

Program Review Guidelines



INTRODUCTION

Executive branch departments and agencies¹ are required by Federal statute and regulation to have an ethics program. One goal of an ethics program is to serve as a formalized and systematic means by which an agency can prevent and detect ethics violations on the part of its employees. However, the ultimate goal of an ethics program is to ensure integrity in Government decision-making processes and to foster public confidence in Government.

PURPOSE OF A REVIEW

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 the ethics requirements found in the various statutes, regulations, and policies and (2) ethics-related systems, processes, and procedures in place for administering the program.

In addition to statutory and regulatory compliance, program reviews focus on identifying and disseminating model practices throughout the executive branch. This focus is intended to encourage agencies to efficiently meet compliance while effectively meeting the ultimate goal of the executive branch ethics program.

REVIEW AUTHORITY

The authority for conducting ethics program reviews is found in title IV of the Ethics in Government Act of 1978, as amended (Ethics Act) and the implementing regulations at 5 CFR part 2638. Under title IV (5 U.S.C. app.), the Director of the Office of Government Ethics (OGE) is to monitor and investigate individual and agency compliance with the public and confidential financial disclosure requirements ([§ 402\(b\)\(3\) and \(5\)](#)). Under part 2638, OGE is to

- monitor compliance with the public and confidential financial disclosure requirements ([§ 2638.102\(a\)\(4\)](#)), and
- evaluate the effectiveness of programs designed to prevent conflicts of interest ([§ 2638.102\(a\)\(6\)](#)).

CORRECTIVE ACTION AUTHORITY

When an agency's ethics program is not in compliance with applicable statutes and regulations, OGE recommends that the agency take action to bring the program into compliance. However, when an agency fails to adequately address its deficiencies, the Ethics Act and the

¹Agency will be used interchangeably to denote a department as well.

implementing regulations at 5 CFR part 2638 also provide the authority for the Director of OGE to order corrective action.

The Ethics Act provides

- for the Director of OGE to order corrective action on the part of agencies and employees which the Director deems necessary (§ 402(b)(9))
- that the Director may order specific corrective action
 - on the part of an agency based on the failure of such agency to establish a system of financial disclosure in accordance with applicable requirements (§ 402(f)(1)(A)(i)), or
 - involving the establishment or modification of an agency ethics program (other than under clause (i)) in accordance with applicable requirements (§ 402(f)(1)(A)(ii)) and
- that the Director shall, if an agency has not complied with an Order within a reasonable period of time, notify in writing the President and Congress of the agency's non-compliance (including any written comments which the agency may provide) (§ 402(f)(1)(B)).

Subpart D of 5 CFR part 2638 provides for the Director to issue

- Notice of Deficiency to the Designated Agency Ethics Official (DAEO), setting forth a deadline for the agency to report back to OGE that the deficiency has been or is being corrected and providing for the agency to include a plan for correcting any deficiency within a reasonable period of time and, possibly, sending status reports to OGE (§ 2638.402(b));
- Order to the agency head with a copy to the DAEO, where OGE determines that an agency has failed to comply with a Notice of Deficiency (§ 2638.402(c) and (d)); and
- Report of Noncompliance to the President and Congress, where OGE determines that an agency has failed to comply with an Order (§§ 2638.403 and 2638.404).

MATERIALITY OF REVIEW FINDINGS

In conducting an ethics program review, findings of lack of compliance with ethics requirements are reportable if they are material. In general, a finding is material if there is

- routine lack of compliance with a statutory/regulatory provision or related provisions or
- a single instance of lack of compliance with a statutory/regulatory provision or related

provisions, although of such magnitude as to bring into question compliance of an element or sub-element, in general, with the provision(s).

In conducting an ethics program review, a team leader may also find instances where an ethics program is exceeding compliance with ethics laws and regulations. In general, a practice that exceeds compliance with ethics laws and regulations can be identified as a model practice if the practice

- helps the agency foster a strong ethical culture.
 - Example - An agency head includes a welcome letter underscoring the importance of ethical culture in initial ethics orientation materials for new employees.
- creates efficiencies in the administration of the ethics program.
 - Example – The agency employs a database that sends automatic notifications reminding ethics officials that a report must be reviewed to meet the 60-day deadline.
- facilitates enduring ethics program effectiveness.
 - Example – The agency has a comprehensive succession plan for the ethics program that prepares the agency for turnover in staff.
- is an innovative solution to a challenge that may be useful to the executive branch ethics community.
 - Example – The agency is having trouble identifying new employees in order to provide them with initial ethics orientation. The human resources office is unable or unwilling to help the ethics office. The ethics office knows that every new employee fills out a form to gain access to a computer. The ethics office then convinces IT to include a signature line for the ethics office on the computer access form. Now, the ethics office can identify every incoming employee because new employees require the signature of an ethics official before they can access their computer.

Other examples of model practices can be found in issued program review reports and on OGE's website.

REVIEW PROCESS

Data Gathering Phase

Approximately two months before the anticipated start of the onsite review, an engagement email is sent announcing OGE's review of an agency's ethics program. The email explains the basic review process and establishes a deadline for the agency to provide preliminary review materials. The review team makes contact and schedules an initial informal meeting with agency ethics officials. During this informal meeting, the review team collects the materials prepared by the agency and discusses with ethics officials the strengths and weaknesses of the agency's ethics as well as the agency's areas of risk and how ethics officials are addressing those risks.

Onsite Phase

The review team conducts an entrance conference – typically attended by the DAEO, Alternate DAEO (ADAEO), other ethics officials and the desk officer – addressing the scope and methodology of the program review, the process for issuing reports, and other administrative issues.

The primary onsite review tasks are (1) the detailed review of agency financial disclosure reports for potential conflicts, technical sufficiency, and timely submission and certification and (2) to ensure through independent verification that the ethics program is operating as described in any policies and procedures. The number of financial disclosure reports reviewed is determined by the number of filers and the conflict of interest risk to specific positions. Advice and counsel samples are checked for timeliness, general accuracy, consistency, accountability, and transparency.

The review team conducts interviews with agency ethics officials and the Office of Inspector General (OIG), as well as supervisory personnel, Human Resources, and, when possible, the agency head. Outstanding questions not answered during the pre-review process are addressed at this time to verify information received. The review team may take this opportunity to observe ethics training and tracking systems for financial disclosure, training, or advice and counsel as appropriate.

At the completion of the onsite phase of the review, the review team conducts an exit conference with the DAEO, ADAEO, other ethics officials, and the desk officer. The review team addresses preliminary findings, model practices identified during the review, and subsequent steps of the review process.

Reporting Phase

A draft of the report is prepared and emailed to the agency for comment. Agencies are generally given two weeks to provide comment, which can be extended if appropriate. Once received, comments are attached to the final draft as an appendix and the review team makes any necessary amendments to the report. The signed transmittal letters and final report are mailed to the DAEO, the agency head, and the agency OIG. The review team emails the scanned copy of the transmittal letter and final report to the ethics office and the desk officer. The final report and agency comments are published on OGE's website thirty days after the report is issued.

Approximately two weeks after the final report has been issued, a review evaluation form is sent to the agency ethics official most directly involved with the ethics program review. The ethics official is asked to complete the evaluation within two weeks.

Follow-up

If a final report contains recommendations, ethics officials are required to respond in writing within 60 days of the date of issuance of the report with an explanation of the actions they have taken or will take to address those recommendations.

Approximately six months after the date of issuance of the report, PRD conducts a follow-up review to determine whether the agency has taken the actions necessary to comply with OGE's recommendation(s) and, if appropriate, suggestions. If the agency has not taken action sufficient to address the recommendation(s), additional follow-up reviews will be conducted.

The review team may request material or schedule onsite work depending on the nature of the recommendation(s) contained in the original report. Upon completion of the follow-up review, the review team drafts a memo stating the recommendation(s), the actions the agency proposed taking in its 60-day response, and results of the follow-up for each recommendation. The review team indicates whether the agency's remediation work has addressed the issue or if management has accepted residual risk of not taking further action. If the agency has taken insufficient steps to resolve those deficiencies identified during the review, OGE may consider further corrective action as necessary.

REVIEW ELEMENTS

Program Administration

1. Develop and maintain a close liaison with OGE concerning the agency's ethics program.
[5 CFR 2638.203\(b\)\(1\).](#)
2. The agency head shall delegate authority to a DAEO and ADAEO and submit formal written designation within 30 days of the delegation. The designation shall include the names and titles of the designees and a copy of the delegation of authority.
[5 CFR 2638.202\(c\).](#)

3. A list of delegated DAEO functions is maintained and made available to OGE upon request. [5 CFR 2638.203\(b\)\(13\)](#).
4. Agency leadership is involved in the ethics program. *OGE Directive*.
5. The agency's supplemental regulations, financial disclosure systems, and post-employment enforcement systems are evaluated periodically to determine their adequacy and effectiveness in relation to current agency responsibilities. [5 CFR 2638.203\(b\)\(10\)](#).
6. DAEO must ensure ethics services are provided to those employees assigned outside the agency. [5 CFR 2638.203\(b\)\(4\), \(6\) and \(7\)](#).

Financial Disclosure

Title I of the Ethics Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (OGE Form 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest review (OGE Form 450).

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs and providing counseling to employees. See [5 CFR § 2634.104\(b\)](#).

Public Financial Disclosure

1. Written policies and procedures governing the review, collection, evaluation and public availability of public financial disclosures. [5 U.S.C. app 402\(d\)\(1\)](#).
2. Written policies and procedures for public financial disclosure comply with all applicable requirements. [5 U.S.C. app 402\(d\)\(2\)](#).
3. Written policies and procedures governing the review, collection, evaluation and public availability of public financial disclosures. [DA-09-03-92](#).
4. Written procedures for public financial disclosure address follow-up with delinquent filers. *OGE Directive*.
5. An agency may use an electronic financial disclosure filing system in accordance with these OGE requirements:
 - a. Electronic filing of nominee OGE Form 278 reports using electronic signatures will not be permitted at this time
 - b. Electronic signatures on the OGE Form 278 are acceptable only if they meet the requirements of the Government Paperwork Elimination Act (GPEA), the E-Sign law, and other applicable laws. Issues such as security, verification and non-repudiation must be addressed

- c. Access to an electronic system from outside the agency's network must have an encryption process
 - d. A Level II E-Authentication standard (user name with PIN or password) is the minimum requirement for electronic signing.
 - e. Any agency development of a "smart financial disclosure form" (TurboTax-like collection of info) will require the use of the complete set of already-OGE-approved supplementary information or the exact language of the statute, regulations and form instructions
 - f. Any electronic form developed for use with a system, absent OGE approval, must exactly replicate the existing paper versions of the OGE Form 278 and be capable of being printed as paper copies
 - g. Public release of a requested OGE Form 278 must still be handled via the paper process. [DO-07-014](#).
6. Agency has a master list of public financial disclosure filers. *OGE Directive*
 7. New Entrant public financial disclosure filers must file within 30 days of assuming position. [5 CFR 2634.201\(b\)\(1\)](#).
 8. Incumbent public financial disclosure filers must file on or before May 15 of the succeeding year. [5 CFR 2634.201\(a\)](#).
 9. Termination public financial disclosure filers must file on or before the 30th day after leaving position. [5 CFR 2634.201\(e\)\(1\)](#).
 10. Filing extensions for public filers were approved or denied in writing maintained as part of the official report file granted for good cause shown did not exceed two 45-day extensions, and requested in writing by employees who provided specific reasons for the extension. [5 CFR 2634.201\(f\)](#).
 11. Late filing fee shall be assessed for public filers filing more than 30 days after the required filing date or the last day of an extension (or waived in accordance with 2634.704(b)). [5 CFR 2634.704\(a\)](#).
 12. Late filing fees were waived by the DAEO on determining that the filing delay was caused by extraordinary circumstances, and if:
 - a. the employee's request was made writing with supporting documentation the DAEO's determination was made in writing to the employee, and
 - b. a copy was placed in the employee's public financial disclosure report file [5 CFR 2634.704\(b\)](#).
 13. Public financial disclosures required to be submitted to OGE must be submitted in a timely manner (generally 2 weeks). [5 CFR 2634.602\(c\)\(1\)](#), [PA-11-03](#) and [Public Financial Disclosure, A Reviewer's Reference p4-16](#).
 14. The following employees have been identified as public filers (including IPAs in filing positions):
 - a. The President and Vice President
 - b. Employees (including SGEs) above GS-15 (or at or above 120% of the minimum rate of pay for GS-15)
 - c. Military members at or above O-7
 - d. Officer or employee in a position determined by OGE to be of equal classification
 - e. Administrative Law Judges appointed pursuant to 5 U.S.C. 3105

- f. Anyone in a position excepted from competitive service by reason of being of a confidential or policy-making character, unless excluded by a determination under 5 CFR 2634.203.
 - g. Postmaster General, Deputy Postmaster General, USPS Board of Governors, USPS or PRC employees paid at or above 120% of the minimum rate of pay for GS-15
 - h. Director of OGE and each agency's primary DAEO
 - i. Any civilian employee (other than a SGE) in the Executive Office of the President with a commission or appointment from the President
 - j. A public filer who has terminated but has not yet filed a termination report.
- [5 CFR 2634.202](#)
15. All public reports shall be reviewed and certified within 60 days after the date of filing, unless additional information is being sought or remedial action is necessary. [5 CFR 2634.605\(a\), Public Financial Disclosure, A Reviewer's Reference p4-3, and PA-11-04.](#)
 16. Public reports have been reviewed for compliance with applicable laws and regulations. [5 CFR 2634.605\(b\)\(1\).](#)
 17. The agency has reported to the Attorney General when there is reasonable cause to believe an employee has willfully failed to file a public report (or information required on such report) or has willfully falsified information on a public report. [5 CFR 2634.701\(a\).](#)
 18. Retain public financial disclosure reports for 6 years (1 year for unconfirmed nominees no longer under consideration by the Senate) and then destroy, unless needed in an ongoing investigation. [5 CFR 2634.603\(g\)\(1\).](#)
 19. Agencies shall make available to the public in accordance with the provisions of 5 CFR 2634.603 those public reports filed with the agency by reporting individuals described under subpart B of this part, unless not required by 5 CFR 2634.603(b) or other applicable authority. [5 CFR 2634.603\(a\).](#)

Confidential Financial Disclosure

1. Written policies and procedures governing the review, collection, and evaluation of confidential financial disclosures. [5 U.S.C. app 402\(d\)\(1\) and DA-09-03-92.](#)
2. Written policies and procedures for confidential financial disclosure comply with all applicable requirements. [5 U.S.C. app 402\(d\)\(2\).](#)
3. Written procedures for confidential financial disclosure address follow-up with delinquent filers. [OGE Directive.](#)
4. An agency may use an electronic financial disclosure filing system in accordance with these OGE requirements:
 - a. Electronic filing of nominee OGE Form 450 reports using electronic signatures will not be permitted at this time
 - b. Electronic signatures on the OGE Form 450 are acceptable only if they meet the requirements of the Government Paperwork Elimination Act (GPEA), the E-Sign law, and other applicable laws. Issues such as security, verification and non-repudiation must be addressed

- c. Access to an electronic system from outside the agency's network must have an encryption process
 - d. A Level II E-Authentication standard (user name with PIN or password) is the minimum requirement for electronic signing.
 - e. Any agency development of a "smart financial disclosure form" (TurboTax-like collection of info) will require the use of the complete set of already-OGE-approved supplementary information or the exact language of the statute, regulations and form instructions.
 - f. Any electronic form developed for use with a system, absent OGE approval, must exactly replicate the existing paper versions of the OGE Form 450 and be capable of being printed as paper copies. [DO-07-014](#).
5. With prior written approval from OGE, an agency may use an alternative confidential filing procedure/form. [5 CFR 2634.905\(a\)](#).
 6. Agency has a master list of confidential financial disclosure filers. [OGE Directive](#).
 7. New Entrant confidential financial disclosure filers must file within 30 days of assuming position or office [5 CFR 2634.903\(b\)](#).
 8. Incumbent confidential financial disclosure filers must file on or before February 15th of the succeeding year. [5 CFR 2634.903\(a\)](#).
 9. The following employees have been identified as confidential filers (including IPAs in filing positions):
 - a. GS-15 or below (or below 120% of minimum rate of pay for GS-15)
 - b. USPS or PRC employees paid below 120% of the minimum rate of pay for GS-15
 - c. Military members under O-7
 - d. Officer or employee in a position determined by the DAEO to be of equal classification, if duties and responsibilities of position require personal and substantial participation, without supervision or review, regarding contracting or procurement administering or monitoring grants, licenses or other federal financial or operational benefits regulating or auditing any non-Federal entity other activities where the final decision or action will have a direct and substantial economic effect on a non-Federal entity, or the agency concludes the duties and responsibilities of the position require filing [5 CFR 2634.904\(a\)](#).
 10. Filing extensions for confidential filers were granted for good cause shown did not exceed 90 days, or granted to an employee in a combat zone for no longer than 90 days from the last day of service in the combat zone or hospitalization resulting from service in the combat zone. [5 CFR 2634.903\(d\)](#).
 11. All confidential reports shall be reviewed and certified within 60 days after the date of filing, unless additional information is being sought or remedial action is necessary. [5 CFR 2634.605\(a\)](#), [PA-11-04](#), and [Public Financial Disclosure, A Reviewer's Reference p4-3](#).
 12. All confidential reports have been reviewed for compliance with applicable laws and regulations. [5 CFR 2634.605\(b\)\(1\)](#)
 13. OGE Form 450-A has been filed by employees who have not changed jobs or had significant changes in duties since filing the previous report are incumbent filers with a previous OGE Form 450 on file (and are not SGEs) are not required by their agency to

complete a new OGE Form 450 (and have not filed a 450-A for three consecutive years). [5 CFR 2634.905\(b\)](#).

14. The agency has reported to the Attorney General when there is reasonable cause to believe an employee has willfully falsified information on a confidential report.

[5 CFR 2634.701\(a\)](#).

15. Retain confidential financial disclosure reports for 6 years and then destroy, unless needed in an ongoing investigation. Note: 450s should be kept beyond 6 years to support corresponding 450As. [5 CFR 2634.604\(a\)](#).

Education and Training

An ethics training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees. Additionally, an agency annually must develop an ethics training plan in accordance with [5 CFR § 2638.706](#).

1. Written education and training plan that is created by DAEO or designee completed at the beginning of each calendar year contains a brief description of the agency's annual training contains estimates of the number of employees who will receive verbal. [5 CFR 2638.706](#).
2. Initial ethics orientation must include: Standards of conduct and agency supplemental standards of conduct to keep (or have readily available) or review, or summaries of the standards of conduct, agency supplemental standards, and 14 principles of ethical conduct to keep, and Names, Titles, Office Addresses and Telephone Numbers of DAEO and other ethics officials, and One hour of official duty time to review the materials. [5 CFR 2638.703](#).
3. Provide initial ethics orientation (IEO) to all new employees within 90 days of their date of entry. [5 CFR 2638.703](#).
4. Annual ethics training for public financial disclosure filers must
 - a. review the 14 General Principles, Standards of Conduct, Agency Supplemental Standards, and the Conflict of Interest statutes
 - b. review DAEO and other ethics officials names, titles, office address, phone numbers
 - c. provide 1 hour of official duty time
 - d. be presented by a qualified instructor (or by telecom, computer, audiotape, or videotape created by a qualified instructor)
 - e. Have a qualified instructor available during and immediately after training, unless DAEO or designee determines in writing that verbal training with a qualified instructor is impractical, and provides written training prepared by a qualified instructor or verbal training presented without a qualified instructor, or the employee is an SGE. [5 CFR 2638.704\(b\), \(e\), \(c\) and \(d\)](#).
5. Provide verbal (in-person, telecommunications, computer, audiotape, or videotape) annual ethics training for public financial disclosure filers. [5 CFR 2638.704\(a\)](#).

6. Annual ethics training for other covered employees must
 - a. Review the 14 General Principles, Standards of Conduct, Agency Supplemental Standards, and the Conflict of Interest statutes
 - b. Review DAEO and other ethics officials names, titles, office address, phone numbers
 - c. Provide 1 hour of official duty time for verbal training at least once every three years, presented by a qualified instructor (or by telecom, computer, audiotape, or videotape created by a qualified instructor) OR
 - d. Provide sufficient official duty time for written training, prepared by a qualified instructor, when not receiving verbal training. Written training prepared by a qualified instructor will satisfy the verbal training requirement for a covered employee if: Sufficient official duty time is provided for the training, and the DAEO or designee makes a written determination that verbal training would be impractical, or the employee is a SGE expected to work 60 or fewer days in a calendar year, or the employee is an officer in the uniformed services serving on active duty for 30 or fewer consecutive days, or the employee was designated by the agency, rather than regulation, to receive training. (Note: IEO meeting the annual requirements may satisfy the written training requirement for the same calendar year) [5 CFR 2638.705\(b\), \(c\), and \(d\)](#).
7. Provide annual ethics training for other covered employees, including
 - a. Employees appointed by the President
 - b. Employees of the Executive Office of the President;
 - c. Employees defined as confidential filers in 5 CFR 2634.904;
 - d. Employees designated by their agency under 5 CFR 2634.601(b) to file confidential financial disclosure reports;
 - e. Contracting officers, as defined in 41 U.S.C. 423(f)(5); and
 - f. Other employees designated by the head of the agency or his or her designee based on their official duties. [5 CFR 2638.705\(a\)](#).

Advice and Counsel

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. See [5 CFR § 2638.203](#). The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. See [5 CFR § 2638.204](#).

OGE's assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures as well as a judgmental sample of the written advice and counsel provided to employees. Further, OGE reviews the samples of advice and interviews ethics officials to assess whether processes and written procedures are effective.

1. A counseling program for all ethics and standards of conduct matters, including post employment matters, must be developed and conducted. [5 CFR 2638.203\(b\)\(7\)](#).
2. DAEO must contact OGE prior to referring a request for an advisory opinion to OGE. [5 CFR 2638.312\(a\)](#).
3. Records are kept, when appropriate, on advice rendered. [5 CFR 2638.203\(b\)\(8\)](#).
4. Copies of advisory opinions concerning the application of 18 USC 202-209 issued by the DAEO shall be transmitted to OGE. [5 CFR 2638.313](#).
5. DAEO must contact OGE prior to referring a request for an advisory opinion to OGE. [5 CFR 2638.312\(a\)](#).

Agency-Specific Ethics Prohibitions, Restrictions, and Requirements

1. Supplementation of OGE regulations must be promulgated jointly with OGE and published in Title 5 of the CFR or authorized by a separate authority. [5 CFR 2635.105\(a\) and \(b\)](#).
2. Public and confidential financial disclosures must comply with applicable supplemental regulations. [5 CFR 2634.605\(b\)\(1\)](#).

Conflict Remedies

1. DAEO must include a PAS nominee's ethics agreement when submitting the nominee's financial disclosure to OGE. [5 CFR 2634.803\(a\)](#)
2. The DAEO must submit with his initial financial disclosure report to OGE any ethics agreement undertaken. [5 CFR 2634.803\(c\)](#)
3. Reporting individuals (filers) have 90 days from the date of Senate confirmation or date entered position to comply with ethics agreements. [5 CFR 2634.802\(b\)](#), [DO-09-015](#) and [5 CFR 2634.804\(a\)\(1\)](#).
4. Agencies have 3 business days from the ethics agreement compliance deadline to submit PAS employees' or DAEO's evidence of compliance to OGE. [5 CFR 2634.804\(a\)\(1\)](#) [5 CFR 2634.804\(a\)\(2\)](#) and [DO-09-015](#).
5. Evidence of compliance with a recusal consists of
 - a. a copy of any recusal instrument listing and describing the specific matters or subjects to which the recusal applies
 - b. a statement of the method by which the agency will enforce the recusal
 - c. a list of the positions of those agency employees involved in the enforcement, and
 - d. the screening arrangement requirements set forth in DAEOgram [DO-09-015](#). [5 CFR 2634.804\(b\)\(1\)](#)
6. Evidence of compliance with a resignation consists of
 - a. written notification from the employee that the resignation has occurred with the resignation date, or
 - b. a copy of the letter of resignation, or
 - c. a written statement from the ethics official based on a written notification from

- the employee. [5 CFR 2634.804\(b\)\(2\) and DO-09-015](#)
7. Evidence of compliance with a divestiture consists of
 - a. written notification from the employee that the item has been sold with the sale date, or
 - b. a copy of the sale document, or
 - c. a written statement from the ethics official based on written notification from the employee. [5 CFR 2634.804\(b\)\(2\) and DO-09-015](#)
 8. Evidence of compliance with a qualified blind or diversified trust consists of information required by 5 CFR 2634 subpart D and submitted to OGE for its certification. [5 CFR 2634.804\(b\)\(2\)](#)
 9. Evidence of compliance with a waiver issued pursuant to 18 U.S.C. 208(b)(1) or (b)(3) consists of a copy of any waivers issued and signed by the appropriate supervisory official. [5 CFR 2634.804\(b\)\(3\) and DO-09-015](#)
 10. The DAEO must inform OGE of any ethics agreements made by an incumbent DAEO or PAS employee during his term in his position and provide evidence of compliance to OGE. [5 CFR 2634.803\(b\)](#), [5 CFR 2634.804\(a\)\(2\)](#), and [DO-09-015](#)
 11. Agency must consult with OGE on 18 USC 208 waivers "when practicable" and forward each waiver to OGE. [5 CFR 2640.303 and DO-10-005](#)
 12. Waivers under 18 U.S.C. 208(b)(1) must comply with the following:
 - a. The disqualifying financial interest, and the nature and circumstances of the particular matter or matters, must be fully disclosed to the Government official responsible for appointing the employee to his position (or other Government official to whom authority to issue such a waiver for the employee has been delegated);
 - b. The waiver must be issued in writing by the Government official responsible for appointing the employee to his position (or other Government official to whom the authority to issue such a waiver for the employee has been delegated);
 - c. The waiver shall be based on a determination that the disqualifying financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Statements concerning the employee's good character are not material to, nor a basis for making, such a decision;
 - d. The waiver must be issued prior to the employee taking any action in the matter or matters [5 CFR 2640.301\(a\) and DO-07-006](#)
 13. Waivers under 18 U.S.C. 208(b)(3) must comply with the following:
 - a. The advisory committee upon which the individual is serving, or will serve, is an advisory committee within the meaning of the Federal Advisory Committee Act, 5 U.S.C. app.;
 - b. The waiver must be issued in writing by the Government official responsible for the individual's appointment (or other Government official to which authority to issue such waivers has been delegated) after the official reviews the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978;
 - c. The waiver must include a certification that the need for the individual's services on the advisory committee outweighs the potential for a conflict of interest;

- d. The waiver must be issued prior to the individual taking any action in the matter or matters [5 CFR 2640.302\(a\)](#)
- 14. The DAEO must inform OGE of any ethics agreements made by an incumbent DAEO or PAS employee during his term in his position and provide evidence of compliance to OGE. [5 CFR 2634.803\(b\)](#), [5 CFR 2634.804\(a\)\(2\)](#) and [DO-09-015](#)
- 15. The DAEO must submit with his initial financial disclosure report to OGE any ethics agreement undertaken. [5 CFR 2634.803\(c\)](#)
- 16. DAEO must be notified of ethics agreements entered into by other reporting individuals. [5 CFR 2634.803\(d\)](#)
- 17. Waiver of the recusal requirement under 5 CFR 2635.503 (extraordinary payment from former employer) must be made in writing, by the agency head or designee authorized to issue waivers under 18 U.S.C. 208(b). [5 CFR 2635.503\(c\)](#)
- 18. Evidence of other reporting individuals' compliance with ethics agreements must be sent promptly to the DAEO. [5 CFR 2634.804\(a\)\(3\)](#).
- 19. Employees recused under the 5 CFR 2635.502 (impartiality) must file written evidence of compliance if they are PAS employees, the DAEO, or have been specifically asked to file. [5 CFR 2635.502\(e\)\(2\)](#)
- 20. Agency must consult with OGE on 18 USC 208 waivers "when practicable" and forward each waiver to OGE. [5 CFR 2640.303](#) and [DO-10-005](#)
- 21. Waivers under 18 U.S.C. 208(b)(1) must comply with the following:
 - a. The disqualifying financial interest, and the nature and circumstances of the particular matter or matters, must be fully disclosed to the Government official responsible for appointing the employee to his position (or other Government official to whom authority to issue such a waiver for the employee has been delegated);
 - b. The waiver must be issued in writing by the Government official responsible for appointing the employee to his position (or other Government official to whom the authority to issue such a waiver for the employee has been delegated);
 - c. The waiver shall be based on a determination that the disqualifying financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Statements concerning the employee's good character are not material to, nor a basis for making, such a decision;
 - d. The waiver must be issued prior to the employee taking any action in the matter or matters [5 CFR 2640.301\(a\)](#) and [DO-07-006](#).
- 22. Waivers under 18 U.S.C. 208(b)(3) must comply with the following:
 - a. The advisory committee upon which the individual is serving, or will serve, is an advisory committee within the meaning of the Federal Advisory Committee Act, 5 U.S.C. app.;
 - b. The waiver must be issued in writing by the Government official responsible for the individual's appointment (or other Government official to which authority to issue such waivers has been delegated) after the official reviews the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978;
 - c. The waiver must include a certification that the need for the individual's services

- on the advisory committee outweighs the potential for a conflict of interest;
- d. The waiver must be issued prior to the individual taking any action in the matter or matters. [5 CFR 2640.302\(a\)](#) and [DO-07-006](#).
23. Waivers issued under 18 U.S.C. 208(b)(1) and (b)(3) shall be made available to the public on request. [5 CFR 2640.304](#).

Enforcement

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the OIG, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's OIG are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. See [5 CFR § 2638.203\(b\)\(11\)](#) and [\(12\)](#).

1. OGE is concurrently notified of all referrals to DOJ on alleged conflict of interest statute violations. [5 CFR 2638.603\(b\)](#).
2. An agency ethics official is required by 28 U.S.C. 535 to report any information he receives relating to a violation of the criminal code, title 18 of the United States Code. [5 CFR 2638.603\(a\)](#) and [5 CFR 2635.107\(b\)](#).
3. The services of the agency's OIG are utilized when appropriate. [5 CFR 2638.203\(b\)\(12\)](#).
4. Agencies must notify OGE of the disposition of referrals made to DOJ, including referrals not prosecuted, indictments made, disciplinary or correction action, and the final disposition of the matter. [5 CFR 2638.603\(c\)](#).
5. Prompt and effective administrative action (including follow-up on remedial actions) is taken to remedy
 - a. Standard of conduct violations
 - b. Failure to file/complete financial disclosures
 - c. Actual or potential conflicts on financial disclosures
 - d. Actual or potential violations of laws governing employees' conduct or financial holdings. [5 CFR 2638.203\(b\)\(9\)](#), [5 CFR 2638.203\(a\)](#), [5 CFR 2635.106\(b\)](#), and [5 CFR 2634.701\(a\)](#).
6. Agencies will not take disciplinary action against employees who violate the standards of conduct or any supplemental standards when they have engaged in good faith reliance upon the advice of an agency ethics official, provided the employees, in seeking such advice, have made full disclosure of all relevant circumstances. This does not apply to criminal statutes. [5 CFR 2635.107\(b\)](#).
7. DAEO must ensure information developed by audit or review is reviewed to determine if agency standards of conduct need revision or if actual or potential conflicts need prompt corrective action. [5 CFR 2638.203\(b\)\(11\)](#)
8. The services of the agency's OIG are utilized when appropriate. [5 CFR 2638.203\(b\)\(12\)](#).

Special Government Employees

A special Government employee (SGE) is retained, designated, appointed or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period. See 18 U.S.C. § 202(a) and 5 CFR § 2640.102(t).

1. SGEs have been identified and prospectively designated appropriately in accordance with 18 U.S.C. 202(a) Retained, designated, appointed or employed to perform temporary duties on a full-time or intermittent basis with or without compensation for a period not to exceed 130 days during any consecutive 365-day period.
[18 U.S.C. 202\(a\)](#), [5 CFR 2640.102\(t\)](#)
2. SGEs meeting the conditions for public filing and who perform (or are expected to perform) their duties for more than 60 days in a calendar year must file a public financial disclosure. [5 CFR 2634.202](#)
3. SGEs not required to file public financial disclosures must file a confidential financial disclosure, unless excluded by designation under 2634.904(b). [5 CFR 2634.904\(a\)\(2\)](#)
4. SGEs have received the appropriate minimum ethics training:
 - Public Filers
 - i. Verbal training without a qualified instructor available or written training prepared by a qualified instructor
 - ii. hour of official duty time provided for training
 - Confidential Filers (Working over 60 days/year)
 - i. 1 hour of verbal training at least once every three years, presented by a qualified instructor (or by telecom, computer, audiotape, or videotape created by a qualified instructor)
 - ii. Sufficient official duty time provided for written training in the years the SGE does not receive verbal training
 - Confidential filers (working 60 or fewer days/year or by DAEO designation that verbal training would be impractical)
 - i. Written training prepared by a qualified instructor
 - ii. Sufficient official duty time provided for training[DO-00-003](#), [5 CFR 2638.704\(e\)](#) and [5 CFR 2638.705\(d\)](#)
5. SGEs have not been inappropriately designated as Representatives. [DO-04-022](#)
[and AO 82x22](#)
6. SGEs designated as confidential filers who are assuming new positions, reappointments, or redesignations (including service on advisory committees) shall file a new entrant confidential report. [5 CFR 2634.903\(b\)](#)

Travel Payments Under 13 U.S.C. § 1353

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically

authorized to do so by the agency. Agencies must submit semiannual reports of travel payments from non-Federal sources in excess of \$250 to OGE. See 31 U.S.C. § 1353.

1. Semiannual reports are filed with OGE by May 31 (for Oct-Mar report) and Nov 30 (for Apr-Sep report). [31 U.S.C. 1353\(d\)](#).
2. Semiannual 1353 travel reports must be submitted electronically on an SF-326 or OGE Form-326 [PA-11-02](#)
3. The agency has a process for analyzing 1353 travel requests for conflicts of interest. [41 CFR 304-5.3\(a\)](#) and *OGE Directive*.