



Ethics Program Review

U.S. Department of Labor Headquarters

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The United States Office of Government Ethics (OGE) conducted a review of the U.S. Department of Labor (DOL) Headquarters ethics program from October through December 2017. 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’s review focused on the ethics program of the U.S. Department of Labor (DOL) Headquarters.

Methodology: OGE examined a variety of documents provided by DOL ethics officials, including DOL’s response to OGE’s 2016 Annual Agency Ethics Program Questionnaire, written procedures for administering the program, samples of public and confidential financial disclosure reports filed in 2017, ethics training materials, and a sample of the ethics advice and counseling provided to employees. In addition, OGE met with agency ethics officials to clarify the information gathered, follow up on issues identified during the review, and discuss ethics program operations in further detail.

Agency Background

DOL fosters and promotes the welfare of the job seekers, wage earners, and retirees of the United States by improving their working conditions, advancing their opportunities for profitable employment, protecting their retirement and health care benefits, helping employers find workers, and tracking changes in employment, prices, and other national economic measurements. In carrying out this mission, the Department administers a variety of federal labor

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

laws including those that guarantee workers' rights to safe and healthful working conditions, a minimum hourly wage and overtime pay, freedom from employment discrimination, unemployment insurance, and other income support.

Program Administration

DOL's ethics program is administered by the Office of Legal Counsel (OLC) within the Office of the Solicitor (SOL). The DOL Solicitor serves as the Designated Agency Ethics Official (DAEO). The Associate Solicitor, who heads OLC, serves as the Alternate Designated Agency Ethics Official (ADAEO). The ADAEO oversees the day-to-day operations of the ethics program. The ADAEO is assisted by a team of three ethics officials.

The administration of DOL's ethics program is centralized with the exception of the confidential financial disclosure system.² OLC is responsible for administering the public financial disclosure system and for providing ethics training and advice DOL-wide. In addition, OLC provides ethics guidance and programmatic oversight to the Regional Solicitors who act as ethics officials for their respective regions.

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 DOL'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 by DOL employees.

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 DOL's written procedures and determined that they did not address the process for making reports publicly available, where applicable. Based on OGE's determination, DOL amended its written procedures to comply with relevant requirements.

² The confidential system is decentralized and is administered by DOL's component agencies. OLC is directly responsible for the confidential system for SOL employees.

³ See 5 U.S.C. app. § 402(d)(1).

Public Financial Disclosure

Within 30 days of assuming a covered public filing position, an individual must file a public financial disclosure report.⁴ 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.⁵ 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.⁶

To evaluate the administration of DOL's public financial disclosure system, OGE examined a sample of 25 new entrant, 25 annual, and 25 termination reports that were required to be filed in 2017. Table 1 below presents the results of OGE's examination.

Table 1. OGE's Examination of DOL Public Financial Disclosure Reports

	New Entrant		Annual		Termination		Total	
Reports Examined	25		25		25		75	
Filed Timely	12	(48%)	24	(96%)	25	(100%)	61	(81%)
Certified Timely	21	(84%)	18	(72%)	15	(60%)	54	(72%)

As noted in Table 1 above, only 12 (48%) of 25 new entrant reports were filed timely. However, OGE notes that of 13 reports that were filed late, 12 were filed late by only a few days each and therefore did not trigger a late filing fee. The filer of the remaining late report was counseled by ethics officials and his late filing fee was waived.

As also noted in Table 1, 54 (72%) of the public reports were certified timely. Another four reports were certified late by only a few days each. However, seven reports were certified more than 200 days after the date of filing, some of which had few or no assets reported. Ethics officials indicated that the late certification of these reports was caused in part by technical issues related to this being the first time DOL had used *Integrity*, the executive branch electronic financial disclosure system.

OGE reminds OLC that the protracted certification of financial disclosure reports increases the risk that employees might take official actions that affect their financial interests, in violation of criminal conflict of interest law. Therefore, OGE recommends that DOL commit the necessary resources to ensure that all public financial disclosure reports be certified timely. OGE believes that the protracted or late certification of reports could be alleviated by assigning additional staff to review financial disclosure reports.

⁴ See 5 C.F.R. § 2634.201(b).

⁵ See 5 C.F.R. § 2634.201(a) and (e).

⁶ See 5 C.F.R. § 2634.605.

Recommendation

1. Commit the necessary resources to ensure that all public financial disclosure reports are certified timely.

During its onsite fieldwork, OGE noted that DOL retained public reports beyond the required six-year retention period. Subsequent to OGE's onsite visit, DOL destroyed all reports that had been retained for more than six years. Therefore, OGE is not issuing a recommendation for improvement.

Confidential Financial Disclosure

Within 30 days of assuming a covered confidential filing position, an individual must file a confidential financial disclosure report.⁷ The individual must also subsequently file an annual report by February 15 each year.⁸ 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.⁹

To evaluate the administration of DOL's confidential financial disclosure system, OGE reviewed a sample of 1 new entrant and 73 annual reports that were required to be filed by SOL employees in 2017. Table 2 below presents the results of OGE's review.

Table 2. OGE's Examination of SOL Confidential Financial Disclosure Reports

	New Entrant		Annual		Total	
Reports Examined	1		73		74	
Filed Timely	0	(0%)	62	(85%)	62	(84%)
Certified Timely	1	(100%)	73	(100%)	74	(100%)

As indicated in Table 2, 62 (84%) of the reports OGE examined were filed timely and all of the reports were certified timely.

Model Practice

As part of its reviews, OGE identifies model practices that other agencies should consider adopting. The following is a model practice at DOL.

- DOL ethics officials send STOCK Act notices to all public filers at the beginning of each month to help ensure that filers to comply with the STOCK Act periodic transaction reporting requirement.

⁷ See 5 C.F.R. § 2634.903(b).

⁸ See 5 C.F.R. § 2634.903(a).

⁹ See 5 C.F.R. § 2634.605.

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.¹⁰ 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 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.

OGE reviewed the materials DOL used to provide initial ethics orientation in 2016 and determined that the materials met applicable content requirements. OGE also determined that DOL provided the orientation to all new employees within 90 days, as required. IEO was conducted live during the Department-wide monthly onboarding program sessions for new career employees. Separate live briefings are provided by the ADAEO to new Schedule C employees. Attendance to the live briefings was tracked by sign-in sheets.

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 method may vary by an employee's financial disclosure filing status.

OGE examined training records and determined that DOL provided annual ethics training to over 99% of covered employees. The training for public filers was conducted in live sessions, including webcast sessions that were used to train covered employees at field locations. OGE reviewed the materials that DOL used to provide annual ethics training to public filers in 2016 and determined that the materials met applicable content requirements.

OGE also examined the materials that DOL used to provide annual ethics training to confidential filers in 2016 and determined that those materials met applicable content requirements as well. However, OGE notes that those materials were provided only as handouts via email and filers were not required to confirm that they had reviewed the material. OGE refrains from making a recommendation at this time, but reminds DOL that amended training

¹⁰ Subsequent to the period covered by OGE's review, the regulation governing executive branch agency ethics training at C.F.R. part 2638 was amended. These amendments became effective January 1, 2017.

regulations at 5 C.F.R. Part 2638 will require tracking of training completion. The amended regulation also requires that the training be interactive. This will be a more resource-intensive effort that DOL should plan for accordingly.

Model Practices

- Ethics officials regularly provide 10-minute presentations on an ethics topic at the Departmental Management Meetings (DMM). The DMM was convened by the Deputy Secretary. Ethics officials' participation in this meeting serves to address timely issues for the Department's senior officials.
- The DOL Secretary stresses the importance of employees in the Department to adhere to the highest standards of conduct by requiring that all non-career appointees attend a mandatory training session titled, "Common Sense Rules of the Road," in addition to the regular ethics training.

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.¹¹ 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 officials provided to DOL employees in the Office of the Secretary and SOL. The counseling addressed a variety of issues including gift acceptance, outside speaking and other activities, endorsements, and post-employment restrictions. OGE found the counseling to be consistent with applicable laws and regulations.

In addition to providing individualized counseling upon request, DOL ethics officials regularly make available ethics-related guidance to all DOL employees. For example, almost monthly, the ethics office publishes an ethics newsletter titled, "Crossroads." Among other things, this newsletter includes summaries of recent ethics guidance, announcements regarding upcoming events such as ethics training, and contact information for ethics officials. Ethics officials also occasionally distribute more targeted guidance to employees. For example, each year during the holiday season the ethics office sends guidance regarding invitations, gifts, parties, and fundraising to all career and non-career employees.

Model Practice

- In addition to providing individualized counseling upon request, DOL ethics officials regularly make available ethics-related guidance to all DOL employees.

¹¹ See 5 C.F.R. § 2638.104 (c)(4).

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.¹² 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.¹³ DOL did not issue any waivers in 2016 or 2017.

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.¹⁴ This written notice is commonly known as an “ethics agreement.” OGE determined that OLC had retained the necessary written documentation of the actions taken by the two DOL officials occupying PAS positions in 2017 to comply with their respective ethics agreements.

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 (DOJ).¹⁵ DOL’s Office of Inspector General (OIG) is responsible for conducting investigations of potential violations of the criminal conflict of interest laws, making any necessary referrals to DOJ, and concurrently notifying OGE of any such referrals. In 2016, DOL’s OIG did not refer any such potential violations to DOJ. However, DOL undertook four disciplinary actions based wholly or in part upon violations of the Standards of Conduct in 2016.

¹² See 18 U.S.C. § 208.

¹³ See Executive Order 12674.

¹⁴ See 5 U.S.C. app. § 110.

¹⁵ See 5 C.F.R. § 2638.206.