

# Ethics Program Review

U.S. Environmental Protection Agency

Report No. 17-16  
March 2017



## Contents

Objectives, Scope, and Methodology.....	2
Agency Background.....	3
Program Administration.....	4
Financial Disclosure.....	5
Education and Training.....	9
Advice and Counseling.....	11
Agency-Specific Ethics Rules.....	11
Conflict Remedies.....	12
Enforcement.....	13
Special Government Employees.....	13

## 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.<sup>1</sup> 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’s review focused on the ethics program of the U.S. Environmental Protection Agency (EPA) headquarters, which includes the Office of the Administrator and 12 other main headquarters offices. Specifically, OGE evaluated the performance of the program at 24 individual offices under 6 main offices at headquarters.<sup>2</sup> The offices reviewed are listed in Table 1 below.

**Methodology:** To assess the EPA headquarters ethics program, OGE examined a variety of documents including the EPA response to OGE’s 2015 Annual Agency Ethics Program Questionnaire, written procedures for administering the program, samples of public and confidential financial disclosure reports filed in 2015, ethics training materials, and a sample of the ethics advice and counseling provided to employees. OGE also met with agency officials to clarify the information gathered, follow up on issues identified during the review, and discuss ethics program operations in further detail.

<sup>1</sup> See title IV of the Ethics in Government Act, 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

<sup>2</sup> In order to further evaluate EPA’s ethics program, OGE intends to conduct reviews at select EPA regional offices later in calendar year 2017.

**Table 1. EPA Offices Reviewed**

<b>Main Headquarters Offices</b>	<b>Offices within Main Headquarters Offices</b>
<b>Office of the Administrator (OA)</b>	Immediate Office (IO) Office of Public Engagement and Environmental Education (OPEEE) Office of Homeland Security (OHS) Office of Congressional and Intergovernmental Relations (OCIR) Office of Public Affairs (OPA) Office of Sustainable Communities in the Office of Policy (OP/OSC) Office of Small Business Programs (OSBP) Science Advisory Board (SAB)
<b>Office of Air and Radiation (OAR)</b>	Office of Atmospheric Programs (OAP) Office of Air Quality Planning and Standards (OAQPS) Office of Radiation and Indoor Air (ORIA)
<b>Office of Land and Emergency Management (OLEM)</b>	Office of Brownfields and Land Revitalization (OBLR) Office of Resource Conservation and Recovery (ORCR) Office of Superfund Remediation and Technology Innovation (OSRTI)
<b>Office of Enforcement and Compliance Assurance (OECA)</b>	Office of Criminal Enforcement, Forensics and Training (OCEFT) Office of Federal Activities (OFA) Office of Site Remediation Enforcement (OSRE)
<b>Office of Chemical Safety and Pollution Prevention (OCSPP)</b>	Office of Pesticides Program (OPP) Office of Science Coordination and Policy (OSCP)
<b>Office of Research and Development (ORD)</b>	Immediate Office (IOAA) Western Ecology Division of the National Health and Environmental Effects Research Laboratory (NHEERL/WED) Water Supply and Water Resources Division of the National Risk Management Research Laboratory (NRMRL/WSWRD) Office of the Science Advisor (OSA) Office of Science Policy (OSP)

**Agency Background**

EPA is headed by a presidentially appointed, Senate-confirmed (PAS) Administrator who is supported by a Deputy, 5 Associates, 12 Assistants (including the positions of General Counsel, Inspector General, and Chief Financial Officer), and 10 Regional Administrators. EPA has approximately 15,000 employees. The mission of the EPA is to protect human health and the environment.

## Program Administration

EPA's ethics program is managed overall by the Office of General Counsel (OGC). The Principal Deputy General Counsel is the Designated Agency Ethics Official (DAEO). The Senior Counsel for Ethics is the Alternate DAEO (ADAEO) and, effective December 2016, supervises the EPA ethics office and oversees the day-to-day operations of the ethics program. The ADAEO is assisted by a staff of one full-time and two part-time ethics officials and, since December 2016, is assisted by an additional full-time ethics official who was appointed to a two-year term. The DAEO, ADAEO and the ethics officials in OGC, taken together, are designated as 'OGC Ethics' and will be referred to as such throughout this report.

OGC Ethics provides ethics guidance and programmatic oversight to more than 100 deputy ethics officials located throughout the Agency, both at headquarters and regional offices. In addition, the office is responsible for administering the public financial disclosure system EPA-wide, creating and delivering training, maintaining the ethics intranet site, and providing all other ethics services directly to OGC and to select offices in the Office of the Administrator.

Each main office within headquarters has a Deputy Ethics Official (DEO), sometimes assisted by an Assistant DEO (ADEO), who has been delegated the responsibility of administering most elements of the ethics program for that office. These elements include managing the confidential financial disclosure system, distributing and tracking ethics training, advising employees on the ethics rules, approving outside activities, and providing ethics services to the special Government employees (SGEs).<sup>3</sup>

In order to fulfill its responsibilities, OGC Ethics engages in a variety of activities, including:

- DEO Ethics Training- OGC Ethics prepares and makes available the DEO Training course, a web-based course designed to help DEOs and ADEOs in carrying out their ethics-related duties.
- Monthly Meetings with DEOs and ADEOs- OGC Ethics hosts monthly meetings for EPA DEOs and ADEOs to discuss ethics issues and programmatic concerns.
- Ethics Training Material- OGC Ethics prepares and distributes the initial ethics orientation and online annual ethics training materials for use by all EPA offices.
- National Ethics Program Tracker Database- OGC Ethics created the National Ethics Program Tracker Database to assist ethics officials in maintaining an ethics file for each employee. The database allows ethics officials to track employee completion of initial ethics orientation and annual ethics training, the status of confidential financial disclosure reports and outside activity requests, and other related ethics documents, such as waivers and recusals.

---

<sup>3</sup> Despite being ultimately responsible for the EPA ethics program, the DAEO does not have supervisory authority over the majority of DEOs or ADEOs.

- Assistance Visits- OGC Ethics visits individual EPA offices to provide assistance in the management of the ethics program.
- Counseling and Training as needed- OGC Ethics provides ethics advice and counseling and specialized training directly to employees, managers, DEOs and ADEOs throughout headquarters, the regions, and laboratories.
- Self-Assessments- OGC Ethics included a voluntary survey at the end of the online annual ethics training it provided in 2015. Among other things, employees were asked to rate the training and provide feedback on the ethics topics about which they would like more information. The majority of the respondents (69%) rated the training as very good or excellent.

### *Ethics Program Staffing Concerns*

As noted above, OGC Ethics--the EPA headquarters ethics office--currently consists of the DAEO, the ADAEO, and two full-time and two part-time ethics officials. While DEOs assist in administering portions of the ethics program throughout the agency, OGE is concerned that OGC Ethics may be insufficiently staffed to ensure the long-term effectiveness of EPA's ethics program. At the very least, OGE is concerned that at current staffing levels, OGC Ethics may not be able to absorb the impact of any staffing changes, such as medical leave or retirement, or any unforeseen events. Additional responsibilities or priorities may stretch existing resources even further. Moreover, the effective administration of certain elements of the ethics program relies largely on the competency of the DEOs who are not directly supervised by OGC Ethics. Again, OGE is concerned that OGC Ethics staffing may be insufficient to provide the DEOs with continuous oversight and necessary guidance and training.

## **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 evaluated the required written procedures for administering the systems and a sample of public and confidential financial disclosure reports that were required to be filed at EPA Headquarters in 2015. OGE evaluated the selected samples for timeliness of filing, review, and certification, as well as for the overall quality of review.

### **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.<sup>4</sup> At the time of OGE's review, EPA had not updated its formal written procedures for its public financial disclosure system to address its migration to *Integrity*, the OGE-developed, executive branch-wide electronic filing system. EPA, an early adopter, had assisted OGE in pilot testing the initial *Integrity* roll-out. During the review, OGE provided OGC Ethics with samples of written procedures to assist in updating EPA's procedures. Subsequently, OGC Ethics finalized and provided OGE with a copy of written procedures for the administration of its public financial disclosure system, dated October 2016.

With regard to the confidential financial disclosure procedures, EPA Ethics Advisory 2009-02 covers the administration of the confidential disclosure system and EPA Ethics Advisory 2008-02 covers the collection and review of EPA Form 3110-48, which is an OGE-approved alternative financial disclosure form filed by EPA special Government employees (SGE).

### **Administration of the Public Financial Disclosure System**

OGC Ethics is responsible for the administration of the EPA public financial disclosure system agency-wide and uses its Form 278 Tracker database as well as *Integrity* to assist in managing the program. Each year, OGC Ethics collects, reviews, and certifies over 400 public financial disclosure reports.

#### *Collection and Review of Public Financial Disclosure Reports*

In 2015, EPA was in the midst of implementing the executive branch-wide filing system, *Integrity*, for public reports of Presidential nominees and appointees to positions requiring Senate confirmation (PAS). Beginning in January 2016, all EPA public filers were required to file through *Integrity* unless there was an exceptional circumstance (e.g., the filer was terminating government service in 2016). As noted above, all public reports are reviewed and certified by OGC Ethics.

#### *OGE's Examination of Public Financial Disclosure Reports*

To evaluate the timeliness of public financial disclosure filing and certification, OGE examined a sample of 25 new entrant, 25 annual, and 26 termination reports that were required to be filed at EPA in 2015. Table 2 below depicts the results of OGE's review.

---

<sup>4</sup> See Section 402(d)(1) of the Ethics in Government Act.

**Table 2. OGE’s Examination of Public Financial Disclosure Reports**

	New Entrant		Annual		Termination		Total	
<b>Reports Examined</b>	25		25		26		76	
<b>Filed Timely</b>	20	(80%)	21	(84%)	21	(81%)	62	(82%)
<b>Certified Timely</b>	23	(92%)	20	(80%)	26	(100%)	69	(91%)

As indicated in Table 2 above, the vast majority of the public reports OGE examined were filed and certified timely. In addition, based on OGE’s examination, it appears that OGC Ethics officials conducted a thorough review of the reports. For example, the report files contained notes from ethics officials documenting their requests for additional information from filers. Additionally, ethics officials routinely provided cautionary letters to filers to address potential conflicts of interest identified during ethics officials’ review of the reports.

**Administration of the Confidential Financial Disclosure System**

DEOs and ADEOs collect, review, and certify the confidential reports for their respective offices. In 2015, approximately 8,200 confidential reports were filed EPA-wide. EPA utilizes the National Ethics Program Tracker Database (NEPT) to administer the confidential financial disclosure system. NEPT alerts confidential filers of their filing requirement and notifies them when their completed reports are received by ethics officials. NEPT is available for use by all DEOs; however, its use is not mandatory and some offices have chosen to use their own tracking systems.

*Collection and Review of Confidential Financial Disclosure Reports*

DEOs and ADEOs collect the paper confidential financial disclosure reports and are responsible for retaining them as appropriate. OGE found that some offices kept the confidential reports beyond the-six year retention period.

Recommendation

1. Ensure that confidential financial disclosure reports are not maintained beyond the six-year retention period.

*OGE’s Examination of Confidential Financial Disclosure Reports*

Confidential reports generally undergo an intermediate review by the ADEOs and are then are certified by the DEOs at the filers’ respective offices.<sup>5</sup> To evaluate the confidential financial disclosure system at EPA headquarters, OGE examined a sample of 32 new entrant and 195 annual reports that were required to be filed in 2015 by headquarters employees. Tables 2.1 and 2.2 below depict the results of OGE’s examination.

<sup>5</sup> Some offices, such as OGC and ORD’s Office of Science Policy, do not conduct an intermediate review.

**Table 2.1 OGE’s Examination of Headquarters Confidential Financial Disclosure Reports**

	New Entrant		Annual		Total	
<b>Reports Examined</b>	32		195		227	
<b>Filed Timely</b>	11	(34%)	168	(86%)	179	(79%)
<b>Certified Timely</b>	27	(84%)	141	(72%)	168	(74%)

**Table 2.2 OGE’s Examination of Headquarters Confidential Reports by Main Headquarters Office**

Office	Sampled Reports		Filed Timely		Certified Timely	
<b>Total</b>	227		179 (79%)		168 (74%)	
<b>OA</b>	49		43 (88%)		27 (55%)	
<b>OAR</b>	43		28 (65%)		41 (95%)	
<b>OECA</b>	32		23 (72%)		21 (66%)	
<b>OCSP</b>	24		22 (92%)		21 (88%)	
<b>OLEM</b>	33		23 (70%)		21 (64%)	
<b>ORD</b>	46		40 (87%)		37 (80%)	

As indicated in Table 2.1 above, OGE could only verify that 11 (34%) of the new entrant reports examined were filed timely.<sup>6</sup> Of the annual reports OGE examined, 168 (86%) were timely filed.

In order to determine the certification timeliness of the reports examined, OGE used either the date entered in the “Agency’s Final Reviewing Office” field of the OGE Form 450 or, if this field was empty, the date entered in the “Signature and Title of Supervisor/Other Intermediate Reviewer” field, in accordance with OGE Program Advisory PA-11-04. Using this procedure, OGE determined that only 74% of all confidential reports examined—both new entrant and annual—were timely certified.

With regard to the certification of confidential reports, EPA should be aware of the recent changes regarding the review of the OGE Form 450 per the Confidential Financial Disclosure Guide re-issued by OGE in August 2016. In particular, Section 3, p. 41-42 reads:

*A reviewer certifies the report by signing and dating the cover page of the OGE Form 450 in the field labeled “Signature and Title of Agency’s Final reviewing Official.” ... There is no general requirement that a filer’s supervisor or any intermediate official examine or review the report.*

<sup>6</sup> OGE could not determine the filing timeliness of another five new entrant reports, as the filers did not indicate their appointment dates on the report.

This change is of particular note for EPA because 31 of the reports that OGE counted as having received timely certification did not have a signature or date in the “Signature and Title of Agency’s Final reviewing Official” field. These reports would be considered to have been uncertified under the new standard specified in the re-issued Confidential Financial Disclosure Guide.<sup>7</sup> Consequently, OGE reminds EPA that certifying officials must now sign and date using the “Signature and Title of Agency’s Final reviewing Official” field of the OGE Form 450 in order to properly certify the report.

Finally, OGE’s examination of the sample of confidential reports found that the review of the reports by DEOs and ADEOs requires improvement. OGE found that 114 out of 227 confidential reports had at least 1 technical reporting error.

### Recommendations

2. Ensure that new entrant confidential reports are filed timely.
3. Ensure that all confidential reports are certified timely.
4. Implement corrective action to improve the review of confidential reports in order to eliminate technical errors.

As noted previously, EPA’s program is decentralized and, as such, the collection, review, and certification of the confidential reports has been delegated to DEOs and ADEOs at the individual EPA offices. The DEOs and ADEOs carry out this responsibility as an ancillary duty. While OGC Ethics acknowledged its ultimate responsibility to oversee the administration of the confidential system, the investment of more time and energy into directing the DEOs and ADEOs on how to carry out their obligations will necessarily come at the expense of something else. With this in mind, OGE again expresses its concern regarding the seemingly insufficient staffing of OGC Ethics.

## **Education and Training**

An ethics training program is essential to raising awareness among employees about the ethics laws and rules that apply to them and the availability of agency ethics officials to provide ethics counseling. Each agency’s ethics training program is required to include at least an initial ethics orientation for all new employees and annual ethics training for covered employees.<sup>8</sup>

To meet initial ethics orientation (IEO) requirements, all new agency employees must receive ethics official contact information along with the following material within 90 days of beginning work: (1) the Standards of Conduct for Employees of the Executive Branch (Standards of Conduct) and any agency supplemental standards of conduct to keep or review; or (2) summaries of the Standards of Conduct, any agency supplemental standards of conduct, and the

<sup>7</sup> These reports consisted of all new entrant reports OGE examined from OAR’s Office of Atmospheric Programs, all annual reports from OCSPP’s Office of Science Coordination and Policy, and 9 out of the 10 annual reports OGE examined from OA’s Office of Sustainable Communities in the Office of Policy.

<sup>8</sup> See 5 C.F.R. §§ 2638.704 and 705 for definition of covered employees.

Principles of Ethical Conduct (Principles) to keep. Employees must receive one hour of official duty time to review the material.<sup>9</sup>

To meet the annual ethics training requirements, covered employees must receive annual training consisting of a review of: (1) the Principles; (2) the Standards of Conduct; (3) any agency supplemental standards of conduct; (4) the criminal conflict of interest statutes; and (5) ethics official contact information. Training length and delivery method may vary by an employee's financial disclosure filing status.<sup>10</sup>

### **Initial Ethics Orientation**

To meet the initial ethics orientation requirement, an OGC Ethics official attends the headquarters new employee orientation, which that is typically held every two weeks, to provide a brief ethics presentation. The OGC Ethics official also provides the new employees a brochure with ethics officials' contact information and references to ethics resources on the EPA intranet. The OGC Ethics official also directs employees to take the online course, "Essential Ethics for New EPA Employees." This course covers the Standards of Conduct, the Principles, the criminal conflict of interest statutes, and EPA's supplemental standards of conduct.

Deputy Ethics Officials track completion of the online initial ethics orientation course through a database that generates certificates upon completion. EPA reported that in 2015, 94% of the employees required to receive initial ethics orientation had received it within 90 days of being hired.

### **Annual Ethics Training**

EPA provided its public and confidential financial disclosure report filers with one hour of official time to complete an online training course titled, "Other People's Money: Fundraising" to meet their annual ethics training requirement in 2015. OGE determined that this course met the regulatory requirements for annual training.

EPA uses its online database to record completion of annual ethics training. For 2015, EPA reported that 10,694 (99%) of 10,737 covered employees received annual training.

### **Additional Training**

EPA periodically provides ethics training beyond the required initial ethics orientation and annual ethics training. For example, approximately every two years, EPA hosts an SES Forum in the Washington, DC area for all of its senior leaders. Included in the event is a one-hour ethics presentation conducted by OGC Ethics.

Additionally, EPA provides a variety of post-employment training for departing employees. For example, the ADAEO routinely provides post-employment briefings to political appointees who are leaving government service. OGC Ethics has also developed an online

---

<sup>9</sup> See 5 C.F.R. § 2638.703.

<sup>10</sup> See 5 C.F.R. §§ 2638.704 and 705.

training course titled, “Leaving the Federal Service.” Finally, OGC Ethics distributes to departing employees “Departure Guides” that cover post-employment restrictions and ethics obligations they should consider when seeking employment.

## Advice and Counseling

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and Standards of Conduct matters, including post-employment matters, is developed and conducted.<sup>11</sup> The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program.<sup>12</sup>

OGC Ethics provides advice to appointees, nominees, and public filers. OGC Ethics also provides advice to DEOs, ADEOs, managers and employees. DEOs and ADEOs provide advice and counseling to their employees but, especially in headquarters, consult with OGC Ethics.

According to the ADAEO, OGC Ethics receives dozens of ethics-related questions each week. She added that her office makes every effort to provide helpful, creative, and customer oriented advice in response to the questions.

To evaluate OGC Ethics’ advice and counseling program, OGE reviewed a sample of the guidance provided in 2015, which addressed conflicts of interest, gifts, attendance at widely attended gatherings, outside activities, EPA’s supplemental standards, impartiality, and post-government employment. OGE determined that this guidance was provided timely and was accurately supported with references and citations to statutory and regulatory criteria.

## 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.<sup>13</sup> A supplemental standards of conduct regulation is issued jointly by the agency and OGE and is published in title 5 of the Code of Federal Regulations.

EPA has supplemental standards of conduct<sup>14</sup> which prohibit employees from designated offices or who perform certain functions from having outside employment with or holding certain financial or other interests in particular companies, industries, or operations.<sup>15</sup> EPA’s supplemental standards of conduct 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;

<sup>11</sup> See 5 C.F.R. § 2638.203.

<sup>12</sup> See 5 C.F.R. § 2638.204.

<sup>13</sup> See Executive Order 12674 and 5 C.F.R. § 2635.105.

<sup>14</sup> See 5 C.F.R. part 6400.

<sup>15</sup> According to the Alternate DAEO, these provisions currently apply to only two EPA offices: the Office of Mobile Sources and the Office of Pesticide Programs.

- 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.

OGE's examination of the sample of financial disclosure reports did not reveal any filers holding financial interests prohibited by the EPA's supplemental standards of conduct. Additionally, as part of its review of EPA's advice and counseling program, OGE identified several written approvals for employees to engage in outside employment activities. These approvals appeared to be granted in compliance with the requirements of EPA's supplemental standards. Furthermore, OGE identified 31 outside employment activities disclosed in the public financial disclosure reports OGE examined to determine whether the approvals were documented. Of the 31 activities, only 6 were of a nature that would require prior approval under EPA's supplemental standards of conduct. In all six cases, OGE verified that ethics officials had provided approval documentation for them.

OGC Ethics officials indicated that it is rare that an outside activity is not approved. EPA's supplemental regulations do not include any outright prohibitions of outside activity for any type of profession or employee. When ethics officials identify an outside activity on a public financial report, they advise employees about the ethics implications, such as misuse of position and representational conflicts of interest, and encourage them to formally request approval from the employee's DEO if the approval documentation is not available during the review of the report.

## Conflict Remedies

The 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.<sup>16</sup> 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.<sup>17</sup> In 2015, OGC Ethics issued four waivers and consulted with OGE on each one.

Additionally, the Ethics in Government Act expressly recognizes the need for PAS nominees to address actual or apparent conflicts of interest by requiring written notice of the specific actions to be taken in order to alleviate the conflict of interest,<sup>18</sup> commonly known as an "ethics agreement." There was no need to for an EPA PAS nominee to enter into an ethics agreement during 2015.

---

<sup>16</sup> See 18 U.S.C. § 208.

<sup>17</sup> See Executive Order 12674.

<sup>18</sup> See 5 U.S.C. app. § 110.

## Enforcement

For 2015, EPA reported no disciplinary actions based wholly or in part upon violations of the criminal conflict of interest statutes. However, EPA reported eight actions based on violations of the Standards of Conduct.

EPA's Office of Inspector General (OIG) conducts investigations of potential violations of the criminal conflict of interest statutes and makes any necessary referrals to the Department of Justice (DOJ). OIG concurrently notifies OGE of any such referrals. In 2015, EPA referred three violations to DOJ and OGE received concurrent notification in each case.

## 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.<sup>19</sup> SGEs generally serve as members of Federal Advisory Committee Act (FACA) committees or as individual experts and consultants. EPA utilizes the services of both types of SGEs. As part of this review, OGE evaluated the ethics services provided to both types of SGEs.

### FACA Committee SGEs

EPA maintains 22 FACA committees. OGE evaluated the ethics services provided to SGE members of a sample of 9 committees, consisting of:

Two Office of the Administrator committees

- OPEEE's National Environmental Education Advisory Council (OPEEE/NEEAC)
- Science Advisory Board and the Clean Air Scientific Advisory Committee (SAB/CASAC)

Two Office of Research and Development committees

- Human Studies Review Board (OSA/HSRB)
- Board of Scientific Counselors Federal Advisory Committee (OSP/BOSC)

One Office of Chemical Safety and Pollution Prevention committee

- Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA)

---

<sup>19</sup> See 18 U.S.C. § 202(a).

## Four Science Advisory Board subcommittees

- Biogenic Carbon Emissions Panel
- Chemical Assessment Advisory Committee Augmented for Review of the Draft IRIS Benzo[a]pyrene Assessment (CAACA IRIS Benzo)
- Drinking Water Committee
- Technological Achievement Awards Committee-2015 (STAA)

OGE's review determined that six of these nine committees are effectively providing ethics services for their SGE committee members. However, improvements in the administration of the confidential financial disclosure and/or ethics training programs of three committees are required.

### *Confidential Financial Disclosure*

In accordance with OGE's financial disclosure regulation, executive branch SGEs are required to file a new entrant confidential financial disclosure report within 30 days after their entry-on-duty date. They must also file a new financial disclosure report each year upon reappointment or re-designation. These reports must be filed before any advice is rendered by the SGE and in the case of FACA committee SGEs, before the first committee meeting.<sup>20</sup> In an effort to enforce these requirements, EPA requires that a FACA committee SGE must have filed a financial disclosure report within one year of a meeting date or activity.<sup>21</sup>

As allowed by OGE regulation,<sup>22</sup> FACA committee SGEs at EPA file the EPA Form 3110-48, an OGE-approved alternative financial disclosure form, in lieu of the OGE Form 450. The alternative form collects targeted financial disclosure and outside activity information most relevant for EPA to identify potential conflicts of interest among FACA committee SGEs. DEOs and ADEOs are primarily responsible for reviewing and certifying these reports, although in some instances committee Designated Federal Officers (DFOs) are also involved in the review.

To evaluate EPA's confidential financial disclosure system for FACA committee SGEs, OGE examined a sample of the reports filed at each committee included in its review. The sample of reports OGE examined were generally reviewed and certified timely. However, OGE identified deficiencies in the confidential systems at three of the committees it examined.

First, OGE could not determine the filing timeliness of the five OPEEE/NEEAC financial disclosure reports it examined because the reports did not have any indication of the date they were received at EPA. Moreover, none of these reports had been reviewed or certified. OGC Ethics officials stated that out of concern regarding the management of the committee's ethics program, they had already appointed a new DEO for OPEEE in the spring of 2016, and that new DEO is one of the OGC Ethics officials.

---

<sup>20</sup> See 5 C.F.R. § 2634.903(b).

<sup>21</sup> See EPA Ethics Advisory 2008-02.

<sup>22</sup> See 5 C.F.R. § 2634.905(a).

Second, at OSA/HSRB, OGE requested to examine seven EPA Forms-3110-48 required to be filed in 2015. Of the seven forms provided, only four were filed in 2015. Of the remaining three, two were filed in 2014 and one was filed in 2013. Despite their failure to file in 2015, OGE determined that the two SGEs who filed 2014 had, at a minimum, filed within the previous 12 months of the first meeting they attended in 2015, in accordance with EPA Ethics Advisory 2008-02. However, the SGE whose most recent EPA 3110-48 was filed in December 2013 attended one meeting in late 2014 and two meetings in 2015, all three of which were more than 12 months after the report was filed.

Finally, at OSP/BOSC, OGE requested to examine eight EPA Forms-3110-48 required to be filed in 2015. However, only two of the forms provided were filed in 2015. Four forms were filed in 2014 and two were filed in 2013. OGE determined that all six the SGEs who filed in 2013 or 2014 participated in meetings in 2015 without having filed an EPA Form 3110-48 within the previous 12 months.

### *Ethics Training*

OGE determined that the vast majority of SGEs serving on FACA committees included in OGE's review had received ethics training in 2015. However, OGE found that only 1 (20%) of 5 OPEEE/NEEAC SGEs included in OGE's review received the training in 2015. Moreover, at OSP/BOSC, only 5 (50%) of 10 filers whose financial disclosure reports were originally requested for review received ethics training.

### Recommendations

5. Implement corrective action to ensure that confidential financial disclosure reports required from SGE members of OPEEE/NEEAC, OSA/HSRB and OSP/ BOSC are timely filed and certified. Also ensure that systems are in place to ensure that all FACA committee SGEs EPA-wide are timely filed and certified.
6. Implement corrective action to ensure that all SGEs serving OPEEE/NEEAC and OSP/BOSC receive ethics training. Also ensure that systems are in place to ensure that all FACA committee SGEs EPA-wide receive the required training.

### **Expert and Consultant SGEs**

In order to evaluate the ethics services provided to non-FACA committee SGE experts and consultants, OGE identified 35 SGEs serving as experts and consultants in 3 of the Office of Research and Development (ORD) offices selected for review:

- Immediate Office (IOAA)
- Western Ecology Division of the National Health and Environmental Effects Research Laboratory (NHEERL/WED)
- Water Supply and Water Resources Division of the National Risk Management Research Laboratory (NRMRL/WSWRD)

### *Confidential Financial Disclosure*

OGE determined that only two of the offices included in its review, NHEERL/WED and NRMRL/WSWRD, collected and reviewed financial disclosure reports from their SGEs. IOAA did not collect financial disclosure reports in 2015. Of the 3 reports OGE examined from NHEERL/WED, 2 (67%) were filed timely and all of the reports were certified timely. However, of the 4 reports examined from NRMRL/WSWRD, only 2 (50%) were filed and certified timely.

### *Ethics Training*

None of the three ORD offices could provide evidence that ethics training was provided to their expert and consultant SGEs in 2015.

### Recommendations

7. Ensure that ORD IOAA undertakes efforts in concert with OGC Ethics to strengthen the administration of the ethics services provided to its expert and consultant SGEs.
8. Ensure that all expert and consultant SGEs EPA-wide receive ethics training.