



Ethics Program Review

U.S. Department of Veterans Affairs

Report No. 19-43
September 24, 2019



The United States Office of Government Ethics (OGE) conducted a review of the United States Department of Veterans Affairs (VA) ethics program from March to July 2019. The review covered program activities for calendar years 2018 and 2019. The following summarizes the results of this 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 all elements of the VA ethics program administered by the Ethics Specialty Team. These elements include program administration, financial disclosure, education and training, ethics counseling, notices to prospective employees and new supervisors, conflict remedies, enforcement, and special government employees.

Methodology: OGE examined a variety of documents provided by VA ethics officials, including VA's response to OGE's Annual Agency Ethics Program Questionnaire for 2018, written procedures for administering the ethics program, samples of public and confidential financial disclosure reports filed in 2018 and 2019, ethics training materials, and a sample of the ethics counseling provided to employees. In addition, OGE interviewed agency officials including the Chief Counsel, Deputy Chief Counsel, Financial Disclosure Coordinator, Chief Human Capital Officer, Human Resources Policy Advisor, and two paralegals to clarify the information gathered, follow up on issues identified during the review, and discuss ethics program operations in further detail.

¹ See 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

Agency Background

VA is the second largest Cabinet-level department and has almost 370,000 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 includes the Principal Deputy General Counsel, who serves as the Designated Agency Ethics Official (DAEO), the Chief Counsel, who serves as the Alternate DAEO (ADAEO), and the Deputy Chief Counsel (DCC). The ADAEO, who is located in Connecticut, and the DCC, located in Texas, handle day-to-day management of the program. Additionally, EST is comprised of Deputy Ethics Officials (DEOs) and paralegals located at VACO and in the five Chief Counsel Districts: Pacific, Continental, Midwest, Southeast, and North Atlantic. VACO DEOs generally handle ethics issues arising at VACO and the DEOs in the districts focus on the districts.

According to the DCC, 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 2018, EST issued over 11,000 advisory opinions, reviewed over 9,300 confidential and over 700 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 available to the public financial disclosure reports filed by the agency's officers and employees.² OGE examined VA's written procedures and determined that they meet applicable requirements.

² See 5 U.S.C. app. § 402(d)(1).

Notices to the DAEO

The lead human resources official is required to notify the DAEO of all appointments to positions that require incumbents to file public or confidential financial disclosure reports no later than 15 days after the appointment. The lead human resources official must also notify the DAEO of terminations of employees in positions that require incumbents to file public financial disclosure reports no later than 15 days after termination.³ This helps to ensure the timely collection of financial disclosure reports.

The DCC provided OGE a copy of a letter from the Deputy Assistant Secretary for Human Resources Management to VA administrators, staff, and human resources (HR) professionals setting out the requirement to notify EST of an employee's appointment to or departure from a position that requires the filing of a financial disclosure report.⁴ However, the DCC could not furnish OGE with any samples of new or terminating filer notifications that would have been required to be provided to EST. An EST paralegal explained that these notifications are not consistently sent to EST and that he compensates by speaking directly to VACO new entrants every other week.⁵ Moreover, the ADAEO conceded that HR offices hire personnel in hospitals and clinics nationwide and that she is not aware how or if the notification requirement is implemented in the field. The Chief Human Capital Officer agreed that HR needs to improve onboarding and out-processing procedures to ensure that EST is consistently provided the required notifications.

Recommendation

1. Develop procedures to ensure that HR notifies EST of appointments to positions that require the filing of public or confidential financial disclosure reports and departures from positions requiring the filing of a public report

Public Financial Disclosure

Within 30 days of assuming a covered public filing position, an individual must file a public financial disclosure report.⁶ 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.⁷ 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.⁸

To evaluate the administration of VA's public financial disclosure system, OGE examined a sample of 205 of the approximately 600 public reports that were required to be filed

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

⁴ HRML No. 05-16-04.

⁵ OGE notes that this additional step by the paralegal does not address the notification requirement for departing public filers.

⁶ See 5 C.F.R. § 2634.201(b).

⁷ See 5 C.F.R. § 2634.201(a) and (e).

⁸ See 5 C.F.R. § 2634.605.

in 2018. This sample included 60 new entrant, 108 annual, and 37 termination non-PAS public reports. Table 1 below presents the results of OGE’s examination.

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

	New Entrant	Annual	Termination	Total
Reports Examined	60	108	37	205
Filed Timely	54 (90%)	101 (94%)	34 (92%)	189 (92%)
Reviewed Timely	59 (98%)	105 (97%)	36 (97%)	200 (97%)
Certified Timely	53 (88%)	93 (86%)	35 (95%)	181 (88%)

As indicated in Table 1 above, OGE found that the vast majority of reports examined were filed, reviewed, and certified timely. However, OGE identified 10 reports that had not been certified, including 8 reports filed in 2018 and 2 filed in 2017.

OGE also identified 12 individuals who had not filed their required termination reports and who had not been referred to the Department of Justice (DOJ) for failure to file. The Chief Human Capital Officer again conceded that VA needed to do a better job of informing EST of the impending departure of public financial disclosure report filers and obtaining contact information to follow-up with them after they have left the department in order to collect their termination reports.

Recommendations

2. Certify the backlog of new entrant and annual public reports from 2017 and 2018.
3. Collect the outstanding termination public financial disclosure reports or, as necessary, refer the delinquent filers to DOJ for failure to file.

Confidential Financial Disclosure

Within 30 days of assuming a covered confidential filing position, an individual must file a confidential financial disclosure report.⁹ The individual must also subsequently file an annual report by February 15 each year.¹⁰ 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.¹¹

To evaluate the administration of VA’s confidential financial disclosure system, OGE examined a sample of 43 new entrant and 47 annual confidential reports that were required to be filed in 2019. Table 2 below presents the results of OGE’s examination.

⁹ See 5 C.F.R. § 2634.903(b).

¹⁰ See 5 C.F.R. § 2634.903(a).

¹¹ See 5 C.F.R. § 2634.605.

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

	New Entrant		Annual		Total
Reports Examined	38		52		90
Filed Timely	6	(16%)	45	(87%)	51 (57%)
Reviewed Timely	37	(97%)	52	(100%)	89 (98%)
Certified Timely	36	(95%)	49	(94%)	85 (94%)

As indicated in Table 2 above, OGE found that only 6 (16%) of the 38 new entrant reports were filed timely. The DCC attributed filing delays to compatibility issues between the VA email server and the Army server that manages the Financial Data Management (FDM) System, the electronic confidential filing system used by VA. Because of these issues, paralegals have to work with their HR points of contact and enter new confidential filer information into FDM manually. The time required for this manual entry delays the assignment of confidential reports to new entrants.

Recommendation

4. Establish a process to ensure that employees entering into confidential financial disclosure filing positions are promptly assigned a new entrant confidential report and that these 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.¹² 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

PAS officials, except for those in positions identified in 5 C.F.R. § 2634.201(c)(2), 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.¹³

¹² See 5 C.F.R. Part 2638 Subpart C.

¹³ See 5 C.F.R. § 2638.305.

In order to meet the ethics briefing requirements in 2018, EST provided individual live training to all new PAS employees. All three PAS employees required to receive an ethics briefing received the briefing within 15 days of their appointment date. OGE reviewed the material covered in the briefings and determined that it met the applicable content requirements.

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.¹⁴

EST provided OGE with VA Human Resources Management Letter No. 5-16-04 dated December 30, 2016, which instructs HR professionals to use the template attached to the letter to provide the required notices to prospective employees. However, neither EST nor the Chief Human Capital Officer could provide OGE any samples of notices that would have been required to be sent during the period under review. Moreover, VA has not established written procedures for issuing the notices, as required.¹⁵

Recommendations

5. Establish written procedures for notifying prospective employees of their ethics responsibilities.
6. Maintain evidence to demonstrate that prospective employees received the required notice of their ethics responsibilities with their written offer 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

As a result of its review, OGE determined that VA does not provide the required notice of ethical obligations to each employee upon initial appointment to a supervisory position. As with the notice to prospective employees program element, EST directed OGE to Human Resources

¹⁴ See 5 C.F.R. § 2638.303.

¹⁵ See 5 C.F.R. § 2638.303(c).

¹⁶ See 5 C.F.R. § 2638.103.

¹⁷ See 5 C.F.R. § 2638.306.

Management Letter No. 5-16-04, instructing HR professionals to use the sample template attached the letter to provide new supervisors with the required written materials. Again, neither EST nor the Chief Human Capital Officer could provide OGE any samples of instances in which new supervisors were provided the required materials.

Recommendations

7. Establish written procedures for providing new supervisors with the required written materials.
8. Maintain evidence to demonstrate that new supervisors received the required written materials.

Initial Ethics Training

Each new employee subject to the Standards of Conduct must complete initial ethics training that meets the requirements of 5 C.F.R. § 2638.304 within three months of appointment, unless excluded by the DAEO. The training must be interactive and focus on government ethics laws and regulations that the DAEO deems appropriate. The training must address: financial conflicts of interest, impartiality, misuse of position, and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and, instructions for contacting the agency's ethics office.¹⁸

According to EST, initial ethics training at VA is provided via an online training program in VA's Talent Management System (TMS), as well as through live or Skype-based trainings by the DEOs, as requested. As part of the new employee on-boarding process, HR assigns the online initial ethics training in TMS. OGE reviewed the TMS training module and determined that it is interactive and addressed the required initial ethics training topics.

New employees indicate their completion of the initial ethics training using the self-certification function of the training module. This information is tracked by VA's Education and Learning Office. According to VA's 2018 Annual Agency Ethics Program Questionnaire and follow-up conducted by OGE during the review, 25,494 new employees received the required initial ethics training in 2018. However, 1,924 of these employees received the training beyond the three-month deadline. The DCC explained that EST deals with HR points of contact (POC) at individual HR offices across the department. He added that staff turnover in these multiple HR offices leads to vacancies in the POC positions and it takes time for a new a POC to be established. Once a new HR POC is in place they must pick up where the former employee left off, leading to delays in assigning the training to the new employee.

¹⁸ See 5 C.F.R. § 2638.304.

Agencies are required to establish written procedures for, among other things, initial ethics training.¹⁹ According to the DCC, VA's procedures have not been updated in several years and thus do not address the revised initial ethics training requirements. As a result, OGE is recommending that VA update its procedures to include the initial ethics training requirements. As part of this update, the procedures should address the issue of HR POC turnover, which has led to some new employees receiving the initial ethics training late. For example, the procedures could require that HR offices establish back-ups to timely assign the training during periods of POC turnover. Alternatively, any initial offer of employment letter or initial packet of material given to new employees during in-processing, could advise employees of the requirement and include instructions for accessing the training. EST might also inquire as to whether the Education and Learning Office could modify its system to notify EST when a new employee self-certifies that they have completed training.

Recommendation

9. Update procedures for initial ethics training and ensure that the DAEO reviews the procedures annually.

Annual Ethics Training for Public Filers

Generally, live training must be provided each calendar year to each employee whose pay is set at Level I or Level II of the Executive Schedule. Live training must also be provided to other employees who are required to file public financial disclosure reports pursuant to 5 C.F.R. § 2634.201(a) every other year, with interactive training provided in the intervening years. The training presentation, whether live or interactive, must focus on government ethics laws and regulations that the DAEO deems appropriate and must address financial conflicts of interest, impartiality, misuse of position, and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and, instructions for contacting the agency's ethics office.²⁰

In 2018, EST provided live or interactive computer-based annual training for VA public filers. OGE determined that both versions of the training met applicable content requirements.

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 described in 41 U.S.C. § 2101; and, other employees designated by the head of the agency. The training presentation must focus on government ethics laws and regulations that the DAEO deems appropriate and must address financial conflicts of interest,

¹⁹ See 5 C.F.R. § 2638.304.

²⁰ See 5 C.F.R. § 2638.308.

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 EST, in 2018, confidential filers and other covered non-filing employees were required to take annual ethics training using the online interactive training module, “Government Ethics-The Essentials” in TMS. OGE reviewed the course material and determined that it met applicable content requirements.

In 2018, 634 public filers and 9,440 confidential filers were required to receive annual ethics training. Table 3 below reflects the number and percentage of public and of confidential filers that completed annual ethics training in 2018 and the type of training completed.

Table 3. OGE’s Examination of Annual Ethics Training for Financial Disclosure Report Filers

DATA ANALYSIS	Training Format		Total
	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).			
<ul style="list-style-type: none"> Executive Schedule Level I and Level II. <i>See</i> 5 C.F.R. § 2638.308(e)(1). 	2 (100%)	-0-	2 (100%)
<ul style="list-style-type: none"> Other PAS and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(2). 	7 (100%)	-0-	7 (100%)
<ul style="list-style-type: none"> SES and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(3). 	313 (48%)	221 (34%)	534 (82%)
Total			543 (86%)
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).			
<ul style="list-style-type: none"> Employees required to file an annual confidential financial disclosure report. <i>See</i> 5 C.F.R. § 2638.307(a)(1). 	N/A	8,694 (92%)	8,694 (92%)

As indicated in the table above, 86% of public filers and 92% of confidential filers and other covered employees received annual ethics training in 2018.

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-

²¹ *See* 5 C.F.R. § 2638.307.

employment restrictions applicable to them.²² 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 EST ethics officials provided to VA employees in 2018. The counseling addressed seeking employment, gifts, post-employment restrictions, conflicts of interests, and outside activities. OGE found the counseling to be consistent with applicable laws 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.²³ 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.²⁴ VA issued one waiver in 2018 and OGE was consulted on it prior to issuance.²⁵

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 2018, VA had three PAS officials with ethics agreements. OGE confirmed that all three officials had timely complied with the terms of their 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).²⁷ While ethics officials have forwarded complaints to VA’s Office of Inspector General (OIG) in the past, OIG has also independently developed cases involving ethical violations and referred these cases to DOJ. In 2018, OIG referred one case of potential violations of the conflict of interest laws to DOJ. OGE was notified of the referral in 2019.

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.²⁸

²² See 5 C.F.R. § 2638.104 (c)(4).

²³ See 18 U.S.C. § 208.

²⁴ See Executive Order 12674.

²⁵ OGE received two waiver consult requests from VA in 2018; however, only was issued. The other waiver was subsequently withdrawn by VA.

²⁶ See 5 U.S.C. app. § 110.

²⁷ See 5 C.F.R. § 2638.206.

²⁸ See 18 U.S.C. § 202(a).

OGE evaluated the collection and review of confidential financial disclosure reports and the provision of annual ethics training for SGE members of 3 of the 28 VA Federal Advisory Committee Act (FACA) committees: the Advisory Committee on Cemeteries and Memorials, the Advisory Committee on Structural Safety, and the Creating Options for Veterans Expedited Recovery (COVER) Commission. The following is a summary of the findings of OGE’s evaluation.

Financial Disclosure

Table 4. OGE’s Examination of FACA SGE Confidential Financial Disclosure Reports

Reports Examined	27	
Filed Timely	26	(96%)
Reviewed Timely	23	(85%)
Certified Timely	23	(85%)

As indicated in the table above, the vast majority of the reports OGE examined were filed, reviewed, and certified timely.

Ethics Training

In 2018, VA provided live annual ethics training for the three FACA committees OGE selected for review. OGE verified that all SGE members of these three committees received the required training.

Agency Comments

Thanks for the opportunity to review the draft report. Earlier this year, based on areas of concern we identified while gathering information for your review, the EST team began working with the Chief Human Capitol Officer and the Talent Management System (training) staff on program changes that will strengthen VA’s implementation of the regulations.

Recommendation 1: Develop procedures to ensure that HR notifies EST of appointments to positions that require the filing of public or confidential financial disclosure reports and departures from positions requiring the filing of a public report. VA concurs. We are revising the financial disclosure handbook to emphasize the importance of timely notice of additions and departures of employees in public and confidential filing positions.

Recommendation 2: Certify the backlog of new entrant and annual public reports from 2017 and 2018. VA concurs. Attorneys are working on these reports.

Recommendation 3: Collect the outstanding termination public financial disclosure reports or, as necessary, refer the delinquent filers to DOJ for failure to file. VA concurs. Attorneys will coordinate with HR to locate the former employees and arrange for the reports to be filed. If necessary, VA will request DOJ enforcement assistance.

Recommendation 4: Establish a process to ensure that employees entering into confidential financial disclosure filing positions are promptly assigned a new entrant confidential report and that these reports are filed timely. VA concurs. This is being done as part of the revision of the financial disclosure handbook to emphasize the importance of timely notice of additions and departures of employees in public and confidential filing positions.

Recommendation 5: Establish written procedures for notifying prospective employees of their ethics responsibilities. VA concurs. We are revising the VA Handbook 5025 to incorporate the regulatory requirements, previously issued in a HRML from the HR office.

Recommendation 6: Maintain evidence to demonstrate that prospective employees received the required notice of their ethics responsibilities with their written offer of employment. VA concurs. We are revising the VA Handbook 5025 to incorporate the regulatory requirements, previously issued in a HRML from the HR office.

Recommendation 7: Establish written procedures for providing new supervisors with the required written materials. VA concurs. We are revising the VA Handbook 5025 to incorporate the regulatory requirements, previously issued in a HRML from the HR office.

Recommendation 8: Maintain evidence to demonstrate that new supervisors received the required written materials. VA concurs. We are revising the VA Handbook 5025 to incorporate the regulatory requirements, previously issued in a HRML from the HR office.

Recommendation 9: Update procedures for initial ethics training and ensure that the DAEO reviews the procedures annually. VA concurs and will revise the handbooks and SOPs as necessary.