCompass Learning Management System (LMS). The LMS then assigns the new entrant training date for each new employee. OGE reviewed the IET provided through LMS and determined it met relevant requirements for content and format. Additionally, SOCO indicated that at the

¹⁶ See 5 C.F.R. § 2638.103.

¹⁷ See 5 C.F.R. § 2638.306.

¹⁸ See 5 C.F.R. § 2638.304.

beginning of an administration, SOCO's practice is to offer live IET to all new political appointees assigned to OSD.

Written Procedures for Initial Ethics Training

Agencies are required to establish written procedures for, among other things, initial ethics training, which the DAEO must review each year.¹⁹ Further, in agencies with 1,000 or more employees, any office that is not under the supervision of the DAEO, but has been delegated responsibility for issuing notices or conducting training, must submit the following materials to the DAEO by January 15 each year: a written summary of procedures that office has established to ensure compliance with initial ethics training requirements; and written confirmation that there is a reasonable basis for concluding that the procedures have been implemented.²⁰

OGE reviewed the written procedures SOCO established for providing IET and found that they met relevant requirements. Of the 351 OSD employees required to receive IET, 347 or 99% received the training within the three months of their appointment, as required.

Annual Ethics Training for Public Filers

Generally, live training must be provided each calendar year to each employee whose pay is set at Level I or Level II of the Executive Schedule. Live training must also be provided to other employees who are required to file public financial disclosure reports every other year, with interactive training provided in the intervening years. The training presentation, whether live or interactive, must focus on government ethics laws and regulations that the DAEO deems appropriate and must address financial conflicts of interest, impartiality, misuse of position, and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and, instructions for contacting the agency's ethics office.²¹

According to SOCO officials, the previously mentioned video featuring the Secretary is often included in live and interactive training. SOCO also uses scenarios in order to engage participants in interactive discussions concerning ethics issues that use examples such as acquisition or foreign policy situations. These scenarios are developed with input from leaders and often tailored to address issues a specific organization is likely to encounter. The attendees receive the scenario handout before the discussion so that participants may prepare. OGE reviewed the materials and determined that the annual training presentation, the Secretary's ethics video, the interactive annual training, and the ethics training scenarios combined with the annual ethics handout met applicable content requirements.

¹⁹ See 5 C.F.R. § 2638.304.

²⁰ See 5 C.F.R. § 2638.310.

²¹ See 5 C.F.R. § 2638.308.

Annual Ethics Training for Confidential Filers

Generally, interactive training is required to be provided each calendar year to employees who are required to file a confidential financial disclosure report pursuant to 5 C.F.R. § 2634.904; employees appointed by the President and employees of the Executive Office of the President; contracting officers; 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.²²

According to SOCO officials, confidential filers receive live or interactive annual training. OGE determined that the annual training presentation combined with the written materials met applicable content requirements.

In 2022, 331 public filers and 643 confidential filers within OSD were required to receive annual ethics training. Table 3 below reflects the percentage of these public and of confidential filers who completed annual ethics training in 2022 and the type of training completed.

Table 3. OSD's Annual Ethics Training for Financial Disclosure Report Filers

	DATA ANALYSIS	Training Format	
		Live	Interactive
	Percentage of public filers who completed annual ethics training before the end of the calendar year. <i>See</i> 5 C.F.R. § 2638.308(a).		
8.6	• Executive Schedule Level I and Level II. <i>See</i> 5 C.F.R. § 2638.308(e)(1).	100%	
8.7	• Other PAS and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(2).	100%	
8.8	• SES and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(3).	86%	14%
	Percentage of confidential filers and certain other employees who completed annual ethics training before the end of the calendar year. <i>See</i> 5 C.F.R. § 2638.307(a)(d).		
8.9	• Employees required to file an annual confidential financial disclosure report. <i>See</i> 5 C.F.R. § 2638.307(a)(1).	80%	20%
8.10	• Employees appointed by the President. <i>See</i> 5 C.F.R. § 2638.307(a)(2).	N/A	N/A
8.11	• Employees of the Executive Office of the President. <i>See</i> 5 C.F.R. § 2638.307(a)(2).	N/A	N/A
8.12	• Contracting officers described in 41 U.S.C. § 2101. <i>See</i> 5 C.F.R. § 2638.307(a)(3).*	N/A	N/A
8.13	• Other employees designated by the head of the agency. <i>See</i> 5 C.F.R. § 2638.307(a)(4).	N/A	N/A

Ethics officials explained that, other than members of committees established under the authority of the Federal Advisory Committee Act (FACA), they do not distinguish between the roles or appointment authorities of confidential financial disclosure report filers. FDM was not designed to track that information. Confidential financial disclosure report filers in the categories described in 8.10, 8.11, and 8.12 are included in the percentage reported in 8.9. FACA committee members are addressed separately in section 10 below.

²² *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.²³ 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 SOCO ethics officials provided to OSD employees in 2022. The counseling addressed conflicts of interests/impartiality, gifts, speaking engagements, awards, post-government employment restrictions, and use of position. OGE found the counseling to be consistent with applicable statutes and regulations.

Conflict Remedies

The primary criminal conflict of interest law prohibits an employee from participating in an official capacity in a particular matter in which he or she has a financial interest.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 No waivers were issued in 2022 for OSD.

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.²⁶ This written notice is commonly known as an “ethics agreement.” In 2022, nine PAS officials were required to submit their Certification of Ethics Agreement Compliance forms, certifying that they had complied with all elements of their ethics agreements. OGE received timely certifications of ethics agreement compliance from all nine of these officials.

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).²⁷ Allegations of violations of the criminal conflict of interest statutes by OSD employees are referred to DoD OIG for appropriate investigation by the Defense Criminal Investigative Service (DCIS). Based on the results of the investigation, DCIS may make a referral to DOJ. DCIS is also responsible for concurrently notifying OGE of referrals made to DOJ and the ultimate disposition of the referral.

²³ See 5 C.F.R. § 2638.104 (c)(4).

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.

In 2022, DOD's OIG did not refer any OSD employees to DOJ for potential violations of the criminal conflict of interest laws.²⁸ Additionally, DOD's OIG reported no disciplinary actions based wholly or in part upon violations of the Standards of Conduct involving an OSD employee in 2022.

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.²⁹

OSD is responsible for overseeing six advisory committees established under the Federal Advisory Committee Act (FACA). These 6 committees employed nearly 138 SGEs in 2022. SOCO administers applicable elements of the ethics program for members of these six committees.

OGE reviewed SOCO's administration of the ethics program within three committees to assess whether OSD's ethics program was in compliance with requirements relevant to SGEs. The committees selected for review were the Defense Science Board, Defense Business Board, and the Defense Innovation Board.

Financial Disclosure

Defense Science Board

The Defense Science Board included 68 SGE members in 2022. The members file an OGE-approved alternative confidential financial disclosure report. OGE examined a sample of 20 reports filed by members in 2022 and determined that all 20 reports were filed and certified timely.

Defense Business Board

The Defense Business Board included 21 SGE members in 2022. Board members are required to file the OGE Form 450. OGE examined 21 reports filed by members in 2022. OGE determined that all 21 reports were filed and certified timely.

Defense Innovations Board

The Defense Innovations Board included nine SGE members in 2022. OGE determined that all nine reports were filed and certified timely.

²⁸ SOCO ethics official advised OGE that OSD has made two referrals to OIG for suspected violations of 18 U.S.C. § 208, but that they are only in the beginning stages of investigation.

²⁹ See 18 U.S.C. § 202(a).

Ethics Training

In 2022, interactive ethics training for SGE board members consisted of the provision of written materials to the board members. Board members are required to certify they received ethics training by submitting an ethics training certificate as part of their onboarding package. Otherwise, they will not be appointed or renewed on the FACA board. In addition subsequent live training is provided at the beginning of the first committee meeting. OGE determined that the training met the applicable content and format requirements.

Defense Science Board

OGE determined that the 20 SGE members of the Defense Science Board whose confidential reports were examined by OGE received the required ethics training timely in 2022.

Defense Business Board

All SGE members of the Defense Business Board received the required ethics training timely in 2022.

Defense Innovations Board

All SGE members of the Defense Innovations Board received the required ethics training timely in 2022.

Agency Comments

The Department notes that OGE's findings indicate 100% of Public and Confidential Reports were reviewed and certified within the time allowed by OGE's regulations. Ethics officials for the OSD DAEO agency receive and review approximately 1200 Confidential and Public Financial Disclosure Reports annually, in addition to providing ethics advice to approximately 2500 OSD personnel and guidance for ethics officials across the Department. The Department acknowledges OGE's preference that initial review occur earlier than the regulatory 60 day deadline to ensure that potential conflicts of interest are identified as quickly as possible and believes that the DoD requirement for supervisory review of reports meets OGE's intent. Supervisory review serves as an additional safeguard by ensuring that an individual above the filer in the chain of command with specific knowledge of the filer's duties conducts a conflict of interest review, typically within two weeks of report submission. Additionally, DoD places significant emphasis on ensuring that report content is accurate and complete to ensure that a comprehensive conflicts review can be conducted. DoD will implement training and process changes with filers, supervisors, and ethics officials to facilitate improvements in the quality of initial report submissions and earlier review and certification of reports.

OGE Response to Agency Comments

OGE commends DoD's commitment to implement training and process changes to facilitate improvements in the quality of initial financial disclosure report submissions and earlier review and certification of reports. OGE will conduct a follow-up review in approximately six months to determine whether sufficient action has been taken to resolve the deficiencies underlying the recommendation issued in this report.