

**United States Office of Government Ethics**

---

Program Review Division

Post-Election Readiness Review



Department of Justice

## TABLE OF CONTENTS

<b>Executive Summary</b> .....	3
<b>Introduction</b> .....	3
<b>Objective, Scope, and Methodology</b> .....	4
<b>Agency Background</b> .....	5
<b>Program Structure</b> .....	6
<b>Departing Officials</b> .....	7
Identification of Departing Officials.....	8
Post-Employment Counseling.....	8
Termination Financial Disclosure.....	10
<b>Incoming Officials</b> .....	11
Nominee Process Overview.....	12
Ethics Agreements.....	16
Initial Ethics Orientation.....	19
<b>Conclusion</b> .....	20
<b>Agency Comments</b> .....	21
<b>Appendix A</b> .....	23
<b>Appendix B</b> .....	29

## EXECUTIVE SUMMARY

The United States Office of Government Ethics (OGE) conducted a review of the nominee financial disclosure process at the Department of Justice headquarters (DOJ Main) and the following two components: Executive Office for United States Attorneys (EOUSA) and the United States Marshals Service (USMS). The primary purpose of this review was to assess the readiness of the ethics program to manage the anticipated increased workload associated with the turnover of Presidentially appointed, Senate-confirmed (PAS) officials in a post-election period.

### What We Found

We concluded that DOJ Main, EOUSA and the USMS appear to be well-positioned to navigate the post-election period. All components appear to have allocated sufficient resources to the nomination process. In the case of EOUSA and USMS, these components have established contingency plans to access additional staff should the time-sensitive nature of the nomination process exceed reviewer capacity. In particular, at EOUSA, all aspects of the nomination process under review suggested a model program due in part to leadership support, clear delineation of duties, comprehensive written procedures for important aspects of the nomination process, knowledgeable ethics officials, and excellent tracking mechanisms. However, we identified challenges in the area of ethics agreements at both DOJ Main and USMS.

### What We Recommend

OGE is making two recommendations for enhancing the ethics agreement compliance process at DOJ Main and USMS. The recommendations include actions to improve DOJ Main's tracking of ethics agreement compliance notification by utilizing existing resources more effectively and strategies to ensure that ethics agreement compliance and notification of compliance are given sufficient priority at USMS.

## INTRODUCTION

Every four years, the United States government faces the possibility of transitioning into a new Presidential Administration. Whenever an Administration changes, the new President will have the opportunity to fill approximately 1,000 of the most senior executive branch leadership positions with the advice and consent of the Senate. When a sitting Administration achieves a second term of office, the turnover of senior positions may be lessened; however, some senior officials may still conclude their service, resulting in a transition of responsibilities to new officials. Whether from a full transfer of power or attrition, leadership vacancies must be addressed quickly and effectively.

As required by statute, the federal ethics community performs a large and fundamental role in this process. The law requires that OGE review the financial interests of all prospective nominees to Senate-confirmed positions for possible conflicts of interest with their prospective duties. OGE does this in concert with the White House and senior career agency ethics officials who are familiar with their agencies' missions and activities. Ethics officials review every

prospective nominee's financial interests and business relationships and generate a public financial disclosure report (OGE Form 278). Where potential conflicts of interest are identified, ethics officials develop remedies typically documented in an ethics agreement so that the President's appointees can carry out their duties with integrity. The detailed work necessary to finalize the required ethics documentation for Senate review can take several weeks.

During this process, the ethics office also serves as a senior official's first regular contact point when entering government service. Agency ethics officials help establish the foundation of ethical government service and educate incoming officials on ways to prevent conflicts of interest. The ethics office is thus responsible for two critical functions not usually addressed by any other office within an agency: preparing a prospective nominee's public financial disclosure report and educating a PAS official on ethical public service.

## **OBJECTIVE, SCOPE, AND METHODOLOGY**

As a part of OGE's ongoing monitoring activities, OGE conducted a review of the nominee financial disclosure process at DOJ Main and the following two components: EOUSA and USMS. The purpose of this review is to (1) assess the ethics program's readiness to handle the anticipated increase in financial disclosure filings associated with the senior official turnover found in a post-election year, (2) evaluate the potential impact of the post-election workload on daily ethics operations, (3) determine the current capacity and future planning related to the nominee financial disclosure process, and (4) identify potential challenges that could impair the ability of ethics officials to conduct timely, accurate, and consistent conflict of interest reviews. OGE has the authority to evaluate the effectiveness of executive agency ethics programs under Title IV of the Ethics in Government Act and 5 CFR part 2638.

To meet these objectives, OGE performed the following actions from November 2011 through May 2012:

- OGE developed a post-election readiness questionnaire to obtain the agency's perspective on how it would address post-election issues including post-employment counseling, PAS financial disclosure, ethics training, and the post-election period's impact on daily operations.
- OGE reviewed agency documentation including the post-election readiness questionnaire responses, standard operating procedures, and training materials in order to assess the agency's preparedness to handle the increased post-election period workload. OGE reviewed the agency's 2011 Agency Ethics Program Questionnaire, an annual survey of general ethics program information, to determine if the agency is currently meeting ethics program requirements prior to the upcoming post-election period.
- OGE identified the number of prospective PAS nominee financial disclosure reports it received for the agency during the previous post-election period, from January 2009 through June 2010. In order to understand the time frames involved in processing a prospective nominee, OGE determined when each report was received, how many reports

were received each month, and calculated how long it took the agency and OGE to complete each report's review, how long it took each confirmed official to comply with the terms of his or her ethics agreement, and how long it took the agency to notify OGE that a confirmed official was in compliance with an ethics agreement.

- OGE interviewed agency ethics officials to follow-up on post-election readiness questionnaire responses and to obtain additional information about the agency's financial disclosure process, post-employment advice and counseling, planning related to the upcoming post-election period, and daily ethics operations. To assess how the agency uses technology to assist the PAS nominee process, OGE observed demonstrations of the electronic systems used to track PAS financial disclosure, advice and counsel, and ethics agreement compliance information.
- OGE reviewed a sample of 38 PAS termination financial disclosure reports submitted to OGE during the period of January through December 2009 from the components under review during the previous post-election period. OGE evaluated the timeliness of submission, review, and certification of the reports, and assessed the quality of both technical and conflict of interest review.

## **AGENCY BACKGROUND**

### DOJ Main

As the Nation's principal law enforcement agency, under the direction of the Attorney General, DOJ is responsible for keeping America safe and ensuring the fair and impartial administration of justice. Through its lawyers, investigators, and agents, DOJ plays a key role in (1) prosecuting criminals, (2) ensuring healthy competition for business in our free enterprise system, (3) safeguarding consumers, and (4) enforcing drug laws. DOJ also plays a significant role in protecting citizens through its efforts for effective law enforcement, crime prevention, and the prosecution and rehabilitation of offenders. DOJ is comprised of bureaus, offices, and divisions and has approximately 118,000 employees. (*See Appendix A.*) Currently, DOJ has 2,942 public financial disclosure filers including 179 PAS officials; however, we focused on DOJ Main which is responsible for 35 of these PAS officials.

### EOUSA

The United States Attorneys serve as the Nation's principal litigators under the direction of the Attorney General. There are 93 U. S. Attorneys stationed throughout the United States, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. U.S. Attorneys are appointed by, and serve at the discretion of, the President of the United States, with the advice and consent of the Senate. Each U.S. Attorney is the chief federal law enforcement officer of the United States within a particular jurisdiction. The EOUSA was created on April 6, 1953, by AG Order No. 8-53 to provide for close liaison between the Department of Justice and the U. S. Attorneys. Currently, EOUSA has approximately 11,300 employees. EOUSA has 1,013 public financial disclosure filers including 93 PAS officials.

## USMS

For over 200 years, U.S. Marshals and their deputies have served as the instruments of civil authority used by all three branches of government. The USMS is part of the executive branch of government, and is the enforcement arm of the United States federal courts. The U.S. Marshals are responsible for the protection of court officers and buildings. The service also assists with court security and prisoner transport, serves arrest warrants, and seeks fugitives. USMS has approximately 5,700 employees located in headquarters and 94 district offices. USMS has 49 public financial disclosure filers in addition to 94 PAS officials.

## **PROGRAM STRUCTURE**

The Assistant Attorney General for Administration serves as the DOJ Designated Agency Ethics Official (DAEO). The Deputy Assistant Attorney General serves as the Alternate DAEO (ADAEO). Both the DAEO and ADAEO spend approximately five percent of their time on ethics-related issues. The Departmental Ethics Office (DEO) based in the Justice Management Division is headed by the DEO Director. The DEO is the central office responsible for overseeing the overall DOJ ethics program, which includes issuing DOJ-wide guidance, providing ethics information and advice and counsel to Deputy Designated Agency Ethics Officials (Deputy DAEOs), and preparing materials for use by Deputy DAEOs. The DEO also provides direct advice and counsel to DOJ's senior leadership, to the Justice Management Division, and to a number of DOJ's smaller components.

The DOJ ethics program is semi-autonomous and decentralized at the component level. A Deputy DAEO at each component manages the daily operations of the ethics program. (*See Appendix A.*) These operations include training design and delivery, advice and counsel, conflict of interest reviews for prospective nominees, and collection and review of component financial disclosure reports.

### DOJ Main

The DEO Director in the Justice Management Division is responsible for the day-to-day administration of the DOJ Main ethics program. The DEO Director has approximately 20 years of ethics-related experience. The DEO Director is aided by the DEO Deputy Director, an Attorney Advisor and an Ethics Program Specialist all of whom average 4 years of ethics-related experience. Additionally, all four DEO members work full time on ethics-related duties. The DEO Director, the Deputy Director and Attorney Advisor are responsible for virtually all aspects of the post-election period workload along with the daily operations, which include providing advice and counseling and conducting ethics training.

### EOUSA

The General Counsel serves as the Deputy DAEO by delegation. Two management analysts are responsible for the day-to-day administration of the financial disclosure elements of the ethics program and handle the majority of the post-election period workload. The management

analysts work full time on ethics-related duties and average 6 years of ethics-related experience. The management analysts are aided by 17 Assistant General Counsels who, on a part-time basis, provide ethics training and counseling as part of their assigned legal responsibilities.

In addition, 94 Ethics Advisors based in the 94 districts act as ethics points of contact, provide initial review of financial disclosure reports, and conduct ethics training. Ethics Advisors receive instruction on how to handle their aspect of the EOUSA ethics program at an annual Ethics Advisor's Conference which lasts two and half days. The EOUSA Director provided opening remarks at the last two Ethics Advisor's Conferences and the latest Ethics Advisor's Conference featured OGE's Acting Director. The EOUSA Deputy DAEO gives an overview of the ethics program, and training sessions cover Ethics Advisor responsibilities, advice and counsel, and conflicts of interest. All Ethics Advisor's Conference sessions are recorded, which facilitates the distribution of information to Ethics Advisors who were unable to attend. These recorded sessions are also used as part of the process to train newly appointed Ethics Advisors.

### USMS

At USMS, the General Counsel serves as the Deputy DAEO. The Principal Deputy General Counsel provides overall direction to the USMS ethics program. An Associate General Counsel is named as Ethics Officer and is responsible for the day-to-day administration of the USMS ethics program. The Ethics Officer has 24 years of ethics-related experience. The Office of General Counsel (OGC) has 18 attorneys and six of them constitute the "Ethics Team," although they perform this function as an additional duty. The Ethics Officer is also aided by an Ethics Specialist.

## **DEPARTING OFFICIALS**

The first challenge to affect an ethics office in any post-election period is the increased number of departing senior officials. When an Administration changes, most incumbent officials will depart at the conclusion of the outgoing Administration's term and prior to the nomination and confirmation of their successors. When an Administration remains for a second term, some incumbent officials will still depart, also leaving leadership vacancies prior to their successors' confirmations.

In order for the ethics office to manage effectively the departure of officials, it must do the following:

- Identify departing officials
- Counsel officials on the negotiation and recusal requirements under the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act)
- Counsel on specific post-government employment activities prohibited by 18 U.S.C. § 207
- Obtain a departing official's final public financial disclosure report
- Review and certify termination financial disclosure reports with 60 days of receipt.

The ethics office must successfully manage this concentrated increase in ethics counseling and financial disclosure review, while also beginning to address its responsibilities regarding each departing official's potential successor.

## IDENTIFICATION OF DEPARTING OFFICIALS

### DOJ Main

Reliable and consistent information on departing PAS officials is essential for managing the orderly departure of PAS officials. Human Resources/Executive Personnel staff is DOJ's primary source of information on departing PAS officials. According to the DEO Director, during the first months of a post-election period, Human Resources/Executive Personnel staff may, depending on the volume of PAS departures, provide a report on PAS official departures as often as twice per day. Information on officials' intent to depart may also come from several other sources including the PAS officials themselves or the media.

### EOUSA

The General Counsel's Office (GCO) tracks all departing PAS officials through the EOUSA Director's office, the Nomination Section, and the Human Resource office. The Director's office receives PAS officials' resignation letters. The Nomination Section at EOUSA coordinates all aspects of prospective PAS nominations as well as their departure and also receives PAS officials' resignation letters. Last, the Human Resources office provides a bi-weekly report that includes departing PAS officials.

### USMS

The Human Resources Division (HRD) is responsible for notifying the OGC of departing PAS officials. USMS has encountered some difficulty with timely notifications due to a recent HRD reorganization. According to USMS ethics officials, the internal changes have made HRD less responsive to ethics office requests for information. In order to mitigate possible communication problems with HRD, USMS has established an agreement with the USMS Office of the Director to receive all PAS resignation letters. The Ethics Officer explained that the departure notifications from the Office of the Director will be helpful in the PAS post-employment counseling process.

## POST-EMPLOYMENT COUNSELING

An ethics office's responsibility to departing senior officials is two-fold: help ensure current officials do not violate conflict of interest laws while they seek future employment and prepare these officials for the statutory limitations that exist on certain activities once they leave government service.

In August 2008, anticipating the 2009 post-election period, the DOJ DAEO notified officials of the launch of a series of comprehensive, voluntary briefings for departing PAS and non-career officials throughout all DOJ and its components. These briefings covered official records



retention requirements, document removal requests, ethical considerations in job seeking, and the post-employment restrictions. The DEO Director conducted the ethics portions of these briefings. According to the DEO Director, should the post-election period include a change in Administration, DOJ Main anticipates providing these briefings once again. In the absence of a change in Administration, DOJ anticipates providing fewer briefings and will rely to a greater degree on written materials. The DEO Director expects the current system would be able to accommodate the expected number of departing PAS officials.

### DOJ Main

DOJ Main has 35 PAS officials; however, the DEO Director does not anticipate having to provide post-employment counseling to all 35 PAS officials during the upcoming post-election period. Five of the 35 PAS officials are appointed for a term, which means that their departure may not coincide with the beginning of a Presidential term. Eight PAS positions are also being filled on an acting basis. The DEO Director estimates that should a full change of Administration occur, DOJ Main may only have 16 PAS officials who will need post-employment counseling. Due to the gradual nature of PAS attrition at DOJ Main, the DEO Director expects that the post-election period's impact on daily operations would be minimal. The DEO Director provides post-employment counseling to PAS officials. According to the DEO Director, providing post-employment counseling is a routine part of the DEO's ethics program and, as such, the DEO has comprehensive guidance material for departing officials including a summary of post-employment restrictions and a chart outlining PAS officials' post-employment restrictions specific to each DOJ component.

### EOUSA

A potential change of Administration would lead to the departure of all 93 EOUSA PAS officials. According to the Deputy DAEO, this departure has historically occurred over a gradual period. In the case of no change of Administration, the Deputy DAEO expects the departure of only a few PAS officials through normal attrition. Due to the gradual nature of attrition at EOUSA, the Deputy DAEO expects that the impact of a potential change of Administration on daily operations would be minimal. In the unlikely event that the workload increased to a point that exceeded the ethics office's capacity, the Deputy DAEO has the authority to assign one of the 17 attorneys in GCO to assist with any part of the ethics program, including the nominee process. The Deputy DAEO can also assign up to three administrative support staff to aid in routine tasks.

The Deputy DAEO sends all U.S. Attorneys an annual electronic communication providing guidance on seeking employment and post-employment restrictions. In the case of a sudden departure, the local Ethics Advisor also provides post-employment guidance to the PAS official and notifies GCO. The local Ethics Advisor provides the departing political appointees with the post-employment information through an electronically distributed post-employment package. Ethics Advisors may provide post-employment counseling if the departing official requests it. EOUSA has also provided an optional post-employment training session to PAS officials during the annual U.S. Attorney conference. Lastly, EOUSA has a post-employment intranet webpage which houses an "Ethics Handbook." The handbook includes all relevant post-employment

information. Departed PAS officials are encouraged to contact their Ethics Advisors or the EOUSA General Counsel if they have any further post-employment questions. According to the Deputy DAEO, EOUSA has historically had no difficulties providing post-employment counseling even during the increased workload of the previous post-election period.

### USMS

OGC offers optional, in-person post-employment counseling to departing PAS officials. USMS ethics officials do not affirmatively reach out to PAS officials to provide post-employment counseling. According to the Ethics Officer, over the past 14 years, no USMS PAS official has taken a position after federal service that could trigger post-employment conflicts. PAS officials and other senior officials receive post-employment information at annual USMS management conferences. Additionally, the Ethics Officer directs PAS officials and other senior officials to the post-employment webpage of the USMS ethics website. Ethics officials distribute novel and important post-employment information via e-mail as needed. USMS uses a post-employment web-based form that PAS officials, and any other USMS employee, can complete to obtain post-employment opinions.

USMS has 94 PAS positions. According to USMS ethics officials, the U.S. Marshals have never departed or been dismissed en masse. In fact, some U.S. Marshals have been retained from one Administration to another. During a post-election period, USMS would provide post-employment counseling to a majority of the 94 PAS officials over a gradual, extended period, thereby reducing the counseling burden on the ethics office.

### TERMINATION FINANCIAL DISCLOSURE

Outgoing senior officials must complete a final public financial disclosure report within 30 days of completing their government service. Ethics officials then must review and certify this termination report to be free from conflicts of interest within 60 days of receipt. The termination report also discloses a departing official's future employment arrangements, allowing ethics officials to tailor any necessary follow-up post-employment counseling and to verify a departing official's government actions complied with Federal conflict of interest laws.

### DOJ Main

The DEO Director explained that, when facing a post-election period, ethics officials open a dialogue with departing PAS officials months before their departure. Ethics officials also inform the departing PAS official either in-person or through briefing materials of the requirement to file a termination public financial disclosure report. The termination report reminders are communicated by the DEO Director or staff via e-mail, telephone calls, and certified mail.

The OGE review team examined a sample of 12 termination reports required to be filed during the period of January 1, 2009 through June 30, 2010. Five of the termination reports were

submitted late and in one case, DOJ Main assessed the \$200 late filing<sup>1</sup>. Eleven of the 12 reports were reviewed and certified timely.

### EOUSA

EOUSA ethics officials inform departing PAS officials of the requirement to file a termination public financial disclosure report with briefing materials provided via e-mail. The OGE review team examined a sample of 22 termination reports required to be filed during the period of January 1, 2009 through June 30, 2010. Four of the 22 termination reports were submitted late. All but one of the 22 reports were reviewed and certified timely.

### USMS

USMS ethics officials inform departing PAS officials of the requirement to file a termination public financial disclosure report in three ways. First, the Ethics Officer informs all public filers of the requirement to file a public termination report every time they file an annual public report. Second, the requirement is also stated on the USMS post-employment ethics webpage. Third, the Ethics Officer informs PAS officials of the requirement via e-mail when he learns of a departure. The OGE review team examined a sample of four termination reports required to be filed during the period of January 1, 2009 through June 30, 2010. One of the four termination reports was submitted late. All but one of the reports were reviewed and certified timely.

## **INCOMING OFFICIALS**

While the processing of outgoing officials continues, ethics offices concurrently devote resources to processing prospective PAS nominees and other incoming officials. The nominee process describes the collective actions required by the ethics office to process a prospective PAS nominee through Senate confirmation. The White House Office of Presidential Personnel will identify potential candidates for nomination to executive branch positions. In the event of a change in administration, the transition team typically works directly with OGE but may contact the agency as well. Upon notification of a potential nominee, the Department of Justice begins to work with the official to prepare a public financial disclosure report for ethics certification and eventual Senate review.

Coordinating with prospective nominees and their representatives on the statutorily required information for the report is both a time-critical and a time-intensive process, often taking several weeks before a complete report is compiled. In rare cases, there can be multiple candidates under consideration for a PAS position and nominations can also be withdrawn. Both scenarios can result in an agency reviewing more financial disclosure reports than the number of positions to be filled. The financial interests and relationships identified in the report must then be thoroughly reviewed and certified by the ethics office as being free from potential conflicts of

---

<sup>1</sup> Three of these reports were signed by the departing PAS officials well within the 30-day filing requirement. However, since there was no agency date of receipt the review team used the certification date to identify when the agency had possession of the report. It is possible that the termination reports may have been submitted earlier and even timely, but the review team has no definitive evidence due to the absence of the agency receipt date.

interest. If a prospective nominee is confirmed, the ethics office is also responsible for that official's formal introduction to executive branch ethics laws and regulations and for verifying that the PAS official completed the actions required to alleviate any potential conflicts of interest.

## NOMINEE PROCESS OVERVIEW

The nominee process takes place concurrently with the other full-time responsibilities at DOJ Main, EOUSA and USMS: reviewing non-PAS public and confidential financial disclosure reports-- 8,931 (DOJ Main), 1,492 (EOUSA), and 1,539 (USMS), providing ethics advice and counseling, presenting initial and annual ethics training to covered employees, and fulfilling the other duties and responsibilities that fall under the purview of the ethics office.

In a post-election period, limited resources must be allocated as efficiently as possible to ensure senior positions are rapidly filled without disrupting daily ethics operations. The first six months after an election can be particularly resource intensive. DOJ Main and EOUSA had generally steady volumes of prospective nominees for the first 18 months of the post-election period, while USMS experienced a substantial increase in volume in late 2009 and early 2010.

### DOJ Main

DOJ Main has developed written procedures to administer the nomination process and is currently revising these procedures to reflect updates to the nominee process. Written procedures for the administration of the financial disclosure system are required by Section 402(d)(1) of the Ethics in Government Act. Comprehensive written standard operating procedures help to ensure that all agency ethics officials, from headquarters officials to regional office officials, follow the same procedures for administering the nomination process. Written standard operating procedures can also serve as the basis for creating a strong succession plan.

Currently, the White House informs the DEO of a prospective nominee to a PAS position. The DEO Director assigns a DEO attorney to review the prospective nominee's financial disclosure for both technical completeness and potential conflicts of interest. During this phase of the nominee process, the DEO attorney contacts the prospective nominee or his or her representative to request more information and, if necessary, amend the report. The attorney reviews the Senate questionnaire and consults with the relevant Deputy DAEO during the conflict of interest review. The attorney also prepares an ethics agreement. The ethics agreement formally documents any steps the prospective nominee must take to address any actual or apparent conflicts of interest in the event of Senate confirmation. When the final draft report and ethics agreement are complete to the satisfaction of OGE and the White House, they are signed by the prospective nominee. Should the White House announce its intent to nominate the prospective official, the DEO Director provides the signed report to the DAEO for certification and delivery to OGE and DOJ's Office of Legislative Affairs.

During the previous post-election period from the January 2009 through June 2010, DOJ Main expeditiously completed its review of prospective nominees' financial disclosure reports. The DEO Director expects that the current staffing level that handled the 35 PAS officials during the

2009 post-election period will be sufficient in 2013. (See Table 1 for the PAS official to reviewer ratio.) DOJ Main does not expect to receive additional resources for the post-election period since the Department of Justice is currently under a hiring freeze. DOJ Main lacks the ability to access other personnel within the Justice Management Division to assist the DEO if the volume of work related to the nominee process exceeds reviewer capacity. If the volume of work related to the nominee process exceeds reviewer capacity, the expectation will be that the staff will work extended workdays.

PAS Officials	35
Full Time Reviewing Officials	4
Part time Reviewing Officials	0
PAS Officials per Reviewer	8.8

### EOUSA

GCO uses ProLaw software to maintain oversight of the PAS nomination process. ProLaw software is used by law firms, corporate legal departments, and government agencies to automate the practice and business of law. EOUSA uses the following capabilities for the ethics program:

- Case management
- Document and records management
- Email and electronic file management

GCO receives reports and the draft Senate questionnaire from the Management office which contain basic information about each prospective PAS nominee such as the nominee's name, district, and when the background investigation was initiated. Management analysts enter this data for each prospective nominee as a case in ProLaw. The elements of any ethics agreement that must be satisfied are also entered into ProLaw. Upon confirmation, EOUSA GCO tracks each PAS official's compliance with the terms of the ethics agreement. The management analysts maintain a spreadsheet to track compliance and also use the ProLaw database to maintain all important PAS records including the ethics agreement compliance data, emails of guidance provided to new U.S. Attorneys, and all advice and counsel requests.

EOUSA has developed written procedures to administer the nomination process. Two management analysts in GCO handle the complete processing of each prospective nominee. When the White House informs the Management office of a prospective nominee, the Management office sends the prospective nominee a candidate package and notifies the two management analysts via email. After a period of two weeks, if the assigned management analyst responsible for the prospective nominee has not been contacted, the management analyst will contact the prospective nominee to offer assistance. The management analyst works with

EOUSA's Management office and the prospective nominee to complete his or her public financial disclosure report. The management analyst compares the draft report to the Senate questionnaire to ensure each accurately reflects the other. The management analyst will provide the draft report to OGE and begin a conflict of interest review, which may involve a GCO attorney, if necessary, for further analysis. At this point, with the concurrence of the prospective nominee, amendments may be made to the draft public financial disclosure report. The management analyst then informs the appropriate district Ethics Advisor of the prospective nominee's financial interests so that the Ethics Advisor can identify any potential conflicts at the district. Ethics Advisors play an important role in the conflicts analysis since they are more familiar with matters that could come before the particular district that might pose a conflict with the prospective nominee's financial interests. The management analyst requests that the Ethics Advisor complete the conflict review within one week if possible.

Once the prospective nominee's public financial disclosure report and ethics agreement are complete to the satisfaction of OGE and the White House, the management analyst will contact the prospective nominee to have the nominee sign the final public financial disclosure report and the ethics agreement, if applicable. The management analyst will also contact the DEO Director and advise that the public financial disclosure report and ethics agreement will soon be delivered to the DEO. The EOUSA Deputy DAEO or Deputy General Counsel (Deputy GC) will sign the public financial disclosure report and the package will be sent to the DEO Director for certification by the DOJ DAEO. DEO will send the certified report to OGE. If the White House nominates the candidate, the DEO will deliver the nomination package to OGE. OGE will sign the public financial disclosure report and prepare its recommendation of confirmation to the Senate.

EOUSA is responsible for in-processing 93 PAS officials. During the previous post-election period from January 2009 through June 2010, EOUSA's management analysts expeditiously completed their reviews of prospective PAS nominees' financial disclosure reports. According to the EOUSA Deputy DAEO, staffing levels were sufficient for the 2009 post-election period. One of the management analysts confirmed that the same staffing levels will be sufficient for 2013's post-election period. (*See Table 2 for the PAS official to reviewer ratio.*) However, unlike DOJ Main, EOUSA has the ability to access other personnel within GCO familiar with the ethics program. (*See Appendix B.*) The EOUSA Deputy DAEO has the authority to allocate any of the 17 attorneys within GCO to assist the management analysts if the volume of work related to the nominee process exceeds reviewer capacity. According to one of the management analysts, while the attorneys would primarily be responsible for dispensing advice and counseling, they have received informal training by the management analysts on the nominee process and conflicts of interest analysis. The management analysts conduct a basic orientation for the attorneys, which covers ethics agreements, nominee issues, and how the nominee process permeates all aspects their work at EOUSA.

Table 2 Department of Justice (EOUSA)	
PAS Officials	93
Full Time Reviewing Officials	2
Part Time Reviewing Officials	0
PAS Officials per Reviewer	46.5

### USMS

Since the 2009 post-election period, the Ethics Officer has access to prospective nominee data maintained by the Office of Congressional Affairs (OCA) such as background investigation start dates, candidate forms, biographies, resumes, and Senate questionnaire results. OCA also maintains recusal memoranda, ethics agreements, and Ethics Pledge documents.

USMS has also developed written procedures to administer the nomination process. Clear delineation of responsibilities helps to ensure that communication flows as intended. The Ethics Officer is the point of contact for OCA regarding all aspects of the nominee process as it relates to ethics. OCA will notify the Ethics Officer of a prospective nominee. Once the prospective nominee has been interviewed by DOJ and the FBI background investigation has begun, OCA will contact the Ethics Officer regarding the prospective nominee's status. The Ethics Officer will then provide the prospective nominee with preliminary financial disclosure instruction and ethics office contact information. When the background investigation has been completed, OCA will notify the Ethics Officer to ensure that the prospective nominee's financial disclosure report is complete. At this point, OGC will also receive the Senate questionnaire. The Ethics Officer will assign an Associate General Counsel (AGC) to review the prospective nominee's public financial disclosure report. The Ethics Officer communicates with the Principal Deputy GC to determine AGC workload and workflow and considers those variables when assigning a prospective nominee to an AGC. The AGC will begin a technical analysis and, with the concurrence of the prospective nominee, amendments may be made to the draft public financial disclosure report. Next, the AGC will contact OGE and concurrently perform a conflict of interest review. In complex cases, the DEO at DOJ Main may assist in the conflict of interest review as well. The AGC will also draft the ethics agreement, if necessary. The AGC will then provide the completed public financial disclosure report and ethics agreement to the DEO for the DAEO's final certification at DOJ Main. If a candidate is nominated, DOJ Main will forward the certified report to OGE. OGE will then sign the report and prepare its recommendation to the Senate.

USMS is responsible for in-processing 94 PAS officials. During the previous post-election period from January 2009 through June 2010, USMS expeditiously completed its review of prospective nominees' financial disclosure reports. OGC's six-attorney "Ethics Team" was in place for the 2009 Presidential transition and this staffing level was sufficient to handle PAS processing. (See Table 3 for PAS official to reviewer ratio.) The USMS Principal Deputy GC explained that if the volume of work related to the nominee process exceeds Ethics Team

capacity, USMS can re-direct non-ethics work to the other 12 attorneys, so that the Ethics Team can spend its time on post-election work. (See Appendix B.)

Table 3 Department of Justice (USMS)	
PAS Officials	94
Full Time Reviewing Officials	1
Part Time Reviewing Officials	5
PAS Officials per Reviewer	15.7

### ETHICS AGREEMENTS

The final element of a prospective nominee’s processing is frequently the ethics agreement. An ethics agreement is broadly defined as “any oral or written promise by a reporting individual to undertake specific actions in order to alleviate an actual or apparent conflict of interest.” See 5 CFR 2634.802(a). In the case of prospective PAS nominees, any such promise must be reduced to writing, summarizing the actions to which the nominee has agreed to take upon Senate confirmation. Among the most common conflict of interest remedies that are reflected in an ethics agreement are recusals, divestitures, and resignations. The confirmed official must complete those actions which he or she has agreed to undertake within 90 days of Senate confirmation. The ethics office has three business days from the compliance deadline to submit evidence to OGE that the PAS official has complied with the terms of the ethics agreement.

#### DOJ Main

There is no formal process for the ethics agreement compliance portion of the nominee process. The DEO Director is responsible for confirming that a PAS official has complied with the terms of his or her ethics agreement and subsequently notifying OGE that compliance has occurred. During the previous post-election period from January 2009 through June 2010, DOJ Main PAS officials completed the actions required by their ethics agreements by the 90-day compliance deadline in 73 percent of cases. During this same time period, DOJ Main ethics officials notified OGE of PAS officials’ compliance by the 93-day notification deadline in 64 percent of cases. (see Table 4.)

Table 4 Department of Justice (Main)	
Meeting Ethics Agreement Deadlines (Jan 2009 – Jun 2010)	
PAS Officials Complying with Ethics Agreements (within 90 days)	73%
Notifications of Compliance Received by OGE (within 93 days)	64%



Although DOJ Main has a database that can be used to track ethics agreement compliance, the DEO Director indicated that it has not been in use in the last year due to a lack of administrative support. OGE reviewed the high-level functionality of the database and believes the database could be helpful in managing the ethics agreement process.

EOUSA

The ethics agreement process is clearly defined at EOUSA. EOUSA’s written procedures for the nomination process include procedures for ethics agreements. The management analysts will draft the ethics agreements and work with OGE on the final language. The management analyst will then discuss the ethics agreement and its required actions with the prospective nominee. The particulars of each ethics agreement are tracked in ProLaw. When a prospective nominee is confirmed to his or her position by the Senate, the management analysts send an e-mail to the PAS official outlining time-sensitive requirements including ethics agreement compliance responsibilities. The management analysts are also responsible for coordinating ethics agreement compliance requirements with regional Ethics Advisors and GCO attorneys when needed. Should a PAS official require recusal from particular government duties, the management analysts coordinate the recusal between a GCO attorney and the Ethics Advisor. Management analysts also utilize a spreadsheet to record when ethics agreement compliance notification was communicated to the Ethics Advisor, to identify the attorney handling a recusal if necessary, and to track when OGE was notified of ethics agreement compliance. During the previous post-election period from January 2009 through June 2010, EOUSA PAS officials completed the actions required by their ethics agreements by the 90-day compliance deadline in 97 percent of cases. During this same time period, EOUSA ethics officials notified OGE of PAS officials’ compliance by the 93-day notification deadline in 98 percent of cases. (*see Table 5.*)

Table 5 Department of Justice (EOUSA)	
Meeting Ethics Agreement Deadlines (Jan 2009 – Jun 2010)	
PAS Officials Complying with Ethics Agreements (within 90 days)	97%
Notifications of Compliance Received by OGE (within 93 days)	98%

The ethics agreement process at EOUSA is a well-functioning system. The management analysts communicate to the Ethics Advisors the importance of compliance with ethics agreements. Written procedures and sufficient tracking resources are in place to maintain oversight over the ethics agreement process. More importantly, the tracking resources are leveraged properly. The written procedures suggest that ethics agreement compliance is given the same level of significance as the rest of the nominee process, even though it occurs after a nominee has been confirmed by the Senate.

USMS

According to the Principal Deputy GC, there are no formal written procedures to govern the ethics agreements process. The attorney assigned to the prospective PAS nominee is also responsible for drafting the ethics agreements and putting the requirements into a recusal memorandum which is then provided to the PAS official to date, sign, and distribute to his/her district manager. That same attorney is also responsible for notifying OGE of compliance with the ethics agreement. Notifications to the PAS official and to OGE are submitted via e-mail.

During the previous post-election period from January 2009 through June 2010, USMS PAS officials completed the actions required by their ethics agreements by the 90-day compliance deadline in 55 percent of cases. During this same time period, USMS ethics officials notified OGE of PAS officials' compliance by the 93-day notification deadline in 43 percent of cases. (See Table 6.)

Table 6 Department of Justice (USMS)	
Meeting Ethics Agreement Deadlines (Jan 2009 – Jun 2010)	
PAS Officials Complying with Ethics Agreements (within 90 days)	55%
Notifications of Compliance Received by OGE (within 93 days)	43%

USMS has an internal deadline of 30 days for the PAS official to comply with the ethics agreement; however, this deadline is regularly missed. The USMS ethics office uses a spreadsheet to track several aspects of the nomination process including compliance with ethics agreements. USMS relies on OGE notifications and the individual USMS attorney to enter data in a timely manner. However, the Ethics Officer explained that information is not always up-to-date on the spreadsheet.

The Principal Deputy GC, the Ethics Officer, and at least one attorney noted that ethics agreement compliance and notification is delayed because getting the prospective nominee through the confirmation process and onboard is the priority at USMS. The Principal Deputy GC also said the ethics office spends most of its time reviewing the prospective nominee's public financial disclosure report and conducting the conflicts analysis. The Ethics Officer agreed that other competing responsibilities typically take priority over the ethics agreement compliance process and added that generating recusal memoranda and gathering compliance information is time-consuming. The Principal Deputy GC has begun to generate ideas on how to improve this process, such as connecting ethics agreement compliance with the orientation PAS officials receive at USMS headquarters.

An ethics agreement is the promise of actions the prospective nominee has agreed to take upon confirmation. Confirmed officials should satisfy these requirements timely and the ethics office should notify OGE promptly. Although USMS has currently no backlog of overdue ethics

agreements, OGE is concerned that the secondary prioritization of ethics agreements during the post-election period and existing process limitations could again result in the USMS ethics agreement program being out of compliance.

### INITIAL ETHICS ORIENTATION

Once a nominee is confirmed by the Senate, the ethics office becomes responsible for that official's initial ethics orientation (IEO). Prospective nominees begin the introduction to ethics in the Federal Government through interactions with the ethics program when completing their financial disclosure reports. It is particularly important that incoming senior officials continue their education on executive branch ethics given their central role in defining an agency's ethical culture.

Within 90 days from the time any employee begins work for an agency, the ethics office must provide that new employee with ethics official contact information as well as one hour to review the standards of conduct, principles of ethical conduct, and any agency supplemental standards, as appropriate. Ethics offices typically provide initial ethics orientations to PAS officials and their key staff through formal, in-person briefings.

#### DOJ Main

The DEO receives regular notices from the Human Resources/Executive Personnel staff of PAS officials' Senate confirmations. Ethics officials then send an e-mail to a new PAS official providing ethics briefing materials and notifying the new PAS official of the required IEO session. During the last post-election period, the DEO held weekly IEO sessions for the first four months of 2009; these sessions accommodated up to 15 PAS officials, non-career Senior Executive Service officials, and Schedule C employees and included, as needed, officials and employees from other DOJ components. After the initial high volume, the sessions were held every other week for several more months. Finally, the DEO held sessions as needed every time a vacant PAS position was filled. The DEO maintains a record of attendance in the form of an attendance roster which officials sign. The DEO Director plans to take a similar approach to IEO depending on the number of PAS vacancies to be filled in the upcoming post-election period.

#### EOUSA

The local Ethics Advisor provides IEO and can tailor the training they provide to target the areas of concern to their particular district. At the agency's last Ethics Advisor's Conference, EOUSA provided Ethics Advisors with a memorandum with general areas to cover during in-person IEO. Ethics Advisors send an e-mail to new PAS officials providing IEO materials including the federal conflict of interest laws, the standards of conduct, agency supplemental regulations, and other relevant documents. In addition, EOUSA policy requires providing PAS officials with in-person IEO on the first day of duty but no later than five days from the first day of duty. Ethics Advisors are then responsible for notifying GCO when they have provided IEO to PAS officials. OGE was not able to obtain information from EOUSA to confirm compliance with these internal policies.

## USMS

Ethics orientation begins upon nomination, when PAS officials are presented with the “Ethics Guide” handbook, specifically tailored to their USMS responsibilities. After confirmation, the USMS OGC provides a new PAS official and the official’s chief deputy with two separate in-person ethics orientations. The first IEO occurs when the PAS official is sworn in at USMS headquarters. According to the USMS Deputy DAEO, the first IEO is not intended to be the formal IEO, but serves as a “sensitivity booster” mandated by the USMS Director. The USMS OGC then conducts a follow-up IEO within the 90-day required timeframe that serves as the official IEO. During this second IEO, PAS officials receive the DOJ Ethics Handbook, the standards of conduct, DOJ supplemental regulations, the Ethics Pledge, and other USMS and DOJ-specific documents like the DOJ Office of Inspector General Guide.

## **CONCLUSION**

DOJ Main, EOUSA, and USMS appear to be well-positioned to navigate the post-election period. All components appear to have allocated sufficient resources to the nomination process. In the case of EOUSA and USMS, these components have established contingency plans to access additional staff should the time-sensitive nature of the nomination process exceed reviewer capacity. In particular, at EOUSA, all aspects of the nomination process under review suggested a model program due in part to leadership support, clear delineation of duties, comprehensive written procedures for important aspects of the nomination process, knowledgeable ethics officials, and excellent tracking mechanisms.

OGE is making two recommendations to strengthen the ethics agreement compliance process at DOJ Main and USMS:

- 1) DOJ Main should document its ethics agreement process and consider ways to formalize notification of compliance, which may include using existing internal DOJ resources to leverage the unutilized database.

DOJ Response: DOJ Main anticipates more timely notice of compliance with ethics agreements for two reasons: one, the office now has an administrative support employee who is using the database system to more accurately track compliance; and second, DEO has advertised for an additional attorney position, who will assist with this and in other aspects of the nominee process.

OGE Comment: DOJ Main’s actions satisfy the intent of the recommendation. OGE will verify the effectiveness of these actions six months after report issuance by determining if compliance notification over that period has occurred by the required deadline.

- 2) USMS should reassess its ethics agreement process and develop a plan for the post-election period. It should consider strategies to put a higher priority on this aspect of

PAS processing. For example, USMS has the ability to rebalance the workload of ethics officials to allow for more focused attention on ethics agreement compliance.

DOJ Response: The USMS will make ethics agreement compliance a higher priority.

OGE Comment: Although no specific actions were outlined, OGE will assess USMS' increased priority on ethics agreement compliance six months after report issuance by determining if compliance and notifications over that period have occurred by the required deadlines.

## AGENCY COMMENTS

The Department of Justice provided the following response to a draft version of the report. OGE comments to specific points have been included below. Responses to OGE recommendations appear above.

*Response provided via email on July 12, 2012:*

P. 7, under Program Structure. The description of the ethics advice by attorneys in both EOUSA and USMS who do not work full-time on ethics is described as a “collateral duty.” This may be semantics, but we suggest it is more accurate to describe ethics as one of the duties they perform among the broad subject matter areas typical of attorneys in an agency general counsel’s office. Collateral duty implies it is less important than or peripheral to other duties, and we think this is inaccurate. They are not full-time ethics specialists, but they advise on ethics as an important part of their assigned legal responsibilities.

OGE Comment: Language changed to “additional” duty.

P. 9, first paragraph. DOJ does intend to hold Transition briefings in the event of a “small” Transition, but we will not hold as many, and we will rely to a greater degree on the written materials that we have prepared for Transition.

OGE Comment: Report has been updated to reflect this additional information.

P. 13, second paragraph. The DEO attorney always contacts the candidate since it is a rare (non-existent?) report that is correct the first time, and of course we cannot assume that the candidate understands all that is required by the report. An ethics agreement is always necessary unless a candidate withdraws or is withdrawn from consideration early in the process. Also, the DEO attorney obtains the Senate Questionnaire as soon as possible. However, often our contact with a candidate is before they have completed the Questionnaire so we may be well along in the review of the 278 and EA before we have the Questionnaire. Also, DEO performs a specific conflicts review, which includes consulting with the relevant DDAEO.

OGE Comment: Report has been updated to reflect this additional information.

P. 20, DOJ Main paragraph. To clarify, the initial ethics briefings described included not only PAS officials, but also non-career SES and Schedule C employees. In addition to the weekly sessions, which were scheduled at a regular time, DEO also did individual briefings of PAS officials who could not attend the scheduled sessions.

OGE Comment: Report has been updated to reflect this additional information.

P. 20, USMS section. The Ethics Guide is provided to nominees upon nomination so that they can become familiar with specific rules and policies before they enter on duty.

OGE Comment: Report has been updated to reflect this additional information.

P. 23. We are not sure the chart accurately conveys the relationships between the various offices. We are happy to discuss further.

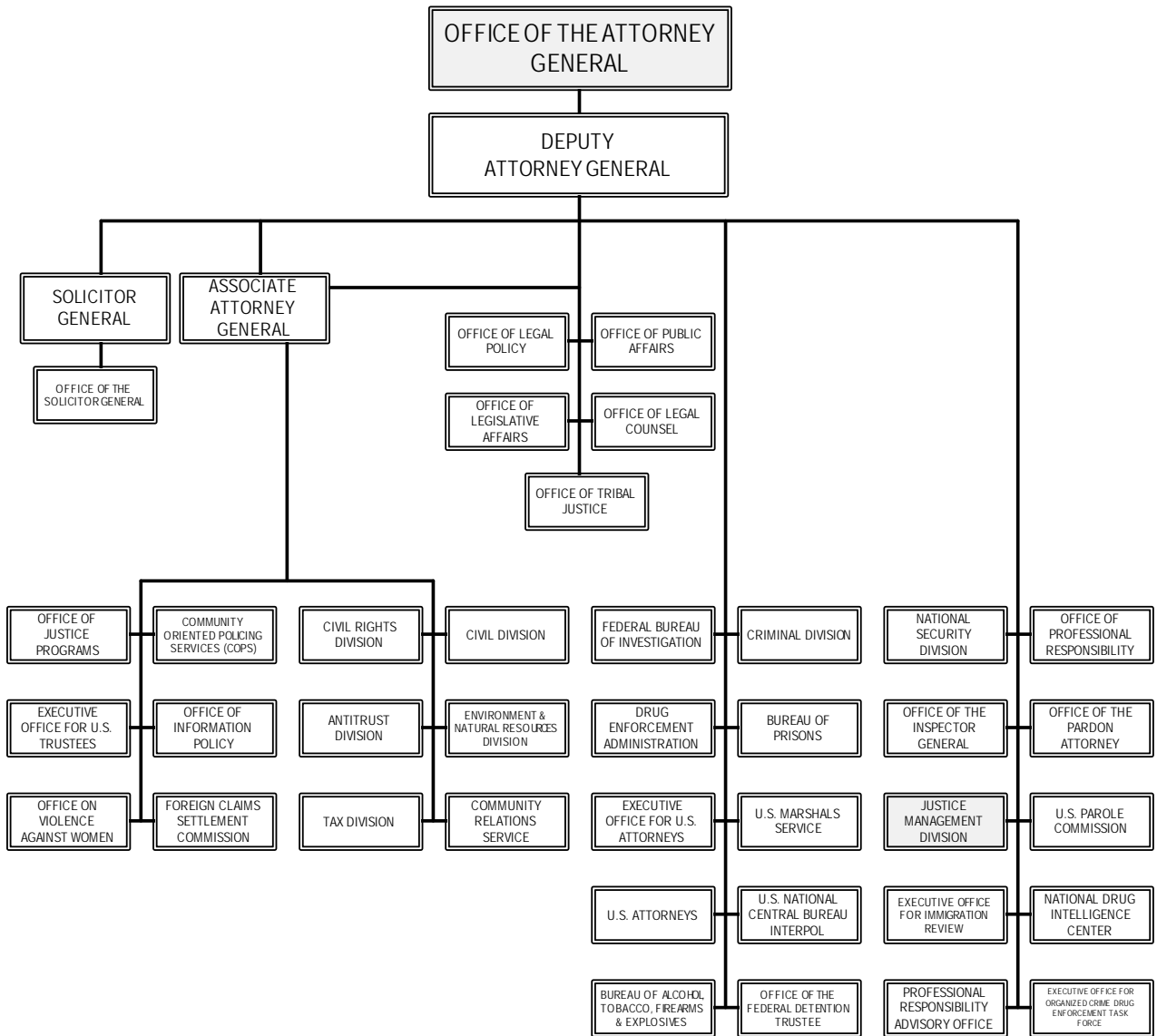
OGE Comment: The organizational chart on page 23 of the discussion draft (The Department of Justice Ethics Office) was intended only to illustrate the structure of that specific office. Interrelationships between DOJ offices are further expanded upon in the body of the report.

P. 30, Chart for USMS ethics personnel responsibilities. There appears to be no ethics advice and counsel included for the attorneys who are members of the Ethics Team. USMS provided information about the amount of time that these attorneys spend on ethics advice.

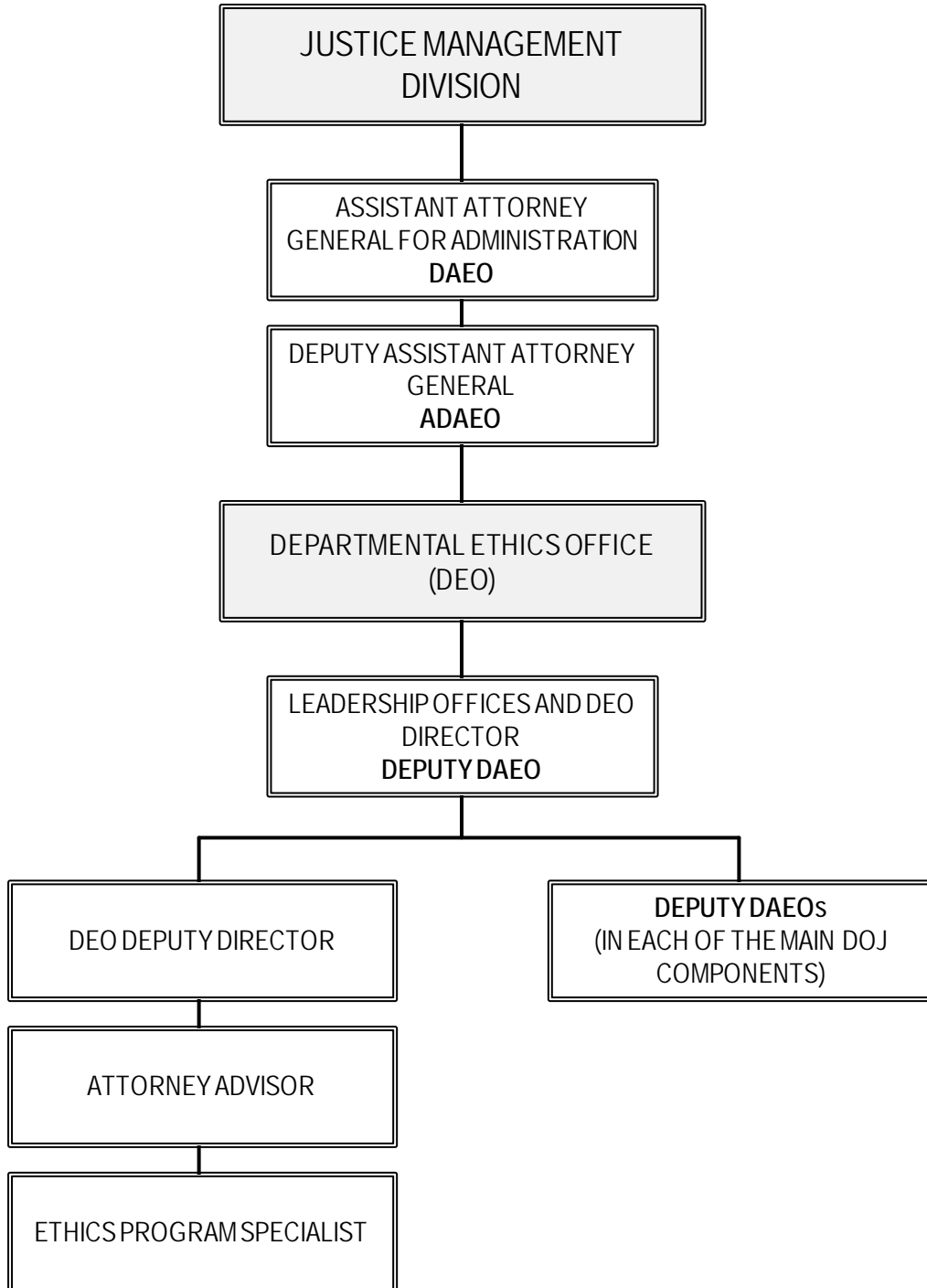
OGE Comment: Chart has been updated to reflect the missing information.

**APPENDIX A**

Department of Justice Organizational Chart

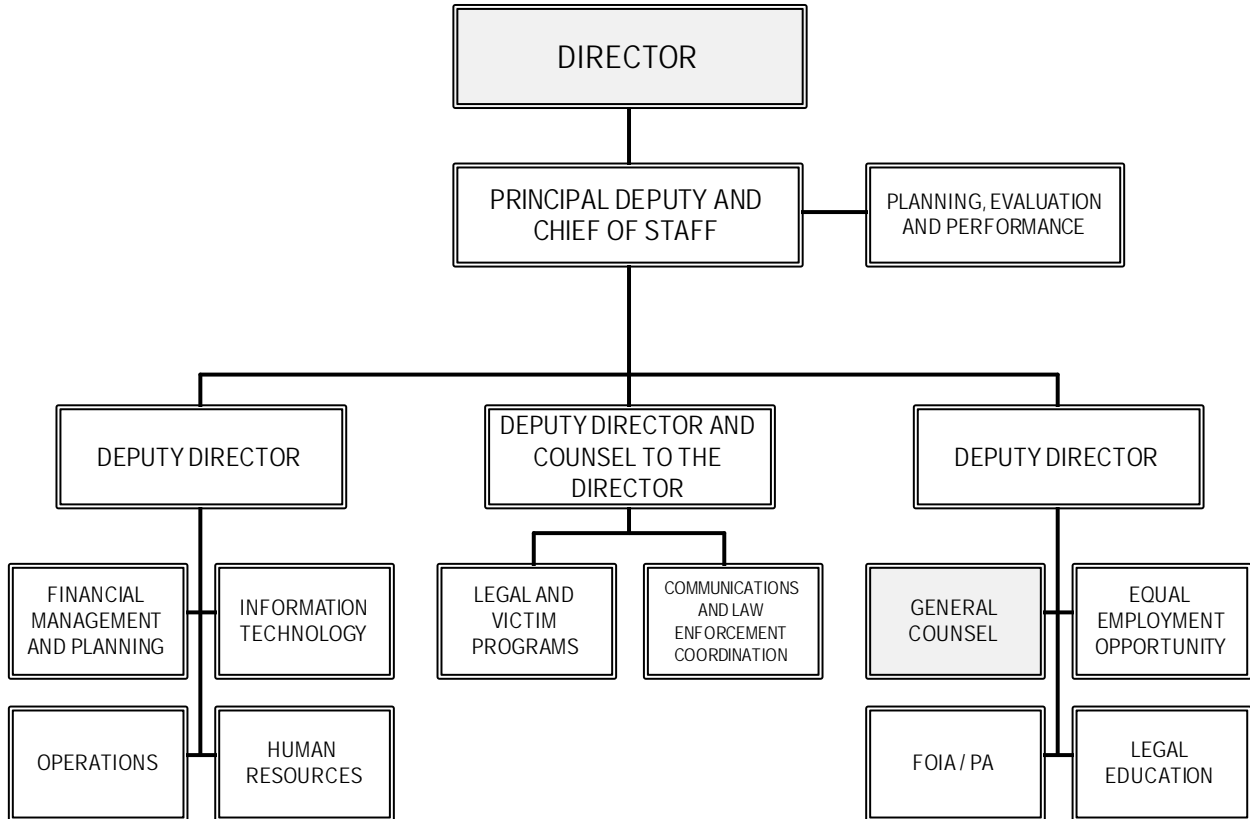


Department of Justice Ethics Office

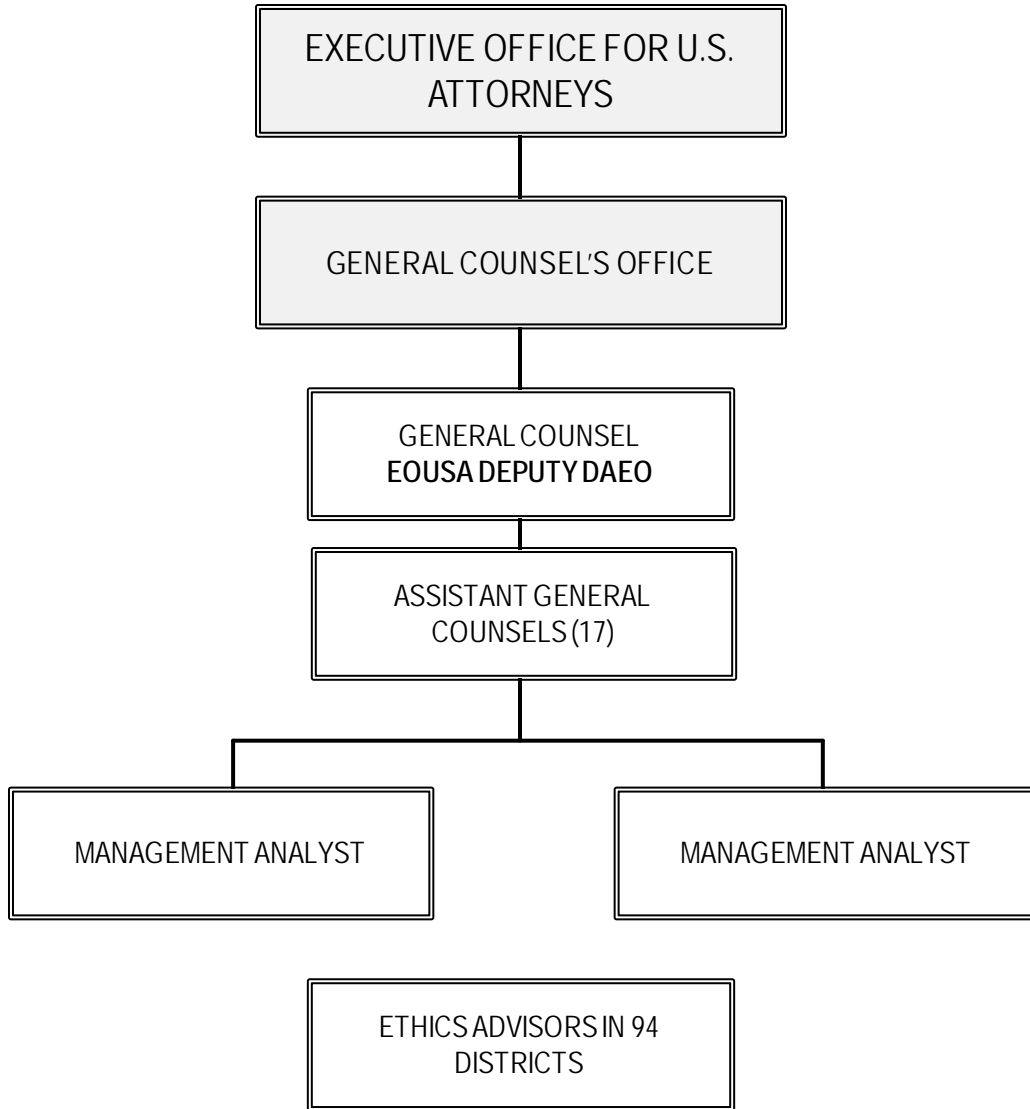




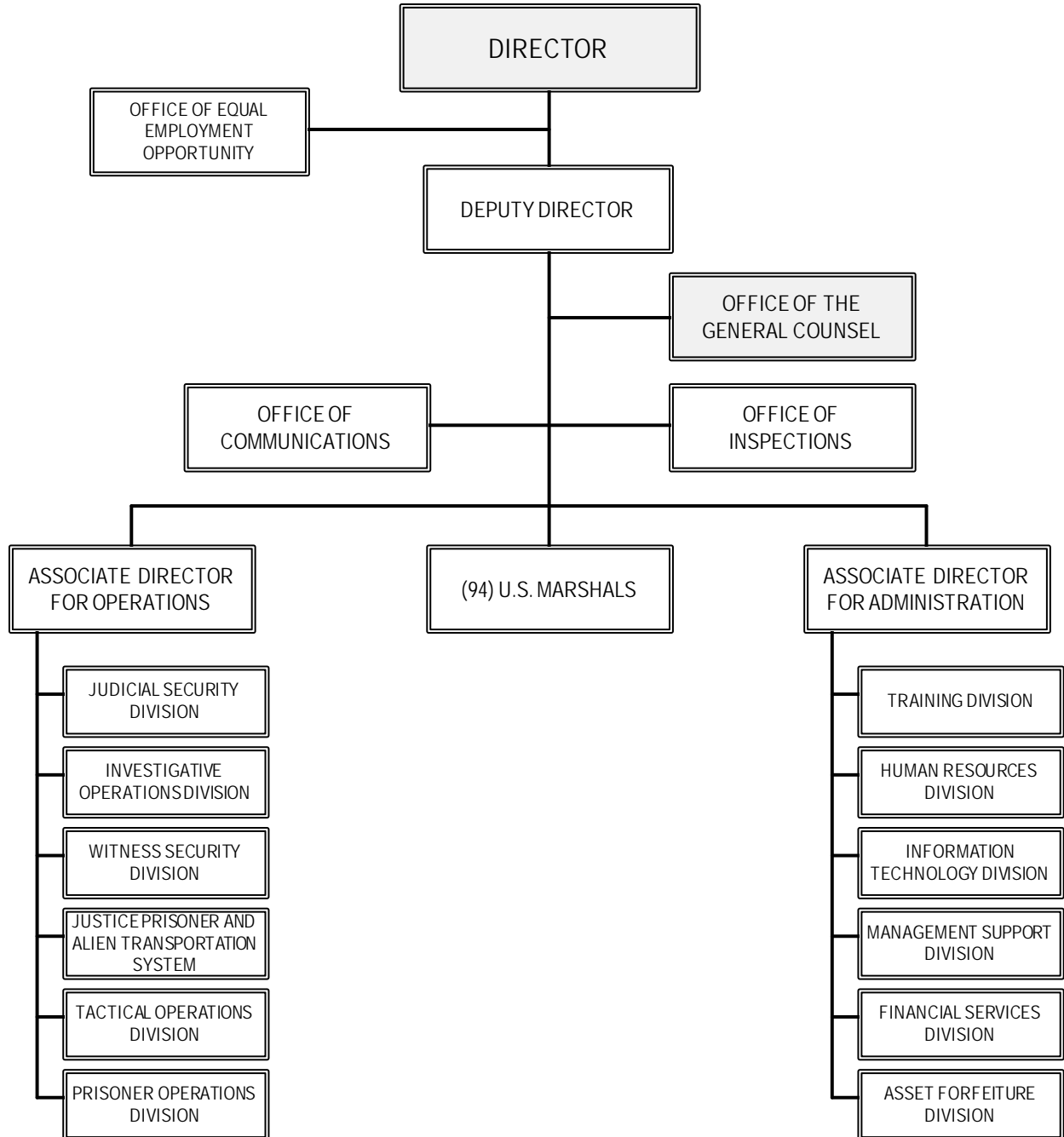
Executive Office for United States Attorneys Organizational Chart



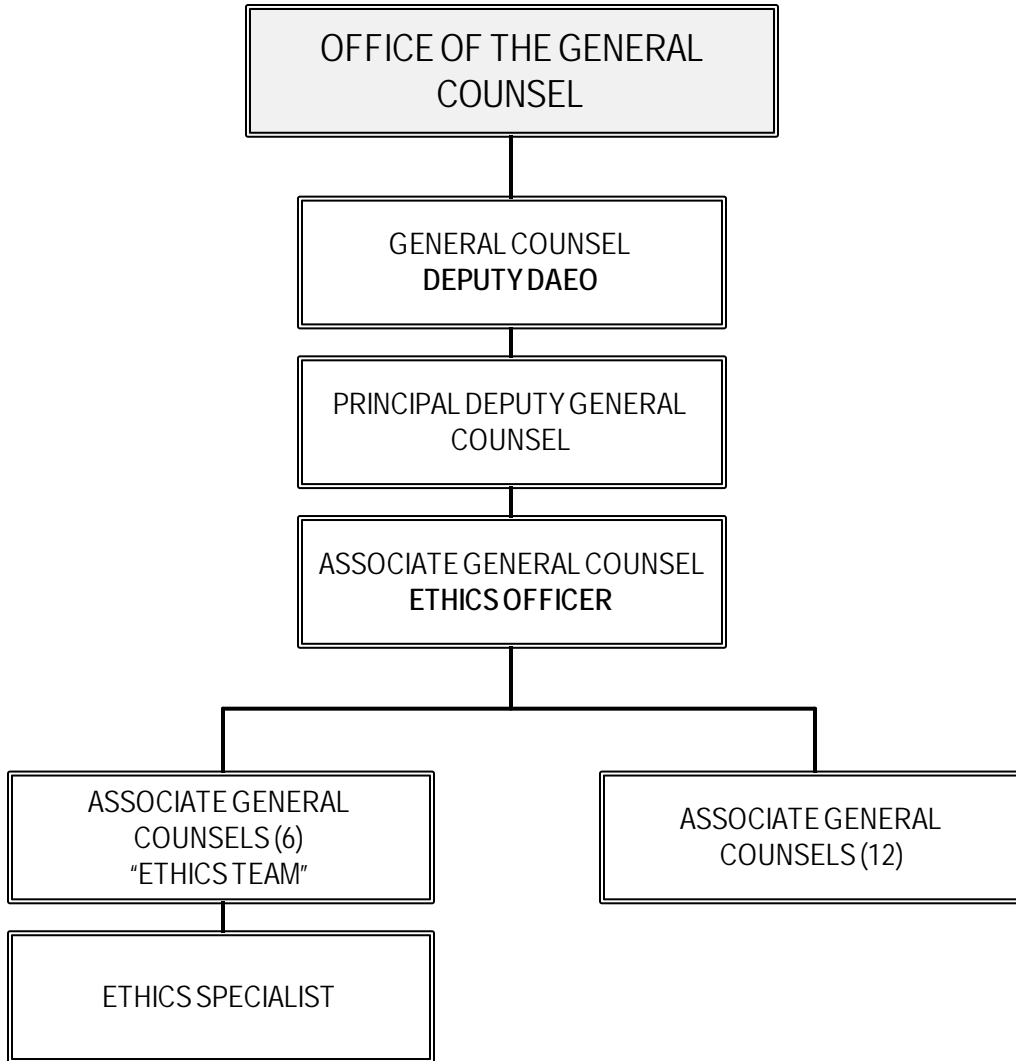
Executive Office for United States Attorneys Ethics Office



# U.S. Marshals Service Organizational Chart



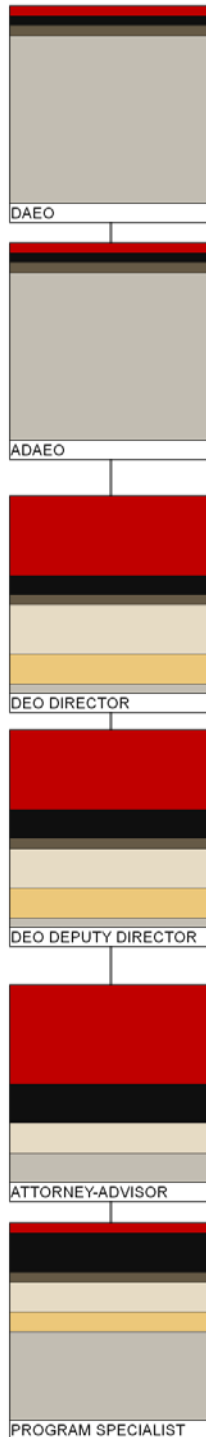
U.S. Marshals Service Ethics Office



**APPENDIX B**

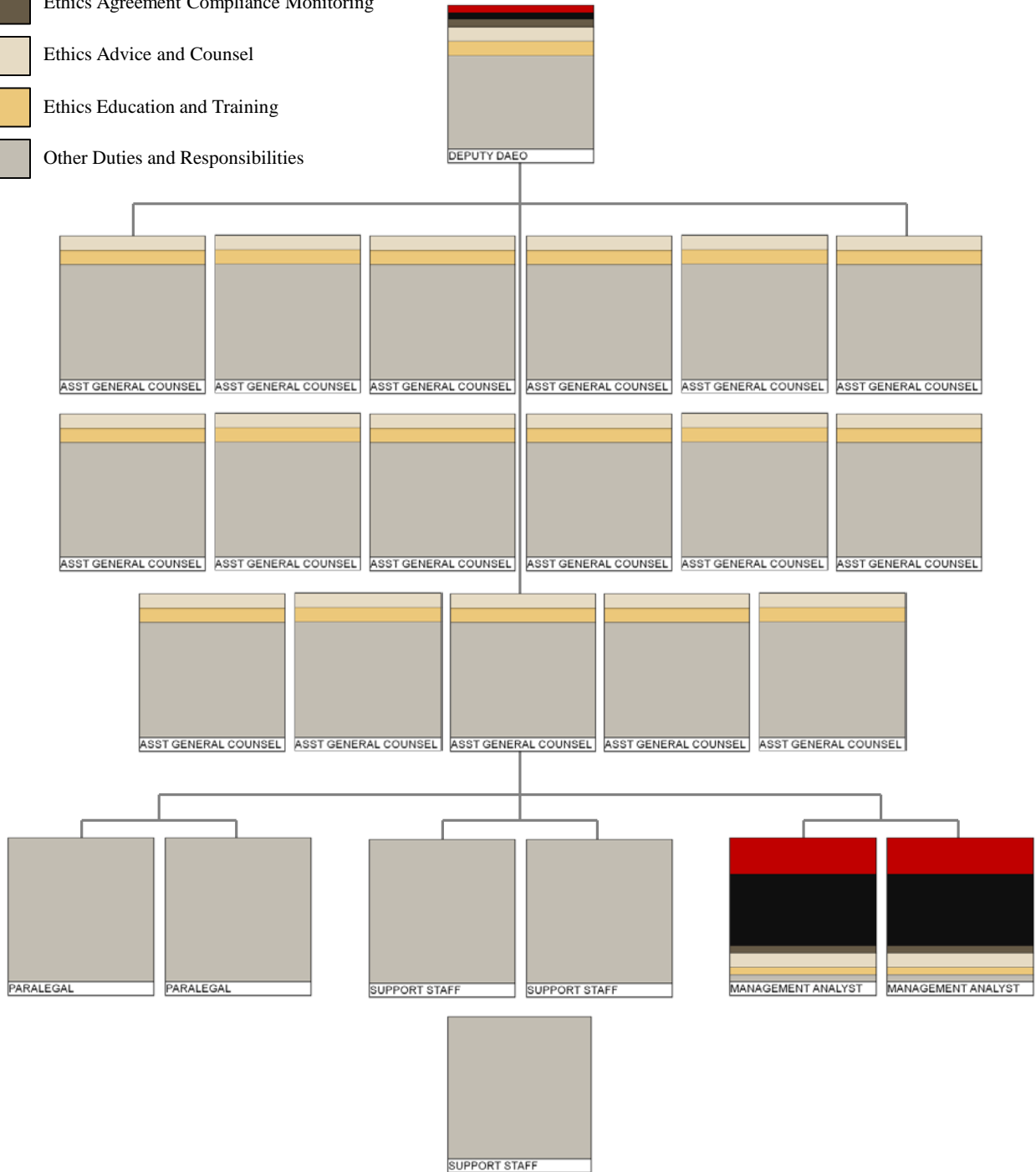
Department of Justice  
 Proposed Ethics Personnel Responsibilities for the 2013 Post-Election Period

- PAS Nominee Financial Disclosure Review
- All Other Financial Disclosure Review
- Ethics Agreement Compliance Monitoring
- Ethics Advice and Counsel
- Ethics Education and Training
- Other Duties and Responsibilities



Executive Office for United States Attorneys  
 Proposed Ethics Personnel Responsibilities for the 2013 Post-Election Period

-  PAS Nominee Financial Disclosure Review
-  All Other Financial Disclosure Review
-  Ethics Agreement Compliance Monitoring
-  Ethics Advice and Counsel
-  Ethics Education and Training
-  Other Duties and Responsibilities



United States Marshals Service  
 Proposed Ethics Personnel Responsibilities for the 2013 Post-Election Period

- PAS Nominee Financial Disclosure Review
- All Other Financial Disclosure Review
- Ethics Agreement Compliance Monitoring
- Ethics Advice and Counsel
- Ethics Education and Training
- Other Duties and Responsibilities

