

United States Office of Government Ethics

Compliance Division

Ethics Program Review

Department of Education

Results in Brief

The United States Office of Government Ethics (OGE) has conducted a review of the ethics program at the Department of Education (Education). With the exception of the financial disclosure program, the review focused primarily on calendar year 2013 program activities.

Contents

Objectives, Scope and Methodology.....	2
Agency Background.....	3
Program Administration.....	3
Financial Disclosure.....	4
Education and Training.....	8
Advice and Counseling.....	10
Agency-Supplemental Regulation.....	10
Enforcement.....	11
Special Government Employees.....	12
Agency Comments.....	13

Objectives, Scope, and Methodology

OGE provides overall leadership and oversight of the executive branch ethics program which is designed to prevent and resolve conflicts of interest. OGE carries out its oversight responsibilities through onsite monitoring of agency ethics programs to ensure agencies are held accountable for compliance with applicable ethics requirements established by statutes, rules, regulations, and Executive Orders. OGE’s oversight activities are also designed to mitigate program vulnerabilities, identify trends and disseminate model practices, as well as to advance its overarching goals of uniformity, continuity and transparency. OGE has authority to evaluate the effectiveness of executive branch agency ethics programs pursuant to Title IV of the Ethics in Government Act and 5 C.F.R. part 2638.

OGE conducted the onsite fieldwork portion of its review of Education’s ethics program in February 2014. With the exception of the financial disclosure program, OGE’s review focused primarily on calendar year 2013 program activities. Follow-up fieldwork was conducted in June 2015 to gather additional, updated information regarding the financial disclosure program.

To assess Education’s ethics program, OGE examined a variety of materials provided by agency ethics officials, including the 2013 Agency Ethics Program Questionnaire, public and confidential financial disclosure reports, initial and annual ethics training materials, and samples of ethics advice and counseling rendered to Education employees. In addition, OGE staff met with agency ethics officials and Education Inspector General staff to verify the accuracy of the information collected, to clarify issues identified during the review, and to discuss ethics program operations in more detail.

Agency Background

Education is a Cabinet-level agency of the federal executive branch whose mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access. Its responsibilities involve developing regulations and policy guidance regarding program operations, determining that program funds are awarded to recipients consistent with statutory requirements and ensuring programs are operated fairly and conform to statutes and laws prohibiting discrimination in federally funded activities. The Department also collects data and conducts research on education to help focus attention on education issues of national importance.

Headquartered in Washington, DC, the Department is led by the Secretary of Education, a Presidentially appointed, Senate-confirmed official, who serves as the principal advisor to the President on federal policies, programs and activities related to education in the United States. To accomplish its mission, Education employs approximately 4,000 employees who are located at its headquarters office and at 10 regional offices.

Program Administration

Education's ethics program is administered by the Ethics Division, a division of the Office of the General Counsel (OGC). The Ethics Division is headed by an Assistant General Counsel who serves as the Department's Designated Agency Ethics Official (DAEO). A Deputy Assistant General Counsel in the division serves as the Alternate DAEO (ADAEO). Assisting the DAEO and ADAEO in the day-to-day management of the program is a staff of eight full-time ethics officials: five Deputy Ethics Officials (DEO) who are attorneys, two ethics program specialists, and one ethics program assistant.

The Ethics Division is responsible for developing policies and procedures for the overall operation of the Department's ethics program, designing and implementing the ethics training program, providing employees with ethics counseling services and administering and monitoring Education's financial disclosure program, including the review and certification of 300 public financial disclosure reports and over 1,000 confidential reports.

While the majority of ethics program services are provided by the Ethics Division, in 2010 the DAEO designated the Counsel to the Inspector General (IG) and three Assistant Counsels to the IG as DEOs. The IG DEOs are responsible for certain ethics program duties related to the IG office, including collecting, reviewing and certifying all confidential reports filed by IG staff as well as approving IG staff requests to engage in outside employment activities.

Agency Leadership Support

The Secretary of Education has demonstrated support for the Department's ethics program. For example, the Secretary prepared a letter that the Ethics Division provides to all new employees as part of Education's new employee orientation. The letter expresses the Secretary's expectation that employees conduct themselves in accordance with the highest levels of integrity

and ethical standards and observe both the letter and spirit of the ethics rules. The letter also encourages employees to contact the Ethics Division when they have questions about an ethical issue or about their ethical responsibilities.

Model Practice

OGE identifies model practices and shares them when it appears they may benefit other executive branch agency ethics programs. OGE considers the following to be a model practice implemented at Education:

- The Secretary of Education visibly demonstrates support of the ethics program by expressing his expectation that employees conduct themselves with integrity and adhere to ethical standards.

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 publicly disclose their personal financial interests. Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions. 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 assist agencies in administering their ethics programs and also assist in providing counseling to employees. *See* 5 C.F.R. part 2634.

Written Procedures for the Financial Disclosure Program

Section 402(d)(1) of the Ethics in Government Act (Ethics Act) requires that executive branch agencies establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available, financial disclosure reports filed by the agency's officers and employees. Written procedures are important to help ensure that agency ethics officials consistently and efficiently administer the financial disclosure program.

The Ethics Division has developed written procedures for administering Education's public and confidential financial disclosure systems. OGE found that these procedures comply with the requirements of the Ethics Act.

In addition to written procedures for financial disclosure, the DAEO shared with OGE the Ethics Division's long-term plan to develop written procedures that will reflect the current practices for administering all other elements of Education's ethics program. Significant resources will be devoted to this effort over the next three years. In view of the importance of having a succession plan to help maintain consistency and provide for continuity within an ethics program, OGE commends Education's plan for developing individualized written procedures for each ethics program element. The process of developing these procedures should also help the Ethics Division to assess its current procedures and implement improvements as necessary.

Public Financial Disclosure

The Ethics Division is responsible for the review and certification of 300 public financial disclosure reports. At the time of OGE's on-site examination, the public financial disclosure reports that were required to be filed on May 15, 2014 were not yet due. Therefore, to evaluate Education's public financial disclosure process, OGE selected a judgmental sample of 56 public financial disclosure reports that were required to be filed in 2013. The sample was examined for timeliness of filing, review and certification, as well as to assess the overall quality of review. Table 1 below presents the results of OGE's examination.

Table 1. Examination of Education's Public Financial Disclosure Reports (2013)

	New Entrant	Annual	Termination	Total
278 Reports Sampled	17	31	8	56
Filed Timely	11 (65%)	30 (97%)	4 (50%)	45 (80%)
Certified Timely	9 (53%)	13 (42%)	3 (38%)	25 (45%)

Of the sample, 80 percent of the public reports OGE examined were filed timely. OGE found evidence within individual report files that ethics officials routinely took action to pursue those reports that were not filed timely. These actions included soliciting support from Education's senior leadership to help obtain a report from a delinquent termination filer and, where appropriate, collecting the \$200 late filing fee. Prior to the conclusion of OGE's review, the DAEO confirmed that all reports had been filed.

OGE notes that 45 percent of the reports included in the sample were found to have been reviewed and certified within the deadline of 60 days after submission. Certification of the majority of the reports not certified within 60 days was delayed because ethics officials were seeking additional information from filers. OGE found the Ethics Division followed established procedures to address filers who were not responsive to requests for additional information.

The DAEO acknowledged in Education's response to OGE's 2013 Annual Agency Ethics Program Questionnaire that there were challenges in balancing the need for a comprehensive review of each financial disclosure report with the requirement to timely certify reports. OGE agrees that reports must be adequately reviewed to make a determination that reported interests do not create a real or apparent conflict of interest. However, conflict of interest determinations must also be made timely in order to prevent conflicts. In light of the importance of financial disclosure, OGE decided to conduct a follow-up examination in June 2015, to determine whether timeliness of certification had improved.

Updated Examination

During OGE’s follow-up fieldwork in June 2015, OGE selected 34 public reports from the Ethics Division’s master list of public filers that were required to be filed in 2014.¹ Table 2 below presents the results of OGE’s second examination.

Table 2. Updated Examination of Education’s Public Financial Disclosure Reports (2014)

	New Entrant	Annual	Termination	Total
278 Reports Sampled	10	20	4	34
Filed Timely	9 (90%)	18 (90%)	4 (100%)	31 (91%)
Certified Timely	8 (80%)	15 (75%)	4 (100%)	27 (80%)

Based on the findings above, the Ethics Division’s public financial disclosure program has significantly improved since our examination of the public reports filed in 2013 as a result of the efforts undertaken by the DAEO to advance the program. Ninety-one percent of the reports in OGE’s sample were filed timely and 80% were certified timely. As a result of this improvement, OGE is making no formal recommendation for improvement.

Conflict-of-Interest Review

OGE found the Ethics Division’s technical approach toward reviewing financial disclosure reports to be a model practice. The Ethics Division uses a triage review process under which all public reports (as well as confidential reports) are initially reviewed for completeness and substantive ethics issues within five business days. This approach allows ethics officials to immediately address potential conflicts of interest and certify reports that do not disclose actual or apparent conflicts. The Ethics Division’s conflicts-focused approach also provides the opportunity for the Ethics Division to render advice and counseling to filers aimed at preventing ethics-related violations.

OGE also notes that as part of each review, ethics officials use a detailed reviewer form to help prompt reviewers to address some of the critical issues that arise during a review to help ensure the identification of potential conflicts, which OGE also considers to be a model practice. During its review, OGE did not identify any actual or potential conflicts of interest that the Ethics Division had not already addressed.

Confidential Financial Disclosure

To evaluate Education’s confidential financial disclosure process, OGE examined a judgmental sample of confidential financial disclosure reports that were required to be filed in

¹ OGE did not examine public reports filed in 2015 at the time of its follow-up because the Ethics Division was still in the process of reviewing and certifying reports filed during the 2015 filing season.

2013. The Ethics Division is responsible for the review and certification of over 1,000 confidential reports. OGE selected 59 confidential reports for examination from the Ethics Division’s master list of confidential filers to examine timeliness of filing, review and certification, as well as to assess the overall quality of review. Table 3 below presents the results of OGE’s examination.

Table 3. Examination of Education’s Confidential Financial Disclosure Reports (2013)

	New Entrant	Annual	Total
450 Reports Sampled	34	25	59
Filed Timely	18 (53%)	25 (100%)	43 (73%)
Certified Timely	27 (79%)	21 (84%)	48 (81%)

As indicated in Table 3 above, while all annual reports in OGE’s sample were filed timely, only 53 percent of new entrant reports were filed timely. As a result of this finding, OGE decided to conduct a follow-up examination in June 2015, to determine whether the timely collection of new entrant confidential reports at Education had improved.

Updated Examination

During OGE’s follow-up fieldwork in June 2015, OGE selected 34 confidential reports from the Ethics Division’s master list of confidential filers that were required to be filed in 2015. Table 4 below presents the results of OGE’s second examination.

Table 4. Examination of Education’s Confidential Financial Disclosure Reports (2015)

	New Entrant	Annual	Total
450 Reports Sampled	23	11	34
Filed Timely	4 (17%)	8 (100%)	12 (35%)
Certified Timely	23 (100%)	11 (100%)	34 (100%)

As indicated in Table 4 above, OGE determined that all annual confidential reports filed in 2015 were filed timely and all reports were certified timely. However, improvement in filing timeliness is still needed for new entrant reports; only 17 percent of new entrant reports were filed timely.

According to the DAEO, most of the new entrant identification difficulty arises from employees who are assigned contracting duties or responsibilities as a collateral duty. Although the Ethics Division relies on its Human Resources (HR) office to assist them in identifying employees who have new Contract Specialist, Contracting Officer (CO), or Contracting Officer’s

Technical Representative (COTR) duties or responsibilities, the Ethics Division has not always received consistent or timely notification from HR officials.

To help address filing timeliness for new entrant reports the DAEO indicated that the Ethics Division plans to do the following:

- Send quarterly reminders, instead of annual reminders, to Executive Officers, who are responsible for informing the Ethics Division when contracting appointments occur, to help remind them of the filing requirement.
- Send a quarterly reminder to Education's Office of the Chief Financial Officer who can provide ethics officials with an updated list of employees who are fulfilling contracting duties as either a Contract Specialist, CO, or COTR.
- Periodically monitor Education's Federal Student Aid's (FSA) website to help obtain updated information regarding FSA employees who are fulfilling contracting duties as either Contract Specialist, CO, or COTR.

Beyond the need to comply with the regulatory requirement that new entrant reports are to be filed within 30 days, timely filing of new entrant reports helps to ensure that ethics officials can promptly determine whether conflicts of interest exist and, if so, take prompt remedial action. Timely action is particularly important since COTRs are involved in contracting and procurement--two areas that pose high risks. Therefore, OGE recommends that the DAEO implement these corrective actions as soon as possible.

Recommendation

- Continue to implement corrective action to ensure that new entrant confidential reports are filed timely.

Model Practices

- The Ethics Division uses a triage process under which all financial disclosure reports are initially reviewed for completeness and substantive ethics issues within five business days.
- As part of the financial disclosure review process, the Ethics Division uses a detailed reviewer form that prompts reviewers to address some of the critical issues that arise during a review to help ensure the identification of potential conflicts.

Education and Training

An ethics training program is essential to raising awareness among employees about ethics laws and rules and informing them of agency ethics official's availability to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees.

OGE regulations require that all new agency employees receive ethics official contact information along with 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 one hour of official duty time to review the material. *See* 5 C.F.R. §2638.703.

OGE concluded that the Ethics Division has implemented an ethics education and training program for Education employees that meets and, in some areas, exceeds the requirements of OGE's training regulation at 5 C.F.R. part 2638. The Ethics Division also meets the requirement for documenting Education's annual ethics training plan in accordance with 5 C.F.R. § 2638.706. In addition to conducting the requisite initial ethics orientation and annual ethics training, OGE also noted that the Ethics Division provides tailored in-person discretionary training upon request throughout the year. The topics of these briefings are developed based on the requestor's specific concerns.

Initial Ethics Orientation

Education's new employees are provided initial ethics orientation materials when they assume their duties. The Ethics Division exceeds the minimum content requirements of 5 C.F.R. § 2638.703 by providing new employees with additional ethics-related materials including the Secretary of Education's welcome letter and several one-page ethics summaries that provide a short synopsis on specific areas of ethics law.

Annual Ethics Training

OGE determined that Education's 2013 annual ethics training satisfied content requirements and confirmed with ethics officials that all financial disclosure filers were trained. The annual training requirement for 2013 training was met through a combination of online and in-person training. The training focused on conflicts of interest rules and seeking employment/post-employment prohibitions. Attendance at in-person training sessions was tracked using sign-in sheets. Ethics training evaluation forms were made available to attendees in order to help the Ethics Division gain insight into what attendees thought of the training and how it might be improved.

Model Practices

- The Ethics Division provides tailored in-person discretionary training upon request throughout the year.
- The Ethics Division surveys employees to assess their satisfaction with the quality of ethics training provided.

Advice and Counseling

The DAEO is required to ensure that a counseling program for agency employees concerning all 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.

OGE examined the advice and counseling services provided by the Ethics Division and determined them to be in compliance with the requirements of 5 C.F.R. §§ 2638.203 and .204. To evaluate Education's advice and counseling program, OGE selected a sample of 20 instances of written advice that had been rendered by the Ethics Division throughout 2013. The advice, ranging from gift questions to impartiality matters, documented the specific issue(s) in question and the basis for the opinion being rendered. The advice was provided in a practical, easy-to-understand format and appeared to be consistent with applicable laws and regulations. The advice was also rendered timely, which is key to addressing potential conflicts of interest and other ethics violations before they occur.

OGE also determined that the Ethics Division's approach to providing guidance on post-employment restrictions to departing employees to be effective. As part of Education's exit process, the Ethics Division meets one-on-one, in person when practical, with each departing political appointee. Written material is provided which outline the basic post-employment restrictions. OGE was informed that upon request, the Ethics Division also meets with departing career staff.

Agency Supplemental Regulation

As authorized by Executive Order 12674 and implemented by 5 C.F.R. § 2635.105, an agency may modify or supplement the Standards of Ethical Conduct, with the concurrence of OGE, to meet the particular needs of that agency.

Education has supplemental standards of conduct regulations which are codified at 5 C.F.R. part 6301. The supplemental standards require employees, other than special Government employees, to obtain written approval before engaging, with or without compensation, in certain outside activities or employment. Specifically, employees must obtain approval prior to: 1) providing services, other than clerical services or service as a fact witness, on behalf of any other person in connection with a matter in which the United States is a party or has a direct and substantial interest, or when the provision of services involves the preparation of materials for submission to, or representation before, a Federal court or executive branch agency, 2) serving as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, employee, advisory committee member, or active participant for a prohibited source, or 3) engaging in teaching, speaking, writing, or consulting that relates to the employee's official duties.

Employees seeking prior approval to engage in outside employment are required to do so by submitting a "Request for Approval of Outside Activity/Employment" form to their

supervisors for approval and then to the Ethics Division for concurrence or non-concurrence. As part of the Ethics Division's prior approval process, comprehensive written ethics advice tailored to the employee's specific outside activity request is provided to all requesting employees. The Ethics Division also maintains copies of outside activity approvals within the employee's financial disclosure files to aid in the review of financial disclosure reports.

To determine compliance with Education's prior approval requirement, OGE evaluated the outside activities that were reported on both the public and confidential financial disclosure reports that OGE selected for examination. OGE identified 21 outside employment activities disclosed on the financial disclosure reports and confirmed that all filers had received the required supervisory approval and Ethics Division concurrence before engaging in the outside employment.

Enforcement

During the course of its review, OGE met with the Counsel to the IG as well as other representatives from the IG's staff to discuss Education's system of enforcement and to determine the effectiveness of the working relationship between the Ethics Division and IG officials. OGE determined that Education is meeting the requirements of 5 C.F.R. § 2638.203(b)(12) by utilizing the services of the IG when appropriate, including the referral of matters to and acceptance of matters from the IG.

Since the IG has its own Counsel, the IG staff does not have to rely entirely on the Ethics Division for legal advice. However, OGE determined through its discussions IG and Ethics Division officials that both offices communicate and coordinate with one another on matters of mutual interest, including ethics-related matters, on a regular basis.

OGE's review of Education's system of enforcement also focused on the requirement at 5 C.F.R. § 2638.603 that agencies concurrently notify OGE of all referrals to the Department of Justice (Justice) of alleged violations of the criminal conflict of interest statutes, declinations to prosecute by Justice, follow-up actions on referrals, and the disposition of referrals. OGE confirmed that the IG is responsible for referring potential violations to Justice on behalf of Education and for concurrently notifying OGE of the referral.

In 2013, OGE was concurrently notified by the IG of one referral made on behalf of Education to Justice for an alleged violation of 18 U.S.C § 205 (activities of officers and employees in claims against and other matters affecting the government). At the time of its review, OGE followed-up with IG officials on the status of this case and was advised that the investigation was still ongoing and no further facts or updates on the status of the case were available. However, IG officials advised that they would notify OGE of the final disposition.

Ethics Program Functions Delegated to the Inspector General's Office

As previously mentioned, in 2010, pursuant to the provisions of 5 C.F.R. § 2638.203 and § 2638.204(a), the DAEO designated the Counsel to the IG as well as the Assistant Counsels to

serve Education's ethics program as DEOs for all current and former IG employees. In this capacity, these DEOs are responsible for certain ethics program duties related to the IG office, including collecting, reviewing and certifying all confidential reports filed by IG staff, as well as well as approving IG staff requests to engage in outside employment activities.

With regard to the confidential financial disclosure system, in 2013 the IG's office was responsible for the review and certification of 256 confidential reports. OGE selected 31 IG reports to examine. OGE determined that 97 percent of the reports were filed timely and all of the reports were reviewed and certified within the required 60-day timeframe.

With regard to Education's outside employment prior approval requirement, OGE followed-up with the Counsel to the IG regarding five reports which disclosed an outside activity to determine whether an outside activity request form was needed. It was determined that none of the activities required prior approval.

Special Government Employees

Education has several advisory committees. These committees are established to help provide advice to the Department on policy and program issues. At the time of OGE's review, the Ethics Division was responsible for 13 advisory committees. Pursuant to 5 C.F.R. § 2634.903(b), the Ethics Division determined that 128 advisory committee members serving on 11 of the committees are special Government employees (SGEs) and are therefore required to file new entrant confidential reports upon nomination and subsequently file new entrant confidential reports each year thereafter. SGEs are also required to receive ethics training.

To evaluate this area of Education's ethics program, OGE evaluated the Ethics Division's procedures for collecting and reviewing advisory committee SGE confidential financial disclosure reports and providing these SGE's with ethics training and advice. OGE focused its examination on 3 of the 11 advisory committees and boards that were comprised of SGEs who file either an OGE Form 450 confidential report or an OGE-approved alternative financial disclosure form.²

The selected committees and boards consisted of the: 1) National Assessment Governing Board, 2) National Committee on Foreign Medical Education and Accreditation, and 3) Historically Black Colleges & Universities Capital Financing Advisory Board. The following is summary of the findings of OGE's review of these committees and boards.

² In April 2005, Education sought approval from OGE to use an alternative confidential financial disclosure procedure to exclude members of its National Board of the Fund for the Improvement of Postsecondary Education Advisory Committee from a portion of the confidential financial disclosure reporting requirement. OGE approved Education's request in May 2005 and also approved the use of this procedure by any other Education board, commission, or advisory committee for which the DAEO deems its use to be adequate in preventing conflicts of interest.

National Assessment Governing Board

OGE examined 23 confidential reports that were required to be filed by members of this board in 2013 and determined that all had been filed, reviewed and certified in a timely manner. OGE did not detect any actual or potential conflicts of interest that the Ethics Division had not already addressed during its review of the reports.

OGE also determined that ethics training was provided to board members addressing the conflict of interest laws and ethics regulations that apply to them, in accordance with 5 C.F.R. §§ 2638.703 and .705. Finally, OGE found that the advice and counseling services provided to the members meet applicable requirements.

National Committee on Foreign Medical Education and Accreditation

OGE examined 11 alternative disclosure forms that members of this committee were required to file in 2013 and determined that all had been filed, reviewed and certified in a timely manner. OGE did not detect any actual or potential conflicts of interest during its examination. OGE also determined that ethics training was provided to all members addressing the conflict-of-interest laws and ethics regulations that apply to them. Finally, OGE found that the advice and counseling services provided to members meet applicable requirements.

Historically Black Colleges & Universities Capital Financing

Only one person served on this committee in 2013. OGE examined the one confidential report filed by the member of this committee and determined it to have been filed, reviewed and certified in a timely manner. OGE did not detect any actual or potential conflicts of interest during its examination. OGE also determined that ethics training was provided to this member and that advice and counseling services were made available.

Agency Comments

The Department of Education appreciates the time and effort that OGE put in to reviewing its ethics program, and concurs with OGE's findings and recommendations. We will continue to work diligently on continuous improvement in our ethics program so that we effectively promote the highest ethical standards for our employees and ensure that the public has the utmost confidence in the integrity of our work. We look forward to continuing a productive and collaborative relationship with OGE.