



# Ethics Program Review

Department of the Air Force Headquarters

Report No. 17-36  
August 2017



The United States Office of Government Ethics (OGE) conducted a review of the Department of the Air Force Headquarters (Headquarters Air Force) ethics program between January and March 2017. The following report 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.<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 elements performed by the Air Force Ethics Office, which is responsible for administering the headquarters ethics program and overseeing the Air Force program department-wide. These elements included program administration, public and confidential financial disclosure, education and training, ethics counseling, agency-specific ethics rules, conflicts remedies, enforcement, and special government employees. The review covered program activities for calendar year 2016.

**Methodology:** OGE conducted its review between January and March, 2017. As part of its review, OGE examined a variety of documents provided by the Air Force Ethics Office, including the Air Force’s response to OGE’s Annual Agency Ethics Program Questionnaire for 2016, written procedures for administering the ethics program, samples of public and confidential financial disclosure reports filed in 2016, ethics training materials, a sample of ethics counseling provided to employees, and procedures for administering the ethics requirements for special government employees. In addition, OGE met with Air Force ethics

<sup>1</sup> See 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

officials to clarify the information gathered, follow up on issues identified during the review, and discuss ethics program operations in further detail.

## Agency Background

The Department of the Air Force (Air Force) is a component organization within the Department of Defense (DoD) that is responsible for defending the peace and security of the United States through control and exploitation of air and space. The Air Force is led by the Secretary of the Air Force, who is responsible for and has the authority to conduct all affairs of the Department. The Secretary is the Air Force's top civilian official, appointed by the President and confirmed by the Senate. The Chief of Staff of the Air Force is the department's highest-ranking military officer and a member of the Joint Chiefs of Staff.

The Headquarters Air Force consists of the Office of the Secretary and the Air Staff. The Office of the Secretary, also called the Secretariat, consists of the offices of the Under Secretary, four Assistant Secretaries, the General Counsel, and various supporting offices such as the Inspector General. The heads of these offices are staff advisors to the Secretary for the functions assigned to them. The Air Staff, organized under the Chief of Staff, provides professional assistance to the Secretary, the Under Secretary, the Assistant Secretaries, and the Chief of Staff.

In addition to the Headquarters Air Force, field organizations comprised of major commands, field operating agencies, and direct reporting units are located throughout the country and internationally to help support the Air Force mission.

## Program Administration

The Headquarters Air Force ethics program is organizationally located in the Air Force Office of the General Counsel (OGC). The General Counsel serves as the Designated Agency Ethics Official (DAEO) and the Deputy General Counsel, Fiscal, Ethics and Administrative Law Division, serves as the Alternate DAEO (ADAEO).<sup>2</sup> The DAEO is responsible for overseeing the Air Force ethics program department-wide and exercises final authority for all ethics matters.

The day-to-day management of the Headquarters Air Force ethics program is carried out by the Air Force Ethics Office (Ethics Office). The Ethics Office is managed by a Director<sup>3</sup> and a staff of five ethics officials: four attorneys who serve as Ethics Counselors and one ethics program administrator. At the time of OGE's review, two of the Ethics Counselors worked on ethics full-time and two performed ethics duties part-time. The Ethics Office also receives limited ethics support from several other employees within OGC.

In addition to the Ethics Office staff, responsibility for providing ethics services to employees located outside of Headquarters rests with Deputy DAEOs and Ethics Counselors located throughout the Air Force's military services and field organizations. According to the Air

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<sup>2</sup> The General Counsel position was vacant at the time of OGE's review.

<sup>3</sup> During OGE's onsite fieldwork, the Director position was vacant. However, prior to the conclusion of OGE's review, a new Director was hired.

Force response to OGE's most recent Annual Agency Ethics Program Questionnaire, the Air Force had 685 ethics officials located outside of headquarters in 2016.

## Financial Disclosure

Title I of the Ethics in Government Act requires that agencies administer public and confidential financial disclosure systems.<sup>4</sup> Financial disclosure serves to prevent, identify, and resolve conflicts of interest by providing for a systematic review of the financial interests of officers and employees. The financial disclosure process also offers an opportunity for ethics officials to provide ethics-related counseling to report filers.

### Financial Disclosure Written Procedures

Each executive branch agency must establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available, financial disclosure reports filed by the agency's officers and employees.<sup>5</sup>

Chapter 7 of the Joint Ethics Regulation (JER) serves as the written procedures for the administration of the public financial disclosure system for all of DoD, including the Air Force. These procedures comply with statutory requirements. In addition to the JER, OGE found that the Ethics Office established additional, more tailored written procedures for administering the confidential financial disclosure system. In creating these tailored written procedures, the Ethics Office has exceeded minimum requirements.

### Public Financial Disclosure

Within 30 days of assuming a covered public filing position, an individual must file a public financial disclosure report.<sup>6</sup> The individual must also file an annual report by May 15 each year and a termination report within 30 days of departing the public filing position.<sup>7</sup> The reports are required to be reviewed for potential conflicts of interest and certified within 60 days of receipt by the ethics office, unless additional information is being sought from the filer or remedial action is being taken.<sup>8</sup>

In 2016, the Ethics Office was responsible for the review and certification of 272 of the 635 public financial disclosure reports that were required to be filed throughout the Air Force. OGE examined a sample of 75 of these reports. Table 1 below presents the results of OGE's examination.

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<sup>4</sup> See 5 U.S.C. app.

<sup>5</sup> See 5 U.S.C. app. § 402(d)(1).

<sup>6</sup> See 5 C.F.R. § 2634.201(b).

<sup>7</sup> See 5 C.F.R. § 2634.201(a) and (e).

<sup>8</sup> See 5 C.F.R. § 2634.605.

**Table 1. OGE’s Examination of Headquarters Air Force Public Financial Disclosure Reports**

	New Entrant		Annual		Termination		Total	
<b>Reports Examined</b>	19		28		28		75	
<b>Filed Timely</b>	16	(84%)	27	(96%)	24	(86%)	67	(89%)
<b>Certified Timely</b>	9	(47%)	11	(39%)	23	(83%)	43	(57%)

As shown in Table 1 above, OGE found that 89% of the reports examined were filed timely; however, only 57% were certified timely. Late certification ranged from 83 days to 266 days beyond the required 60-day timeframe and included 4 reports that had not been certified at the time of OGE’s on-site examination in January 2017.

According to Ethics Office officials, some of the reports were certified late due to the Ethics Office seeking additional information from filers. However, the Ethics Office officials conceded that most certifications occurred late due to the relatively large volume of reports that are required to be filed with the Ethics Office and the limited number of ethics officials that are available to review and certify them. Specifically, from January 1, 2016 through August 5, 2016, the Ethics Office had one full-time reviewer (the Ethics Counselor responsible for managing the public system) and one part-time reviewer (the then Ethics Director). Between these dates, these 2 reviewers certified approximately 120 public reports from the 2016 filing cycle.

Additionally, Ethics Office officials explained that in the early part of 2016, the Ethics Office was working to address a certification backlog of public reports that were filed during the 2015 filing cycle. The 2015 backlog stemmed from yet another backlog from 2014, which occurred due to the loss of two Ethics Counselors who formerly reviewed public reports.

OGE notes that at the time of its onsite examination in January 2017, the Ethics Office was still working to certify 35 public reports that were filed in May 2016, but which OGE did not examine as part of its sample. However, the Ethics Office has since confirmed that all 35 outstanding public reports from 2016 had been certified.

OGE is concerned about the recurring challenges the Ethics Office has faced in effectively administering its public financial disclosure system.<sup>9</sup> While OGE recognizes staffing limitations can affect the timely review and certification of reports, it remains essential that reports be reviewed and certified within 60 days of being filed to ensure that potential conflicts of interest are promptly identified and remedied.

Despite the concerns regarding the timeliness of certification, OGE was satisfied with the quality of the conflict of interest analyses the Ethics Office ultimately conducted.

<sup>9</sup> Similar concerns regarding the public system were raised during OGE’s 2011 review of the Air Force ethics program.

## Recommendation

1. Develop and implement procedures to help ensure that public financial disclosure reports are reviewed and certified within the required 60-day timeframe.

### **Confidential Financial Disclosure**

Within 30 days of assuming a covered confidential filing position, an individual must file a confidential financial disclosure report.<sup>10</sup> The individual must also file an annual report by February 15 each year.<sup>11</sup> The reports are required to be reviewed for potential conflicts of interest and certified within 60 days of receipt by the ethics office, unless additional information is being sought from the filer or remedial action is being taken.<sup>12</sup>

In 2016, the Ethics Office was responsible for the review and certification of 513 of 25,327 confidential reports that were required to be filed throughout the Air Force. OGE examined a sample of 25 new entrant and 25 annual reports filed with the Ethics Office in 2016. Table 2 below presents the results of OGE's examination.

**Table 2. OGE's Examination of Headquarters Air Force Confidential Financial Disclosure Reports**

	New Entrant		Annual		Total	
<b>Reports Examined</b>	25		25		50	
<b>Filed Timely</b>	13	(52%)	20	(80%)	33	(66%)
<b>Certified Timely</b>	25	(100%)	25	(100%)	50	(100%)

As indicated in Table 2 above, only 66% of the reports OGE examined appeared to have been filed timely; however, all reports were certified timely.

Regarding the new entrant reports that appeared to have been filed late, Ethics Office officials stated that the majority of the filers of these reports incorrectly listed their dates of initial hire at the Air Force as their new entrant date instead of listing the date they assumed duties that triggered the requirement to file a confidential report. They added that several other reports, both new entrant and annual, were either filed in error or were not properly entered into the system. For these reasons, the vast majority of reports that OGE identified as being filed late were actually filed timely or were not required to be filed at all.

In light of Ethics Office officials' explanations regarding the reports OGE identified as being filed late, OGE is not making a formal recommendation for improvement. Nonetheless, OGE encourages Ethics Office officials to educate new entrant filers on using the proper new entrant date and to take steps to ensure that reports are not filed or input into the system erroneously.

<sup>10</sup> See 5 C.F.R. § 2634.903(b).

<sup>11</sup> See 5 C.F.R. § 2634.903(a).

<sup>12</sup> See 5 C.F.R. § 2634.605.

As with the public reports, OGE was satisfied with the quality of the conflict of interest analyses the Ethics Office conducted.

## **Education and Training**

During the period covered by OGE's review, each agency's ethics training program was required to include at least an initial ethics orientation for all new employees and annual ethics training for covered employees.<sup>13</sup> 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.

### **Initial Ethics Orientation**

To meet initial ethics orientation (IEO) requirements in 2016, all new agency employees were required to 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 Principles of Ethical Conduct (Principles) to keep. Employees were also to receive one hour of official duty time to review the material.

According to Ethics Office officials, they provide a one-hour IEO briefing to new civilian Headquarters Air Force employees twice a month as part of a general new employee orientation.<sup>14</sup> In addition to receiving the IEO briefing, new civilian employees are directed to read and become familiar with the Department of the Air Force Employees Guide to the Standards of Conduct (the Handbook), which provides a brief overview of the ethics rules. OGE determined that the IEO briefing in combination with the Handbook met, and in fact exceeded, the 2016 IEO requirements.

### **Annual Ethics Training**

To meet the annual ethics training requirements in 2016, covered employees were required to 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 could vary by an employee's financial disclosure filing status.

The Ethics Office used a combination of in-person and online training to help satisfy the annual training requirement for both public and confidential filers assigned to the Headquarters

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<sup>13</sup> Subsequent to the period covered by OGE's review, the regulation governing executive branch agency ethics training at 5 C.F.R. part 2638 was amended. These amendments became effective January 1, 2017.

<sup>14</sup> The Ethics Office does not provide IEO to military personnel who are newly assigned to the Headquarters Air Force since they have already received IEO at an earlier point in their military careers, usually during their initial military training.

Air Force in 2016. OGE evaluated the in-person and online content and determined that it satisfied annual ethics training requirements.

In terms of ensuring that covered employees received the required annual training, the Ethics Office informed OGE that within Headquarters Air Force, one public filer did not receive annual training in 2016 and training completion for two confidential filers could not be confirmed.

### **Advice and 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.<sup>15</sup>

OGE examined a sample of the ethics-related counseling provided by the Ethics Office on a variety of issues and found the counseling to have been consistent with applicable laws and regulations. The counseling was also rendered timely, which is key to addressing potential conflicts of interest and other ethics violations before they occur.

In addition to providing counseling in response to questions that are posed, the Ethics Office provides weekly in-person post-employment briefings to Air Force military officers and civilian employees who are retiring or who are seeking post-Government employment. In addition to the briefing, employees are provided with a pre- and post-employment reference guide, which outlines the basic pre- and post-employment restrictions concerning Air Force personnel. The Ethics Office reported that it makes available one-on-one counseling should an employee have specific questions.

### Model Practice

OGE identifies model practices and shares them when it appears they may benefit another agency's ethics program. The following is a model practice OGE identified at Headquarters Air Force:

- Ethics Office officials offer in-person, weekly post-employment briefings to Headquarters Air Force employees.

### **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>16</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.

<sup>15</sup> See 5 C.F.R. § 2638.104(c)(4).

<sup>16</sup> See Executive Order 12674 and 5 C.F.R. § 2635.105.



The Air Force, including Headquarters Air Force, is subject to the DoD supplemental standards of conduct regulation.<sup>17</sup> Among other things, DoD’s supplemental regulation requires financial disclosure filers to obtain prior approval before engaging in outside activities with prohibited sources.<sup>18</sup>

To determine Headquarters Air Force’s compliance with the DoD prior approval requirement, OGE reviewed the outside activities that were reported on the sample of public and confidential financial disclosure reports that OGE examined. OGE identified nine outside employment activities listed on these reports and determined that none of the activities were of a nature that would require prior approval under the supplemental regulation. OGE also examined written approvals for three outside activities involving prohibited sources that were outside our original sample and found them to be granted in accordance with the supplemental regulation.

### **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.<sup>19</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>20</sup> In 2016, the Air Force did not issue any such waivers.

Additionally, the Ethics in Government Act expressly recognizes the need for Presidential nominees requiring Senate confirmation 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>21</sup> This written notice is commonly known as an “ethics agreement.” At the time of this report’s issuance, the Air Force had no PAS officials with an ethics agreement compliance due date occurring during the period under review.

### **Enforcement**

Executive branch offices are required to notify OGE when they refer a potential violation of a conflict of interest law to the Department of Justice.<sup>22</sup> According to the Air Force’s response to OGE’s most recent Annual Agency Ethics Program Questionnaire, no referrals involving Air Force employees were made to the Department of Justice regarding potential criminal conflict of interest violations in 2016. However, according to the questionnaire, two disciplinary actions were taken based wholly or in part upon violations of a conflict of interest law and 25 disciplinary actions were taken based wholly or in part upon violations of the Standards of Conduct in 2016.

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<sup>17</sup> See 5 C.F.R. part 3601.

<sup>18</sup> See 5 C.F.R. § 3601.107.

<sup>19</sup> See 18 U.S.C. § 208.

<sup>20</sup> See Executive Order 12674.

<sup>21</sup> See 5 U.S.C. app. § 110.

<sup>22</sup> See 5 C.F.R. § 2638.206.

## 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>23</sup> SGEs are required to file financial disclosure reports and receive ethics training.

The Air Force has three advisory committees that support Air Force operations: 1) Air Force Scientific Advisory Board, 2) Air University Board of Visitors, and 3) Air Force Academy Board of Visitors. These committees are established to provide advice and recommendations to the Secretary of the Defense, through the Secretary of the Air Force, on matters pertaining to the Air Force. At the time of OGE's review, the Ethics Office determined that 85 members of these committees were SGEs.

### Financial Disclosure

OGE selected the Air Force Scientific Advisory Board (Board) to evaluate the ethics program services provided to Air Force advisory committee SGEs. OGE examined 50 confidential reports that were required to be filed by members of this committee in 2016. Table 3 below presents the results of OGE's examination.

**Table 3. OGE Examination of Scientific Advisory Board Confidential Financial Disclosure Reports**

<b>Reports Examined</b>	50	
<b>Filed Timely</b>	50	(100%)
<b>Certified Timely</b>	46	(92%)

As noted in Table 3 above, all of the reports OGE examined were filed timely and all but four reports were certified timely.

OGE did not detect any actual or potential conflicts of interest during its examination of these reports. However, OGE noticed that none of the SGE Board members indicated their reporting status on the first page of the confidential report as "New Entrant," as required by regulation.<sup>24</sup> This is an important distinction, as a new entrant report covers different reporting periods than an annual report. Moreover, a new entrant filer, unlike an annual filer, does not have to report gifts or travel reimbursements. Ethics Office officials assured OGE that during future filing cycles, SGE reports would be categorized correctly.

In addition to its examination of the Board's financial disclosure reports, OGE determined that Board member SGEs were properly provided with ethics training. The training includes information on the conflict of interest laws and ethics regulations that apply to Board

<sup>23</sup> See 18 U.S.C. § 202(a).

<sup>24</sup> See 5 C.F.R. § 2634.903(b).

members and is provided when members first come on board and annually thereafter, as required.

### Agency Comments

We appreciate the opportunity to review and comment on the Office of Government Ethics' (OGE) draft 2016 calendar year program review report for the Air Force's, Ethics Office. We also greatly appreciate the time your team dedicated to this review and are pleased that OGE found the Ethics Office program generally in compliance with applicable laws, regulations, and policies.

The report contained the recommendation that the Air Force Ethics Office, “[d]evelop and implement procedures to help ensure that public financial disclosure reports are reviewed and certified within the required 60-day timeframe.” We acknowledge that manpower shortages underlie the challenges we face in certifying financial disclosure reports within the required 60-day timeframe. An important component to the success of an agency's ethics program is adequate manpower. To that end, our Ethics Office is assessing alternatives that may allow us to hire a full-time paralegal/ethics program specialist, who will be responsible for tracking and managing our financial disclosure program. This new position will help alleviate some of the effects of our manpower shortage by allowing the ethics counselor(s) to devote more time to reviewing and certifying reports. In addition, once our staff situation improves (ideally in the next two months) we will engage in expanded training of various staff members in order to expand the pool of personnel able to assist with these reviews, even if only on a part-time basis. Solving the effects of the manpower shortage will require extraordinary effort by our entire office team.

While not a formal recommendation, the report also encouraged the Ethics Office to “educate new entrant filers on using the proper new entrant date and to take steps to ensure that reports are not filed or input into the system erroneously.” This comment was in response to filers incorrectly filling in their dates of hire, instead of the date they assumed duties on their financial disclosure reports. We appreciate this comment and will continue to make it a priority to educate filers and certifying supervisors about the financial disclosure reporting requirements.

The Air Force Ethics Office will continue to internally monitor our program to ensure compliance with legal and program requirements. Thank you again for your review and the opportunity to provide feedback on your recommendations