



Ethics Program Review

U.S. Environmental Protection Agency

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The U.S. Office of Government Ethics (OGE) conducted a review of the U.S. Environmental Protection Agency (EPA) ethics program from March 2019 through June 2020. The following summarizes the results of that review.

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Objectives, Scope, and Methodology

Objectives: OGE provides overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest. The Ethics in Government Act gives OGE the authority to evaluate the effectiveness of executive agency ethics programs.¹ OGE uses this evaluation authority largely to conduct reviews of agency ethics programs. The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

Scope: OGE examined all elements of the EPA ethics program administered by the Ethics Office at headquarters. These elements include program administration, financial disclosure, education and training, ethics counseling, agency-specific ethics rules, conflict remedies, enforcement, and special government employees.

Methodology: OGE issued a report on its most recent previous review of EPA’s ethics program in March 2017. That report included eight recommendations addressing the deficiencies identified during the review. OGE coordinated with EPA ethics officials on several occasions in 2018 to assess the EPA ethics program’s progress in addressing the recommendations. During this process, ethics officials advised OGE they were still working on implementing the recommendations, but had not yet made significant progress. OGE then initiated a more formalized follow-up review in the spring of 2019 to further assess EPA’s progress. During the course of the follow-up review, it became apparent to OGE that EPA still had significant work to do before the recommendations could be closed.

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

Because the next full plenary review of EPA's ethics program had been scheduled to occur in fiscal year 2020, OGE decided to re-evaluate the deficiencies identified in the 2017 report as part of this plenary review, rather than continuing to conduct follow-up reviews focused only on the deficient program elements. During the current review, OGE examined a variety of documents, policies, and procedures provided by EPA ethics officials, including EPA's response to OGE's 2018 and 2019 Annual Agency Ethics Program Questionnaires (OGE Annual Questionnaire), written procedures for administering the financial disclosure programs, samples of public and confidential financial disclosure reports filed in 2018 and 2019, ethics training materials, and a sample of the ethics-related advice and counseling provided to employees. In addition, OGE met with agency ethics officials to clarify the information examined, follow up on issues identified during the review, and discuss ethics program operations in further detail.

Program Administration

EPA's ethics program is highly decentralized. The Deputy General Counsel for Environmental Media and Regional Law Offices is EPA's Designated Agency Ethics Official (DAEO). The Senior Counsel for Ethics is the Director of the EPA Ethics Office and serves as the Alternate DAEO (ADAEO). The Ethics Office is organizationally located within the Office of the General Counsel in Washington, DC, and consists of five ethics officials, in addition to the ADAEO. The Ethics Office provides ethics guidance to political appointees, members of the Senior Executive Service, and OGC personnel. The office also provides ethics training and approves agency travel reimbursement from outside sources for these employees.

In addition to the Ethics Office officials, EPA has approximately 150 Deputy Ethics Officials (DEO) located throughout the country. Each EPA region and program office has a DEO, and an Alternate DEO (ADEO), who are responsible for managing the ethics program within their respective region or office using guidance provided by the Ethics Office.

Ethics Program Challenges

During OGE's review, EPA Ethics Office officials acknowledged that their program was out of compliance in some areas and pointed to the lack of a permanent DAEO from September 2018 through September 2019 as a significant cause. For example, they asserted that EPA did not issue the required notices to prospective employees or new supervisors because a DAEO was not available to issue them.² EPA appointed a permanent DAEO in September 2019 and ethics officials believe that they can now comply with these and other program requirements. Additionally, ethics officials stated that insufficient resources precluded them from being able to meet some programmatic responsibilities.

Despite the appointment of a permanent DAEO, OGE continues to have serious concerns regarding the structure and accountability within the EPA ethics program. As OGE indicated in its March 2017 program review report, despite being ultimately responsible for overseeing the EPA ethics program, the DAEO does not have supervisory authority over the majority of the DEOs or ADEOs. This creates the potential for a lack of direct accountability. Moreover, the

² See 5 C.F.R. § 2638.303 and See 5 C.F.R. § 2638.306.

performance of each element of the ethics program varies significantly depending on the experience and degree of engagement of each DEO. Additionally, ethics officials believe that the small size of the Ethics Office and the decentralized program structure prevents them from having enough time and resources to conduct thorough, systematic oversight of the ethics advice and counseling given by DEOs across the agency.

Financial Disclosure

Title I of the Ethics in Government Act requires that agencies administer public and confidential financial disclosure systems. Financial disclosure serves to prevent, identify, and resolve conflicts of interest by providing for a systematic review of the financial interests of officers and employees. The financial disclosure process also offers an opportunity for ethics officials to provide ethics-related counseling to report filers.

To evaluate EPA's financial disclosure systems, OGE examined the required written procedures for administering the systems, EPA's processes for notifying the DAEO when employees entered or departed filing positions, and a sample of public and confidential financial disclosure reports.

Financial Disclosure Written Procedures

Each executive branch agency must establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available financial disclosure reports filed by the agency's officers and employees.³ OGE examined EPA's written procedures and determined that they did not specifically address the 30-day deadlines for collecting new entrant and termination public financial disclosure reports. In addition, EPA had not updated the procedures for collecting and reviewing confidential reports to reflect EPA's use of an electronic filing system for confidential disclosure reports.

Recommendations

1. Ensure that written procedures for public financial disclosure include the requirement that new entrant and termination public financial disclosure reports are filed no later than 30 days after the date of an employee's appointment to or termination from a public filing position.
2. Ensure the written procedures for confidential financial disclosure are revised to reflect the process for filing confidential reports through the EPA's new electronic filing system

Notices to the DAEO

Agency human resources offices play a vital role in ensuring the effective administration of the ethics program. Without necessary information about agency employees, ethics officials cannot successfully carry out their important work. Among other things, the lead human

³ See 5 U.S.C. app. § 402(d)(1).

resources official is required to notify the DAEO of all appointments to positions that require incumbents to file public or confidential financial disclosure reports no later than 15 days after the appointment. The lead human resources official must also notify the DAEO of terminations of employees in positions that require incumbents to file public financial disclosure reports no later than 15 days after termination.⁴

EPA's Human Resources Management Division (HRMD) is responsible for notifying the Ethics Office of appointments and terminations of public financial disclosure report filers. OGE reviewed a sample of appointment and departure notifications from to the Ethics Office provided during the last quarter of 2019 and found that HRMD had issued them timely.

EPA's Office of Human Resources (OHR) is responsible for notifying ethics officials of appointments to confidential report filing positions. Ethics officials explained that OHR is notifying only the direct supervisor of these appointments.

Recommendation

3. Ensure that OHR notifies the DAEO or responsible DEO when an employee enters a position whose incumbent is required to file a confidential financial disclosure report, as required by 5 C.F.R. § 2638.105.

Public Financial Disclosure

Within 30 days of assuming a covered public filing position, an individual must file a public financial disclosure report.⁵ The individual must subsequently file an annual report by May 15 each year and a termination report within 30 days of departing the public filing position.⁶ Ethics officials are required to review the reports for potential conflicts of interest and certify them within 60 days of receipt by an agency's Ethics office, unless additional information is being sought from the filer or remedial action is being taken.⁷

EPA's public financial disclosure report filers submit their reports to the Ethics Office through *Integrity*, OGE's web-based electronic filing system. To evaluate the administration of EPA's public financial disclosure system, OGE examined a sample of 30 new entrant, 45 annual, and 26 termination reports that were required to be filed in 2019. Table 1 below presents the results of OGE's examination.

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

⁵ See 5 C.F.R. § 2634.201(b).

⁶ See 5 C.F.R. § 2634.201(a) and (e).

⁷ See 5 C.F.R. § 2634.605.

Table 1. OGE’s Examination of EPA Public Financial Disclosure Reports Filed in 2019

| | New Entrant | Annual | Termination | Total |
|--|-------------|----------|-------------|----------|
| Reports Examined | 30 | 45 | 26 | 101 |
| Filed Timely | 10 (33%) | 44 (98%) | 17 (65%) | 71 (70%) |
| Certified within 60 Days of Receipt | 15 (50%) | 33 (73%) | 19 (73 %) | 67 (66%) |

Late Filing

As noted in Table 1 above, only 33% of the new entrant reports and 65% of the termination reports OGE examined were filed timely. Moreover, only 70% of all public reports OGE examined were filed timely.

Ethics Office officials explained that late filing was caused by employees being temporarily detailed to public filing positions. In the sample of new entrant public reports OGE examined, at least ten individuals identified their positions as “acting.” Ethics Office officials explained that these individuals were on a detail to these positions. However, despite an agreement under which HRMD staff is to notify the Ethics Office biweekly of any executive personnel actions, the Ethics Office does not receive timely notification about details. Ethics Office officials further explained that this is in part because HRMD may not necessarily be notified of detail assignments timely themselves. HRMD officials agreed that there is frequently a lag in the reporting of detail assignments. They explained that this is often due to a delay by the program offices in submitting the required personnel action to HRMD. Ethics officials are working with HRMD to ensure that the Ethics Office is notified timely of all appointments to and terminations from public financial disclosure filing positions, including details.

According to Ethics Office officials, late filing fees for late new entrant reports were not assessed because they considered the late notification of the filing requirement to be an administrative oversight. However, there was not documentation that the late fee was waived. OGE reminds EPA that even if an administrative oversight is responsible for the late filing of public financial disclosure reports, an agency must make a determination to assess or waive the late filing fee when a public filer submits a report more than 30 days after the applicable due date.⁸

Late Certification

As also noted in Table 1, of the public reports OGE examined, EPA only certified 66% within 60 days of receipt, including only half of the new entrant reports. Ethics Office officials explained that in some instances they completed the review within 60 days but the certification was delayed while the filer was gathering information to respond to follow-up inquiries from the

⁸ See OGE’s Public Financial Disclosure Guide Section 1:05 Late Filing Fees; 5 U.S.C. app. § 104(d); and 5 C.F.R. § 2634.704

Ethics Office. They also indicated that filers did not respond promptly to questions and comments about their reports, even when provided with frequent reminders. To address this issue, in September 2019, the Acting DAEO issued an advisory to all public filers encouraging them to respond timely when asked to provide information. The advisory is now also included in all notifications to new entrant filers.

OGE could not calculate the rate for timely review of the reports independently from the certification date because ethics officials did not consistently include the date the initial review was completed in *Integrity*. Looking forward, OGE strongly suggests that EPA utilize this feature in order to monitor the timeliness of initial review, particularly in cases where certification is delayed because filers do not timely respond to requests for additional information.

Ethics Office officials also identified workload as another factor contributing to the delay in certification of public reports in 2018 and 2019. They explained that while the Ethics Office gained additional staff by the end of fiscal year 2019, some of the new ethics officials had no previous experience using *Integrity* or reviewing public financial disclosure reports.

Recommendations

4. Ensure that new entrant public financial disclosure reports are filed timely.
5. Ensure that termination public financial disclosure reports are filed timely.
6. Assess or waive late filing fees for public financial disclosure report filers who file reports more than 30 days after the applicable due date.
7. Ensure that public financial disclosure reports are certified timely.

Confidential Financial Disclosure

Within 30 days of assuming a confidential filing position, an individual must file a new entrant 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, unless additional information is being sought from the filer or remedial action is being taken.¹¹

EPA's confidential financial disclosure system is a highly decentralized, with the Ethics Office providing overall guidance, training, and tools for managing the system to the DEOs. In turn, each of more than 120 DEOs manages the confidential financial disclosure system within his or her own office.

To evaluate the administration of EPA's confidential financial disclosure system, OGE examined a sample of 29 new entrant reports filed between 2017 and 2019 and 44 annual reports 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 EPA Confidential Financial Disclosure Reports Filed between 2017 and 2019

| | New Entrant | | Annual | | Total | |
|--|-------------|-------|--------|--------|-------|-------|
| Reports Examined | 29 | | 44 | | 73 | |
| Filed Timely | 14 | (48%) | 40 | (91%) | 54 | (74%) |
| Reviewed Timely | 25 | (86%) | 44 | (100%) | 69 | (95%) |
| Certified within 60 Days of Receipt | 19 | (66%) | 36 | (82%) | 55 | (75%) |

Late Filing of New Entrant Reports

Table 2 shows that only 48% of the new entrant reports examined by OGE were filed timely. Ethics Office officials stated that human resources often did not notify DEOs of employees entering covered filing positions in a timely manner, resulting in new employees filing their new entrant reports late.

Late Certification of Reports

Table 2 also shows that only 75% of the confidential reports OGE sampled, including 66% of the new entrant reports, were certified within 60 days of receipt. Ethics Office officials reported that some confidential reports were certified beyond 60 days of receipt because filers failed to respond timely to requests for additional information required to certify the reports. They added that some of the reports had been reviewed within 60 days, but reviewers were engaged in counseling employees and determining what remedies, (e.g., divestiture, recusal, etc.) might be necessary before the reports could be certified.

DEOs cited additional reasons for delayed certification, including additional new ethics-related administrative duties due to reorganization, changes in staffing assignments, and increased workload and demands, including lingering issues from the partial government shutdown in December 2018 and January 2019. They also indicated that an increasing number of experienced officials who assisted them in carrying out their ethics duties are being reassigned to other duties, on extended medical leave, have retired, or left the agency.

Technical Reporting Deficiencies

In addition to deficiencies in timeliness of filing and certifying confidential reports, OGE identified multiple technical errors on the reports examined. For example, OGE found that many new entrant reports were missing the dates on which the filer was appointed to the filing position. Additionally, the date that the Ethics Office received the report was frequently missing on both new entrant and annual reports.¹² OGE reviewers also had difficulty in selecting a

¹² Appointment dates and dates received are necessary to determine the timeliness of filing of financial disclosure reports.

sample of reports to examine because the master lists provided by EPA contained errors, such as including names of non-filers and misidentifying the type of report filers were required to file.

New E-filing System

The Ethics Office launched an electronic confidential financial disclosure system for the 2020 filing season,¹³ which the Ethics Office anticipates will improve filing by reducing the number of technical errors made by both filers and reviewers. In addition, after the initial year, EPA officials expect filing will improve because filers will be able to see their prior submissions to remind themselves of what they previously reported and make any necessary updates.

The review and certification of reports filed during the 2020 filing cycle was not completed in time to be included within the general scope of OGE's review. Therefore, OGE did not evaluate EPA's electronic filing system. However, during its review, OGE examined one of the electronic confidential disclosure forms generated by EPA's electronic financial disclosure filing system and found that the form generated was not in compliance with OGE requirements. As stated in OGE DAEOgram 07-014, any electronic form developed for use with a system, absent OGE approval, must exactly replicate the existing paper versions of the OGE Form 450, which the form generated by the EPA system did not.

Recommendations

8. Ensure that new entrant confidential financial disclosure reports are filed timely.
9. Ensure that new entrant confidential financial disclosure reports are certified timely.
10. Ensure that confidential financial disclosure reports are thoroughly reviewed in order to eliminate technical reporting deficiencies.
11. Ensure that the confidential disclosure forms generated by EPA's electronic financial disclosure system exactly replicate the existing paper version of the OGE Form 450.

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 presidentially appointed, Senate-confirmed (PAS) officials; 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.¹⁴ 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.

¹³ Approximately 9,000 EPA employees filed the paper version of the OGE Form 450 in 2019.

¹⁴ See 5 C.F.R. Part 2638 Subpart C.

Ethics Briefings for Certain Agency Leaders

Certain PAS officials must complete an ethics briefing to discuss their immediate ethics obligations no later than 15 days after their appointment, unless the DAEO grants an extension. Any extension of more than 15 days requires the DAEO to make a written determination that extraordinary circumstances make it necessary to provide the briefing at a later date.¹⁵

In 2019, four EPA PAS officials were required to receive the ethics briefing. Only one of the four PAS officials received the briefing timely. However, EPA reported that all four received initial ethics training in 2018. OGE also confirmed three of these PAS officials received annual ethics training in 2019.

Recommendation

12. Ensure that PAS officials complete the required ethics briefing to no later than 15 days after their appointment.

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.¹⁶

OGE's review revealed that EPA has not established written procedures for issuing notices to prospective employees. Moreover, OGE's review of a sample of written offers of employment issued by OHR in 2019 found that they did not contain the required ethics content. Ethics Office officials asserted that inadequate staffing prevented them from complying with this requirement.

Recommendations

13. Establish written procedures for issuing the required notices to prospective employees and ensure the DAEO reviews them annually.
14. Ensure OHR or other responsible office provides the DAEO a summary of written procedures for providing the notices to prospective employees and that the DAEO reviews those procedures annually.
15. Ensure that OHR or other responsible office provides the DAEO written confirmation that there is a reasonable basis for concluding that the procedures have been implemented.

¹⁵ See 5 C.F.R. § 2638.305.

¹⁶ See 5 C.F.R. § 2638.303.

16. Ensure that the notices to prospective employees meet all content requirements and are issued as required.

Notices to New Supervisors

An agency must provide each employee upon initial appointment to a supervisory position with certain written materials within one year of the appointment. The written materials must include: contact information for the agency's ethics office and the text of the regulation specifying the government ethics responsibilities of supervisors;¹⁷ 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.¹⁸

OGE's review revealed that EPA has not established written procedures for issuing the required written materials to new supervisors within one year of appointment. Moreover, the Ethics Office did not provide OGE with evidence to demonstrate that EPA satisfied this requirement in 2019. As with the notices to prospective employees, ethics officials asserted inadequate staffing for EPA Ethics not being able to fulfill all of its programmatic obligations.

Recommendations

17. Ensure the DAEO establish written procedures for issuing supervisory ethics notices and that the DAEO reviews the written procedures annually.
18. Ensure OHR or other responsible office provides the DAEO a summary of written procedures for providing the supervisory ethics notices and that the DAEO reviews those procedures annually.
19. Ensure that OHR or other responsible office provides the DAEO written confirmation that there is a reasonable basis for concluding that the procedures for issuing the supervisory ethics notices have been implemented.
20. Ensure that the supervisory ethics notices meet all content requirements and are issued as required.

Initial Ethics Training

Each new employee subject to the Standards of Conduct must complete initial ethics training (IET) that meets the requirements of 5 C.F.R. § 2638.304 within 3 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

¹⁷ See 5 C.F.R. §2638.103

¹⁸ See 5 C.F.R. § 2638.306.

regulations or a summary thereof, as determined appropriate by the DAEO; and instructions for contacting the agency's ethics office.¹⁹

EPA did not have written procedures for providing IET in 2019. Ethics Office officials indicated that the vast majority of incoming employees take a self-paced online training course to meet the IET requirement.²⁰ In addition, at EPA Headquarters, OHR provides new employee orientation at the beginning of every pay period. An ethics official attends the orientation to provide a brief, 10-15 minute presentation regarding ethics obligations federal employees are subject to and reminds new employees to complete the online IET course within their first three months at EPA.

OGE reviewed the materials EPA used to provide IET to new employees in 2019 and determined that the materials met applicable content requirements. Ethics officials reported that 96% of the employees hired in 2019 received IET within three months of appointment. Based on the systems in place, it appears that there is reasonable assurance that IET is provided to new employees within three months of appointment, as required.

Recommendation

21. Ensure the DAEO establish written procedures for providing IET to new employees within three months of appointment and that the DAEO reviews the written 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. The training, whether live or interactive, must address: financial conflicts of interest; impartiality; misuse of position; and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of, or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and instructions for contacting the agency's ethics office.²¹

In 2019, EPA conducted annual training for public filers mostly through online modules. OGE reviewed the modules and accompanying written materials and determined that both met

¹⁹ See 5 C.F.R. § 2638.304.

²⁰ The remaining senior-level new employees are provided in-person training by qualified ethics officials. For example, senior officials such as PAS officials, non-career SES, and Schedule C employees receive in-person training from the Ethics Office. In addition, incoming career public filers who will be taking positions designated as DEO positions receive in-person initial ethics training.

²¹ See 5 C.F.R. § 2638.308.

applicable content requirements. However, as indicated in Table 3 below, only four of the five PAS officials required to receive annual training in 2019 received it. EPA's Administrator was required to receive live annual ethics training in 2019, but did not receive annual ethics training in any format. Ethics Office officials explained that they advised the Administrator to complete the online annual training, which he did in early January 2020.

Recommendation

22. Ensure that the Administrator, as an Executive Schedule Level II employee, completes live annual ethics training every year.

Annual Ethics Training for Confidential Filers and Certain Other Employees

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. 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.²²

In 2019, EPA provided annual ethics training for confidential filers using online modules. OGE reviewed the modules accompanying written materials and determined that both met applicable content requirements.

Tracking Annual Training Completion

To assess EPA's procedures for tracking completion of annual ethics training, OGE reviewed the training records of 45 public and 44 confidential filers, the sample of employees whose annual financial disclosure reports OGE examined. Table 3 below presents the results of OGE's review.

²² See 5 C.F.R. § 2638.307.

Table 3. OGE’s Examination of EPA Annual Training

| | | 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). | Sample Size | 0 (0%) | 0 (0%) | 0 |
| | 1 ²³ | | | |
| <ul style="list-style-type: none"> Other PAS and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(2). | Sample Size | 0 (0%) | 4 (100%) | 4 |
| | 4 | | | |
| <ul style="list-style-type: none"> SES and Equivalent. <i>See</i> 5 C.F.R. § 2638.308(e)(3). | Sample Size | 2 (5%) | 32 (86%) | 34 |
| | 40 | | | |
| Total | | | | 38 (84%) of 45 |
| 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). | | 0 (0%) | 39 (89%) | 39 (89%) of 44 |

As indicated in the table above, 84% of the 45 public filers and 89% of the 44 confidential filers in OGE’s sample received annual ethics training in 2019.

Ethics Counseling

The DAEO, acting directly or through other officials, is responsible for providing advice and counseling to prospective and current employees regarding government ethics laws and regulations, and providing former employees with advice and counseling regarding post-employment restrictions applicable to them.²⁴ 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 Ethics Office officials provided to employees. The counseling addressed a variety of issues including gift acceptance, outside speaking and other activities, impartiality, and post-employment restrictions. OGE found the counseling to be consistent with applicable laws and regulations.

Agency-Specific Ethics Rules

An agency may modify or supplement the Standards of Conduct, with the concurrence of OGE, to meet the particular needs of that agency.²⁵ A supplemental standards of conduct

²³ EPA’s Administrator is an Executive Level II official. The Administrator is EPA’s only Executive Level I or Level II official. This distinction is relevant because Executive Level I and Level II officials are generally required to receive one hour of live training each year. *See* 5 C.F.R. § 2638.308(e)(1).

²⁴ *See* 5 C.F.R. § 2638.104 (c)(4).

²⁵ *See* Executive Order 12674 and 5 C.F.R. § 2635.105.

regulation is issued jointly by the agency and OGE and is published in title 5 of the Code of Federal Regulations.

EPA has a supplemental standards of conduct regulation.²⁶ This regulation prohibits employees from certain offices or who perform certain functions from having outside employment with or holding certain financial or other interests in particular companies, industries, or operations. EPA's supplemental standards of conduct regulation also requires employees to receive approval from their DEO before engaging in outside employment that involves:

- consulting services;
- the practice of a profession as defined in the Standards of Conduct;
- holding State or local public office;
- subject matter that deals in significant part with the policies, programs or operations of EPA or any matter to which the employee presently is assigned or to which the employee has been assigned during the previous one-year period; or
- the provision of services to or for an EPA contractor or subcontractor, the holder of an EPA assistance agreement or sub agreement, or a firm regulated by the EPA office or region in which the employee serves.

As part of its examination of a sample of EPA public and confidential financial disclosure reports as discussed earlier in this report, OGE evaluated filer compliance with the financial interest restrictions of the EPA supplemental standards of conduct regulation. OGE did not identify any filers holding prohibited financial interests during this examination.

To evaluate employee compliance with EPA's outside employment prior approval requirement, OGE also reviewed the outside activities reported on 19 of the public and confidential financial disclosure reports that OGE examined during its evaluation of EPA's financial disclosure systems. OGE confirmed that, for the majority of filers, the positions had been approved or did not require prior approval. However, because of EPA's mandate to telework during the COVID-19 pandemic, ethics officials could not access the outside positions prior approval records for three individuals located within the Office of Pesticide Policy.

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.²⁷ 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.²⁸ OGE's review found that EPA issued five waivers in 2019 and consulted with OGE prior to their issuance in each instance.

²⁶ See 5 C.F.R. part 6400

²⁷ See 18 U.S.C. § 208.

²⁸ See Executive Order 12674.

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 they are required to take in order to alleviate their conflict of interest.²⁹ This written notice is commonly known as an “ethics agreement.” Once confirmed, PAS appointees must fulfill all of their written ethics commitments. OGE found that all five EPA PAS officials confirmed in 2019 timely complied with the terms of their ethics agreements.

Enforcement

Executive branch offices are required to notify OGE when they refer a potential violation of a criminal conflict of interest law to the Department of Justice (DOJ).³⁰ In 2019, EPA made one such referral and notified OGE, as required. Additionally, EPA reported five disciplinary actions based wholly or in part upon violations of the Standards of Conduct 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.³¹ SGEs are required to file financial disclosure reports and receive ethics training.

EPA maintains 20 Federal Advisory Committee Act (FACA) committees, the members of which are SGEs. OGE selected the Human Studies Review Board (HSRB) and the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) for review to evaluate the ethics program services rendered to EPA advisory committees.

Alternative Financial Disclosure

As allowed by OGE regulation³², SGEs serving on Federal Advisory Committee Act (FACA) committees at EPA file the EPA Form 3110-48, an OGE-approved alternative confidential financial disclosure form, in lieu of the OGE Form 450. The alternative form collects the financial disclosure and outside activity information necessary for EPA to identify potential conflicts of interest. DEOs and ADEOs are primarily responsible for reviewing and certifying these forms, although in some instances committee Designated Federal Officers (DFOs) are also involved in the review.

Due the Covid-19 pandemic, OGE was unable to examine the reports filed by HSRB and FIFRA SAP SGEs for compliance because EPA ethics officials were working remotely and could not access the EPA 3110-48 forms requested. OGE will examine the reports when circumstances permit.³³

²⁹ See 5 U.S.C. app. § 110.

³⁰ See 5 C.F.R. § 2638.206.

³¹ See 18 U.S.C. § 202(a).

³² See 5 C.F.R. § 2634.905

³³ EPA’s ethics officials advised OGE that, consistent with guidance from the Office of Management and Budget, all staff are working remotely during the COVID-19 pandemic. The materials OGE requires in order to make its

Ethics Training

Due to the Covid-19 pandemic, OGE evaluated the provision of annual ethics training for the HSRB SGE committee members only because EPA could not provide evidence of 2019 ethics training completion for the FIFRA SAP members. OGE determined that the annual training it reviewed met applicable format and content requirements. In 2019, nine SGE members participated in the first HSRB meeting conducted in April. Eight of these members received annual ethics training in 2019. However, due to the Covid-19 pandemic, EPA could not provide evidence of ethics training completion for members who were appointed in the fall 2019.

Recommendations

23. When possible, provide OGE the EPA 3110-48 reports filed by FIFRA and HSRBC members in 2019.
24. When possible, provide evidence of annual ethics training completion in 2019 and 2020 by all FIFRA SAP and HSRB members.

Agency Comments

Thank you for providing a draft of the report for the program review conducted by the Office of Government Ethics for the ethics programs and operations of the Environmental Protection Agency. We appreciate that your report was supportive of the advice and guidance EPA ethics officials provided to employees. The report included recommendations in some administrative and technical programmatic areas. We accept the recommendations as helpful and will take steps to implement them. We note that in the past two years, EPA established a formal Ethics Office headed by the Alternate Designated Agency Ethics Official (ADAEO), and increased the number of full time ethics officials from 3 to 6. The Ethics Office is the nucleus of the agency's ethics program, and its role includes training and guiding approximately 150 part time Deputy Ethics Officials across the agency. The recommendations will help guide continued strengthening of the EPA ethics program.

As the report indicates, OGE did not focus on the 2020 launch of the agency's electronic filing system for the 9000 annual confidential financial disclosure reports. This electronic system avoided the technical deficiencies found in the previous paper filing system, and helped increase timely filing, review and certification, notwithstanding full-time remote operation during the pandemic. For the 2020 filing cycle, we also note that the program attained 97% timely certification of public financial disclosure reports, aided by weekly team meetings using tracking charts as part of a lean management system.

assessment are inaccessible from remote locations. EPA staff would be required to physically enter their offices to retrieve and transmit the materials to OGE. OGE's policy during the COVID-19 pandemic strictly prohibits asking agencies to send staff to their offices or otherwise violate social-distancing or other mitigation policies to retrieve requested materials. OGE will assess EPA's compliance with these requirements when circumstances permit.