



Ethics Program Review

Department of Veterans Affairs

Report No. 23-31
June 29, 2023



The United States Office of Government Ethics (OGE) conducted a review of the Department of Veterans Affairs (VA) ethics program from January through May 2023. 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 examined the following elements of VA’s ethics program: program administration, financial disclosure, education and training, ethics counseling, agency-specific ethics rules, conflict remedies, enforcement, and SGEs. OGE’s review examined the ethics program administered throughout VA and focused on ethics program activities that occurred in 2022 and 2023.²

Methodology: OGE examined a variety of documents provided by VA’s ethics officials, including VA’s response to OGE’s 2022 Annual Agency Ethics Program Questionnaire, written procedures for administering the ethics program, samples of public and confidential financial disclosure reports filed in 2022, ethics training materials, and a sample of the ethics advice and counseling provided to employees. In addition, OGE met with VA 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 title IV of the Ethics in Government Act, 5 U.S.C. app. § 402 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 agreements, reporting acceptance of travel and related expenses from non-federal sources under the authority of 31 U.S.C. § 1353, and other program elements.

Agency Background

VA is the second largest Cabinet-level department and has over 425,000 employees whose mission is to serve America's Veterans and their families. VA is comprised of a Central Office (VACO), which is located in Washington, DC, and field facilities throughout the U.S. There are three major VA service line organizations: Veterans Health Administration, Veterans Benefits Administration, and National Cemetery Administration. VA services and benefits are administered through a network of hospitals, outpatient clinics, Vet Centers and Regional Offices, and national, State or Tribal Cemeteries. The department operates under the leadership of the Secretary, a presidentially appointed, Senate-confirmed (PAS) official.

Program Administration

VA's ethics program is administered by VA's Ethics Specialty Team (EST). EST is led by the Deputy General Counsel and the Deputy Chief Counsel (DCC), both of who are located at VACO and serve as the Designated Agency Ethics Official (DAEO) and the Alternate DAEO (ADAEO), respectively. The ADAEO manages the day-to-day administration of the ethics program.

Additionally, EST is comprised of Deputy Ethics Officials (DEO) and paralegals located at VACO and in the five Chief Counsel Districts: Pacific, Continental, Midwest, Southeast, and North Atlantic. VACO DEOs generally address ethics issues arising within VACO and the DEOs generally address ethics issues that arise within their respective districts, under EST's supervision.

According to the Deputy Chief Counsel, there is continuous communication among EST to ensure consistency in ethics guidance throughout VA. If unusual or sensitive questions arise, EST staff members contact the ADAEO or DCC for assistance. The ADAEO and DCC also meet with each EST staff member on a biweekly basis. In 2022, EST reviewed almost 12,000 confidential and over 800 public financial disclosure reports, and provided ethics training at VA facilities throughout the country, in person and via electronic media.

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.

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.³ OGE examined VA's written procedures and determined they meet applicable requirements.

Notices to the DAEO

Agency human resources offices play a vital role in ensuring the effective administration of the ethics program. Without necessary information about agency employees, ethics officials cannot successfully carry out their important work. Among other things, the lead human resources official is required to notify the DAEO of all appointments to positions that require incumbents to file public or confidential financial disclosure reports no later than 15 days after the appointment. The lead human resources official must also notify the DAEO of terminations of employees in positions that require incumbents to file public financial disclosure reports no later than 15 days after termination.⁴ This helps to ensure the timely collection of financial disclosure reports.

OGE's last review of VA's ethics program in 2019 found that VA did not have effective written procedures in place to ensure that HR notified EST of appointments to positions whose incumbents are required to file public or confidential financial disclosure reports. VA also did not have effective procedures for HR to notify EST of departures from those positions whose incumbents are required to file public reports.

During the current review, OGE examined VA's written procedures and found that they were in compliance with applicable requirements. Based on the examination of a sample of notifications sent from HR to EST, OGE determined that the written procedures were also effective.

EST officials noted that a paralegal meets biweekly with new entrant public filers to provide training on new entrant public financial disclosure filings. Officials also noted that the Corporate Senior Executive Management Office (CSEMO) now notifies the Deputy Chief Counsels within EST of new entrants and termination filers. EST paralegals conduct monthly training sessions with HR points of contact at individual VA facilities. The training emphasizes the importance of timely notice to EST of any new employees who are entering confidential filing positions.

Public Financial Disclosure

Within 30 days of assuming a covered public filing position, an individual must file a public financial disclosure report.⁵ 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.⁶ The reports are required to be reviewed for potential conflicts of interest and certified

³ See 5 U.S.C. § 13122 of the Ethics in Government Act.

⁴ See 5 C.F.R. § 2638.105(a)(1) and (2).

⁵ See 5 C.F.R. § 2634.201(b).

⁶ See 5 C.F.R. § 2634.201(a) and (e).

within 60 days of receipt by the ethics office, unless additional information is being sought from the filer or remedial action is being taken.⁷

To evaluate the administration of VA's public financial disclosure system, OGE examined 40 new entrant, 40 annual and 20 termination reports that were required to be filed from 2022 until the date of OGE's review. Table 1 below presents the results of OGE's examination.

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

	New Entrant		Annual		Termination		Total	
Reports Examined	40		40		20		100	
Filed Timely	31	(78%)	34	(85%)	18	(90%)	83	(83%)
Certified Timely	35	(88%)	36	(90%)	18	(90%)	89	(89%)

As noted in Table 1, 31 (78%) of the 40 new entrant reports were filed timely and 35 (88%) were certified timely. Also as noted in Table 1, 34 (85%) of the 40 annual reports were filed timely and 36 (90%) certified timely. OGE examined notes documenting review of the disclosures and found that reviewers raised and resolved questions when filers' assets were identified as potential conflicts.

During OGE's last review in 2019 OGE discovered that five termination reports that were required to be filed were never filed. During the current review, OGE reviewers were able to determine that the employees who were required to file these reports were referred to the Department of Justice (DOJ) for potential prosecution; however, these referrals were not made until four years after the fact. Additionally, one termination report required to be filed in 2022 had not been filed at the time OGE conducted the current review. The employee required to file the report was also referred to the DOJ. All six referrals were concurrently reported to OGE, as required.

Recommendation

1. Ensure that new entrant public financial disclosure reports are filed timely.
2. Refer employees who do not file required public financial disclosure reports to DOJ in a timely manner.

OGE's Examination of Confidential Financial Disclosure Reports

Within 30 days of assuming a covered confidential filing position, an individual must file a confidential financial disclosure report.⁸ The individual must also subsequently file an annual report by February 15 each year.⁹ The reports are required to be reviewed for potential conflicts of interest

⁷ See 5 C.F.R. § 2634.605.

⁸ See 5 C.F.R. § 2634.903(b).

⁹ See 5 C.F.R. § 2634.903(a).

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.¹⁰

To evaluate the administration of VA's confidential financial disclosure system, OGE reviewed a sample of 46 new entrant and 42 annual reports that were required to be filed in 2022. Table 2 below presents the results of OGE's review.

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

	New Entrant		Annual		Total	
Reports Examined	46		42		88	
Filed Timely	29	(63%)	34	(81%)	63	(72%)
Certified Timely	44	(96%)	42	(100%)	86	(98%)

As indicated in Table 2, 29 (63%) of the 46 new entrant reports OGE examined were filed timely, and 44 (96%) were certified timely. Also as indicated in Table 2, 34 (81%) of the 42 annual reports OGE examined were filed timely, and 42 (100%) were certified timely. OGE examined notes documenting review of the disclosures and found that reviewers raised and resolved questions when filers' assets were identified as potential conflicts.

Recommendation

3. Ensure that new entrant confidential financial disclosure reports are filed timely.
4. Ensure that annual confidential financial disclosure reports are filed timely.

Education and Training

Each executive branch agency must carry out a government ethics education program to teach employees how to identify government ethics issues and obtain assistance in complying with government ethics laws and regulations. The training program is to include: briefings for certain 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.¹¹ 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 ethics counseling. Each agency's ethics training program is required to include at least an initial ethics orientation for all new employees and annual ethics training for covered employees.¹²

¹⁰ See 5 C.F.R. § 2634.605.

¹¹ See 5 C.F.R. Part 2638 Subpart C.

¹² See 5 C.F.R. §§ 2638.704 and 705 for definition of covered employees.

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.¹³ 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 OGE determined that there were no new PAS employees appointed during the period covered by the review.

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 Agencies must also establish written procedures for issuing notices to prospective employees, which the DAEO annually reviews.

OGE examined several samples of notices sent to prospective employees in 2022 and determined that all relevant content requirements were met.

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 several samples of notices sent to new supervisors in 2022 and determined that all relevant content requirements were met.

¹³ See 5 C.F.R. Part 2634.201 (c) (2)

¹⁴ See 5 C.F.R. § 2638.305.

¹⁵ See 5 C.F.R. § 2638.303.

Written Procedures

OGE's last review in 2019 found that VA had not established written procedures for issuing notices to prospective employees or new supervisors. Therefore, OGE recommended that VA establish those procedures, as required. During the course of the current review, OGE found that EST had established for VA the required written procedures and that they met applicable requirements.

Initial Ethics Training

Each new employee of the agency 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 concepts related to: 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 Agencies must also establish written procedures for IET that the DAEO annually reviews.

OGE's last review of VA in 2019 found that EST's written procedures for conducting initial ethics training did not comply with relevant requirements. During the current review, EST provided OGE with written procedures for administering IET which did meet relevant requirements. EST affirmed that these procedures are reviewed by the DAEO annually, as required.

OGE reviewed the materials VA used to provide initial ethics training in 2022 and determined that the materials met applicable content requirements. OGE also determined that VA provided IET to 85% of new employees; however, only 67% of those who were trained received the training within 90 days, as required.

EST generally conducted IET for VA employees in interactive online sessions, with some employees receiving live training, during which EST provided required ethics materials. EST also provided employees with the following written materials: a summary of the Standards of Conduct and instructions for contacting the EST. Using provided training records, OGE was able to confirm that Career Senior Executive Service members were provided IET individually by the ADAEO who addressed all required material.

Recommendation

5. Ensure that new employees receive initial ethics training within 90 days of entry on duty.

¹⁶ See 5 C.F.R. § 2638.304.

Annual Ethics Training

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.¹⁷

OGE reviewed the materials EST used to provide annual ethics training for VA employees in 2022 and determined that the materials met applicable content requirements. OGE examined training records and determined that EST provided annual ethics training to 91% of VA confidential financial disclosure filers and 100% of public financial disclosure filers. The training was conducted via interactive online training for confidential financial disclosure filers and live for public financial disclosure filers. EST provided OGE a packet of materials that they affirmed were provided during the training.

In 2022, EST also provided live training to all VA PAS employees. OGE reviewed the material covered in the briefings and determined that it met the applicable content requirements.

Advice and Counseling

The DAEO, acting directly or through other officials, is responsible for providing advice and counseling to prospective and current employees regarding government ethics laws and regulations and providing former employees with advice and counseling regarding post-employment restrictions applicable to them.¹⁸ 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 counseling and advice EST provided to VA's employees. The advice examined addressed criminal conflict-of-interest statutes, misuse of position, gifts, financial disclosure reporting, outside employment, post-employment, and widely attended gatherings. The advice appeared to be responsive to the questions asked, timely, and consistent with applicable laws and regulations.

¹⁷ See 5 C.F.R. § 2638.308.

¹⁸ See 5 C.F.R. § 2638.104 (c)(4).

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.¹⁹ 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, before issuing the waiver on each occasion. VA issued eight waivers in 2022. OGE was consulted on all eight waivers, as required.

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. This written notice is commonly known as an “ethics agreement.” Eleven VA PAS officials confirmed in 2021 had ethics agreements. OGE confirmed that all eleven officials had timely complied with the terms of their ethics agreements.

Enforcement

Executive branch offices are required to notify OGE when they refer a potential violation of a conflict of interest law to the Department of Justice (DOJ). VA made seven referrals to DOJ in 2022 and two in 2023, based wholly or in part upon violations of the criminal conflict of interest statutes (18 U.S.C. §§ 203, 205, 207, 208, and 209). OGE was concurrently notified of these referrals, as required.

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.

According to VA’s response to OGE’s 2022 Annual Agency Ethics Program Questionnaire, 1,032 SGEs served at the department in some capacity in 2022. To evaluate the ethics-related services provided to SGEs, OGE selected three VA advisory committees comprised of SGEs for examination. These committees were: 1) the Advisory Committee on Tribal and Indian Affairs, 2) Advisory Committee on Prosthetics and Special-Disabilities Programs, and 3) Advisory Committee on Cemeteries and Memorials.

¹⁹ See 18 U.S.C. § 208.

Advisory Committee on Tribal and Indian Affairs

OGE attempted to review confidential reports filed by SGEs on this committee for 2022. However, EST was not able to provide OGE with the requested reports within a reasonable timeframe. Indeed, as of the issuance of this report, EST has still not provided the confidential financial disclosure reports, which were initially requested in March 2023.

Through a review of training records, OGE was able to determine that ethics training was timely provided to the SGE committee members and that it met relevant requirements for content and timeliness.

Recommendation

6. Locate confidential financial disclosure reports filed by SGE members of the Advisory Committee on Tribal and Indian Affairs and immediately provide the reports to OGE.

Advisory Committee on Prosthetics and Special Disabilities Programs

OGE examined all 11 confidential reports filed by SGEs on this committee in 2022. Of these 11 confidential reports, all were found to have been filed and reviewed timely. However, none of the 11 reports were certified timely.

Through a review of training records, OGE was able to determine that ethics training was timely provided to the SGE committee members and that it met relevant requirements for content and timeliness.

Recommendation

7. Ensure that advisory committee SGE confidential reports filed by the Advisory Committee on Prosthetics and Special Disabilities Programs are certified timely.

Advisory Committee on Cemeteries and Memorials

OGE examined all 12 confidential reports filed by SGEs on this committee in 2022. Of these 12 confidential reports, 11 were filed before the first committee meeting in June 2022; the remaining committee member filed a report in November 2022, but the filer did not attend any meetings in the calendar year. Eleven of the 12 confidential reports filed by SGEs on this committee in 2022 were certified timely.

Through a review of training records, OGE was able to determine that ethics training was timely provided to the SGE committee members and that it met relevant requirements for content and timeliness.

Agency Comments

Recommendation 1: Ensure that new entrant public financial disclosure reports are filed timely.

Agency response: In 2022, the VA's Office of General Counsel established a financial disclosure program manager position and dedicated additional paralegal support to the financial disclosure program. The dedicated resources have resulted in increased communication and follow up with new entrants. By way of example, the program manager contacts the filers shortly before the due date to offer assistance and advise filers on the availability of an extension, if necessary.

Recommendation 2: Refer employees who do not file required public financial disclosure reports to DOJ in a timely manner.

Agency response: The financial disclosure program manager and lead paralegal meet on a weekly basis to review the public financial disclosures. The increased oversight will enable more timely referrals to DOJ.

Recommendation 3: Ensure that new entrant confidential financial disclosure reports are filed timely.

Agency response: The Ethics Team is now working in collaboration with the DDAEOs of our suborganizations (VHA, VBA, NCA and OIT) to (a) ensure that the local human resources offices timely report those employees who are confidential filers and (b) identify delinquent filers earlier in the filing year and have been urged to utilize the authority of 5 C.F.R. §§ 2634.701(d) to impose appropriate administrative action on those filers.

Recommendation 4: Ensure that annual confidential financial disclosure reports are filed timely.

Agency response: See response directly above.

Recommendation 5: Ensure that new employees receive initial ethics training within 90 days of entry on duty.

Agency response: The Ethics Team continues to work closely with the Office of Chief Human Capital Officer to improve the timeliness of VA's initial ethics training for new employees.

Recommendation 6: Locate confidential financial disclosure reports filed by SGE members of the Advisory Committee on Tribal and Indian Affairs and immediately provide the reports to OGE.

Agency response: See response directly below.

Recommendation 7: Ensure that advisory committee SGE confidential reports filed by the Advisory Committee on Prosthetics and Special Disabilities Programs are certified timely.

Agency response: VA OGC-EST acknowledges its difficulty in producing these reports in a timely manner. A solution for this issue has been identified to be obtaining an electronic filing system for confidential financial disclosure filers who are VA special government employees (SGE) serving on Advisory Committees. VA OGC has agreed to purchase FDOonline for use exclusively by VA special government employees (SGE) and Advisory Committee filers, which currently may only file paper 450 reports. We are hopeful that by the end of the calendar year, FDOonline will be in place at VA for reporting by confidential financial disclosure filers who are special government employees (SGE) serving on Advisory Committees. Our difficulties in responding in a timely manner to OGE requests for 450 reports from special government employees (SGE) and Advisory Committee was exacerbated by the timing of multiple retirements and departures from EST in the past twelve months, along with the ongoing move and renovations in VA's Central Office where the paper 450 reports in question are securely stored.