

United States Office of Government Ethics

Compliance Division

Ethics Program Review

Office of Personnel Management

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Objectives, Scope and Methodology

The United States Office of Government Ethics (OGE) provides overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest. 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. The Ethics in Government Act gives OGE the authority to evaluate the effectiveness of executive agency ethics programs. *See* title IV of the Ethics in Government Act, 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

OGE conducted a review of the Office of Personnel Management (OPM) ethics program between July and September 2015 and focused on data covering calendar year 2014. As part of the review, OGE examined several documents including the 2014 Agency Ethics Program Questionnaire, OPM ethics program instructions, samples of public and confidential financial disclosure reports, ethics training materials, and a sample of the ethics advice and counseling rendered to employees. OGE also interviewed OPM ethics officials and employees with ethics-related duties from the Office of the Inspector General and the Office of Human Resources.

Agency Background

The Office of Personnel Management is the result of American civil service leaders, led by Theodore Roosevelt, working together to establish an impartial civil service founded in merit principles. Beginning with the Civil Service Commission, created by the Pendleton Civil Service Reform Act of 1883, Theodore Roosevelt laid the foundation for reforming the Federal Service from the spoils system into a merit-based hiring system where all Federal employees receive fair treatment, equal access and protection. OPM exists to support Federal employees who serve the American public through recruiting, training, motivating, retaining and honoring a diverse workforce.

OPM oversees all policy created to support Federal human resource departments, ensures the availability of quality healthcare and insurance benefits for Federal families, provides Government-wide administration of retirement benefits and services for all Federal employees, and manages human capital for every Federal agency. The 4,956 OPM employees serve in the Office of the Director; Office of the General Counsel; Office of Communications; Congressional, Legislative and Intergovernmental Affairs; Program Divisions; and Support Functions.

Program Administration

OPM's Office of the General Counsel (OGC), located in Washington, DC, reports directly to the Office of the Director. The General Counsel serves as the Designated Agency Ethics Official (DAEO) and oversees the ethics program. The Deputy General Counsel assists the DAEO serving as the Alternate DAEO (ADAEO). The Principal Deputy Ethics Official, an attorney, manages the day-to-day operations of the ethics program. Deputy Ethics Officials in OGC, employees in the Office of Human Resources (OHR) and 18 ethics Points of Contact (POCs) from various divisions provide assistance in administering the program.

OPM ethics program instructions establish roles, responsibilities and requirements for managing the ethics program. The DAEO, ADAEO and Deputy Ethics Officials' responsibilities include providing advice and counseling; developing and providing training; reviewing ethics-related materials for legal sufficiency; collecting and reviewing financial disclosure reports; maintaining liaison with the Office of Inspector General, OGE and other Federal agencies; enforcing regulatory and statutory requirements; and reporting suspected violations of ethics laws and regulations. The ethics POCs are responsible for maintaining lists of positions required to file confidential financial disclosure reports and providing employees with contact information for ethics officials. The DAEO, ADAEO, Principal Deputy Ethics Official, Deputy Ethics Officials and the ethics POCs are held accountable for their ethics duties through a distinct element in their performance standards.

Agency Leadership Support

The OPM Director supports the ethics program by meeting with ethics officials and communicating relevant ethics information to all OPM employees. For example, throughout 2014, the Director sent emails to employees regarding trending ethics matters identified by ethics officials through advice and counseling requests.

Financial Disclosure

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal government by demonstrating that officials are able to carry out their duties without compromising the public trust. In order to ensure this confidence, high-level Federal officials use the public financial disclosure system to publicly disclose their personal financial interests. Title I also authorizes OGE to establish a confidential financial disclosure

system, in which less senior executive branch personnel in certain designated positions file confidential financial disclosure reports. 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 reports also assist agencies in administering their ethics programs and providing counseling to employees. *See* 5 C.F.R. part 2634.

Written Procedures

Section 402(d)(1) of the Ethics in Government Act requires each executive branch agency to establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available financial disclosure reports filed by the agency's officers and employees.

OPM's public and confidential financial disclosure system written procedures meet the Ethics in Government Act requirements. OPM's ethics program instructions include general responsibilities and duties for administering the financial disclosure systems. OPM also developed separate detailed written procedures for the public and confidential financial disclosure systems that supplement the program instructions. The written procedures describe maintaining and updating a master list of filers; identifying and notifying filers of the filing requirements; distributing blank report forms (OGE Form 278, OGE Form 278-T and OGE Form 450); collecting, reviewing and certifying reports; and retaining reports and related documentation. The procedures also address implementation of the Stop Trading on Congressional Knowledge (STOCK) Act of 2012 and the reporting requirements for couples in same-sex marriages as affected by the Windsor decision.

Public Financial Disclosure

The Principal Deputy Ethics Official collects, reviews, certifies and maintains all public financial disclosure reports. He uses a master list of filers and coordinates with OHR personnel to identify and notify filers of the public filing requirements. The Principal Deputy Ethics Official also informs filers about the annual filing requirement and periodically sends them reminders to file their annual reports.

In order to timely capture new entrant filers, OHR notifies the Principal Deputy Ethics Official of all senior official appointments, promotions, details and rotations to public filing positions. Moreover, prior to their appointment to a public filing position, OHR informs prospective and current employees of the requirement to file a public report within 30 days from their appointment date. OHR also notifies the Principal Deputy Ethics Official of all departures from public filing positions and advises any employee leaving such a position about the relevant post-employment restrictions and the requirement to complete a termination report within 30 days after leaving the position. The Principal Deputy Ethics Official provides assistance and consultation to filers completing a termination report.

In 2014, OPM identified 109 positions requiring the filing of a public financial disclosure report. The Principal Deputy Ethics Official reviewed and certified all 109 reports, consisting of 29 new entrants, 66 annuals and 14 terminations.

To evaluate the timeliness of public financial disclosure filing and certification, OGE reviewed a sample of 24 new entrant, 24 annual and 12 termination reports that were required to be filed in 2014 (Table 1).

Table 1. Review of OPM’s Public Financial Disclosure Reports

	New Entrant	Annual	Termination
278 Reports Sampled	24	24	12
Filed Timely	23 (96%)	24 (100%)	12 (100%)
Certified Timely	24 (100%)	24 (100%)	12 (100%)

OGE determined that all reports were certified timely and only one report was filed beyond the deadline without an extension documented on the report. The Principal Deputy Ethics Official confirmed that a verbal filing extension was provided in this case and agreed to annotate filing extensions on the form in the future.

Employees in positions requiring public financial disclosure are also required to file periodic transaction reports (OGE Form 278-T). Periodic transaction reports are filed to disclose purchases, sales or exchanges of stocks, bonds, commodities futures or other forms of securities when the transaction amount exceeds \$1,000.

During 2014, OPM collected, reviewed and certified 31 periodic transaction reports. To evaluate the timeliness of periodic transaction report filing and certification, OGE reviewed these 31 periodic transaction reports and found them all to be filed and certified timely.

Confidential Financial Disclosure

OPM component supervisors and the ethics office designate positions that require filing a confidential financial disclosure report. The Principal Deputy Ethics Official then reviews the designated positions and their associated duties on an annual basis to ensure they should continue to be covered by the financial disclosure requirements. The Principal Deputy Ethics Official, with assistance from the ethics POCs, notifies designated filers of the filing requirement and provides them with a blank confidential financial disclosure form and his contact information should they require assistance in completing the report.

In 2014, OPM identified 374 designated confidential filing positions. The Principal Deputy Ethics Official reviewed and certified all 374 confidential financial disclosure reports, consisting of 26 new entrants and 348 annuals.

To evaluate the timeliness of confidential financial disclosure filing and certification, OGE reviewed a sample of 20 new entrant and 20 annual reports required to be filed in 2014 (Table 2).

Table 2. Review of OPM's Confidential Financial Disclosure Reports

	New Entrant		Annual	
450 Reports Sampled	20		20	
Filed Timely	17	(85%)	20	(100%)
Certified Timely	20	(100%)	20	(100%)

OGE noted that none of the reports indicated the date on which they were received by the agency, as required by 5 C.F.R. § 2634.605(a). OPM instead maintains a separate list of when financial disclosure reports are filed. The Principal Deputy Ethics Official acknowledged the clerical error and agreed to begin documenting the date received on the reports. Based on a review of the list of filing dates and the dates on which the filers signed the reports, OGE determined that 17 of the 20 reports were filed timely. Moreover, all of the reports were certified timely.

Conflicts of Interest

According to the Principal Deputy Ethics Official, the public and confidential financial disclosure reports are reviewed for conflicts of interest by analyzing the filers duties against the information disclosed on the reports. The Principal Deputy Ethics Official provides counseling and guidance to filers and supervisors regarding any actual, apparent or potential conflicts of interest identified on the report.

Retention of Reports

Agencies are required to secure and maintain public and confidential financial disclosure reports for six years. Public financial disclosure reports remain publicly available during the six-year period and unless reports are needed in an ongoing investigation, all reports are to be destroyed after six years. During the program review, OGE observed public and confidential financial disclosure reports covering calendar years 2006 and 2007 that were retained beyond the six-year period. The Principal Deputy Ethics Official immediately purged these reports and developed a destruction schedule to ensure consistent and timely destruction in the future. Public and confidential financial disclosure reports covering calendar years 2008 to 2014 were properly retained in a locked file cabinet within a secured room.

Education and Training

Initial Ethics Orientation

OGE regulations require new employees to receive the following material within 90 days of beginning work for an agency: (1) the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards) and any agency supplemental Standards to keep or review, or (2) summaries of the Standards, any agency supplemental Standards, and the Principles of Ethical Conduct (the Principles) to keep. Employees must receive contact information for

agency ethics officials and one hour of official duty time to review the material. *See* 5 C.F.R. § 2638.703.

OGE examined OPM's initial ethics orientation materials and determined them to be compliant with the content requirements. In order to satisfy the initial ethics orientation requirements, OPM provides all new employees these materials, as well as online training, within the first 90 days of employment.

During agency new employee orientation, OHR officials notify new employees of their obligation to complete initial ethics orientation within 90 days. At this time, OHR provides new employees a welcome memorandum with contact information for the ethics officials; ethics orientation requirements; information about accessing the online ethics training through the OPM Learning Connection; and instructions to review the Standards, employee responsibilities and conduct, and the OPM supplemental ethics regulation. New employees also receive an Ethics Orientation Fact Sheet containing ethics laws and rules regarding the Hatch Act, prizes offered at conferences, use of government vehicles and misuse of government information.

All new employees, with the exception of Senior Executive Service (SES) and Schedule C officials, complete initial ethics orientation through OPM's Learning Connection. The online ethics course covers several topics including the Standards, the Principles, OPM's supplemental Standards and the conflict of interest statutes. SES and Schedule C officials receive an in-person ethics briefing from the Principal Deputy Ethics Official. OPM's internal website also makes available to all OPM employees ethics materials such as the Standards and OPM's supplemental Standards; information related to new employees, financial disclosure, conflicts of interest and impartiality; ethics official and POC contact information; and frequently asked ethics questions.

OPM's 2014 Agency Ethics Program Questionnaire and records indicate new employees received initial ethics orientation, as required. Due to a computer network problem at the time of the review, OPM was unable to provide a comprehensive report of initial ethics orientation completion. Therefore, OGE manually sampled initial ethics orientation data for 31 new employees and determined that 100 percent completed the orientation within the 90-day deadline.

Annual Ethics Training Plan

OGE regulations at 5 C.F.R. § 2638.706 require agencies to develop, at the beginning of each year, a written plan for annual ethics training. The plan must contain a brief description of the agency's annual training and include estimates of the number of employees who will receive verbal and written training. OPM's annual ethics training plan for 2014 meets these requirements and describes the training, estimates for the number of employees expected to receive the training, the amount of time for the training and the delivery platform.

Annual Ethics Training

OGE regulations require all covered employees to receive annual ethics training consisting of a review of: (1) the Principles; (2) the Standards; (3) any agency supplemental Standards; (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. *See* 5 C.F.R. §§ 2638.704 and 705.

OPM provides online ethics training through its Learning Connection portal. Annually, all public and confidential filers, excluding political appointees, spend one hour of official time completing the online training and are provided with an opportunity to contact ethics officials during and after the training. The Principal Deputy Ethics Official provides an in-person briefing and PowerPoint presentation for political appointees. The online ethics training and in-person briefings meet the regulatory requirements for annual training.

OPM uses its Learning Management System to record completed training for covered employees. OGE's review of OPM records indicates all covered employees received annual training in 2014.

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. *See* 5 C.F.R. § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 C.F.R. § 2638.204. OPM's Principal Deputy Ethics Official is responsible for the day-to-day operations of the counseling program.

All OPM employees may seek advice and counseling by in-person office visits, telephone, fax, email and during ethics training. OPM's internal website provides information about seeking ethics counseling. Ethics officials may discuss matters amongst themselves prior to responding to requests for advice. Although ethics POCs are not authorized to provide legal assistance or advice, requests are forwarded to the Principal Deputy Ethics Official.

During 2014, OPM received email, telephone and in-person requests for advice and counseling. OGE reviewed 18 samples of OPM advice and counseling and determined that the Principal Deputy Ethics Official provided timely guidance supported with references and citations to statutory and regulatory criteria. The advice and counseling requests OGE examined involved the following ethics-related topics: post-employment, gifts from outside sources, seeking employment, impartiality, social media engagement, book publication, outside activities, financial disclosure, speaking in an official capacity, travel reimbursement and use of official title.

The Principal Deputy Ethics Official proactively provides agency employees with relevant ethics and post-employment information. Throughout the year, he sends emails to

employees containing information about various ethics-related topics. OPM also requires departing employees to attend an exit consultation in order to receive guidance on post-employment restrictions and contact information for ethics officials.

Agency-Specific Ethics Rules

As authorized by Executive Order 12674 and implemented by 5 C.F.R. § 2635.105, an agency may modify or supplement the Standards, with the concurrence of OGE, to meet the particular needs of that agency. A supplemental agency regulation is issued jointly by the agency and OGE and is published in title 5 of the Code of Federal Regulations. The Supplemental Standards of Ethical Conduct for OPM employees requires prior approval for certain outside activities. *See* Title 5 Part 4501.

According to the supplemental regulation, an OPM employee, other than a special Government employee, will obtain written approval before engaging in certain compensated or uncompensated activities:

- Providing professional services involving the same skills or education background as the employee's official duties;
- Teaching, speaking or writing related to the employee's official duties;
- Serving as an agent for a prohibited source; or
- Providing services other than clerical services or service as a fact witness in which the United States is a party and has a direct and substantial interest, or the services involves the preparation of materials for submission to or representation before a Federal court or executive branch agency.

OGE examined samples of public and confidential financial disclosure reports for outside activities that would require prior written approval in accordance with OPM's supplemental regulation. No outside activities disclosed on the financial disclosure reports OGE examined required prior written approval. According to the Principal Deputy Ethics Official, in 2014, OPM received and approved only one request to participate in an outside activity covered by the supplemental regulation.

Conflict Remedies

The criminal conflict of interest law at 18 U.S.C. § 208 prohibits an employee from participating in an official capacity in a particular matter in which he or she has a financial interest. Congress included two provisions that permit an agency to issue a waiver of the prohibition in individual cases. Under Executive order 12674, agencies must consult with OGE, where practicable, prior to issuing a waiver under section 208. During 2014, OPM did not issue any waivers of the provisions of 18 U.S.C. § 208.

The Ethics in Government Act expressly recognizes the need for Presidentially appointed, Senate-confirmed (PAS) nominees to address actual or apparent conflicts of interest by requiring written notice of the specific actions taken in order to alleviate the conflict of interest. *See* 5 U.S.C. app. § 110. OPM's Director, Deputy Director and Inspector General are PAS officials. Of these officials, only the OPM Director has an ethics agreement; the Deputy Director position was vacant during 2014 and the Inspector General does not have an ethics agreement. Based on OGE records, the OPM Director complied with the terms of the ethics agreement.

Enforcement

OPM reported no disciplinary actions based wholly or in part upon violations of the criminal conflict of interest statutes (18 U.S.C. §§ 203, 205, 207, 208 and 209) nor the Standards of Ethical Conduct (5 C.F.R. § part 2635). OPM's Office of Inspector General (OIG), in consultation with OGC, conducts investigations of potential violations of the criminal conflict of interest statutes and makes any necessary referrals to the Department of Justice (DOJ). OGC concurrently notifies OGE of any such referrals. In 2014, OPM did not refer any violations to DOJ.

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 no more than 130 days in any 365-day period. SGEs typically serve on agency advisory boards or commissions. In 2014, OPM's 32 SGEs served in positions on one committee under the Federal Advisory Committee Act (FACA), one non-FACA committee and as experts grading application examinations.

SGEs may be excluded from filing financial disclosure reports under 5 C.F.R. § 2634.904(b) when the agency head or designee determines the duties of the position make the possibility of real or apparent conflicts of interest remote. OPM has excluded the SGEs on the FACA and non-FACA committees from the confidential financial disclosure filing requirement based on the particular duties and responsibilities described in the committee charters. OPM also concluded that the duties of the SGE experts grading application examinations were unlikely to pose a conflict of interest and therefore excluded them from the confidential filing requirement as well. OPM ethics officials annually review the responsibilities and duties of its SGEs to determine their filing status. All SGEs serving in the aforementioned positions completed initial ethics orientation as required.

Agency Comments

The Office of Personnel Management appreciates the time and effort that OGE devoted to its ethics program review. The agency is proud of its ethics program and treats agency and employee ethics responsibilities and requirements seriously. We will continue to work closely with OGE, follow the ethics program guidelines and monitor all aspects of our ethics program to ensure its continued effectiveness, the highest ethical standards for our employees and the utmost public confidence in the integrity of our work. Thank you for the professionalism displayed during the course of this review.