

United States Office of Government Ethics

Compliance Division

Ethics Program Review

Department of Homeland Security

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the United States Department of Homeland Security's (DHS) ethics program from October through November 2012. Based on the results of our review, OGE concludes that while DHS ethics officials are performing the vast majority of duties necessary to administer an effective ethics program at DHS's headquarters, improvements are needed in the financial disclosure program to maintain the integrity of the overall ethics program. Specifically, OGE is concerned about the timeliness of certification of public financial disclosure reports and the accuracy of the list of confidential financial disclosure filers. However, OGE also acknowledges DHS's actions to improve its financial disclosure program.

Highlights

- DHS's Ethics Division hired three new full-time personnel in 2012 and one in 2013.
- The Ethics Division provides discretionary training throughout the year to emphasize specific ethics rules and requirements to different audiences within DHS.
- The Ethics Division provides departing employees in-person, post-employment briefings as part of the employee check-out process.

Concerns

- A significant number of public financial disclosure reports that were due by May 2012 were not certified timely.
- The master list for confidential filers was not reliable to account for all employees who were required to file a confidential report.
- DHS could not confirm that all covered employees received annual ethics training.

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Objectives, Scope, and Methodology

OGE provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance. 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. OGE has 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.

To assess DHS's ethics program OGE examined a variety of documents provided by DHS ethics officials, including the 2011 agency ethics program questionnaire, public and confidential financial disclosure reports filed in 2012, and advice and counsel provided to DHS employees. In addition, OGE's Program Review Division staff met with DHS ethics officials and DHS's Inspector General staff to obtain additional information about the strengths and weaknesses of the ethics program, seek clarification on issues that arose during OGE's analysis of the documents collected, and verify data collected.

In view of DHS's decentralized ethics program structure, OGE limited its review scope to the DHS Headquarters ethics program located in Washington, D.C. OGE conducted its fieldwork during October and November 2012.

Agency Background

DHS is the Cabinet-level department of the Federal executive branch tasked with ensuring that the nation's homeland is safe, secure, and resilient against terrorism and other hazards. Its operations include ensuring safe and secure borders, welcoming lawful immigrants and visitors, and promoting the free flow of people and commerce across the borders of the United States. DHS is led by the Secretary of Homeland Security, a Presidentially appointed and Senate-confirmed appointee and was established after the terrorist attacks on September 11, 2001 through the passage of the Homeland Security Act of 2002. DHS formally began operations on March 1, 2003, bringing together 22 different Federal departments and agencies under a unified, integrated Department. Under direction from the Office of the Secretary and the heads of various directorates, offices, and components, DHS employs more than 200,000 employees to accomplish its mission, making it the third largest Cabinet-level Department, after the Department of Defense and Veteran Affairs.

Program Administration

DHS's ethics program is administered by the Ethics Division, a part of the Office of the General Counsel (OGC) at DHS Headquarters. The Ethics Division is headed by the Principal Deputy General Counsel, who serves as the Designated Agency Ethics Official (DAEO) while the Associate General Counsel for Ethics serves as the Alternate DAEO (ADAEO). The DAEO and ADAEO are assisted by seven full-time staff within the Ethics Division.¹ They are the Deputy

¹ The DAEO and ADAEO responsibilities include providing ethics training and reviewing the public financial disclosure reports filed by individuals nominated by the President and subject to Senate confirmation.

Associate General Counsel for Ethics,² three Deputy Ethics Officials (DEOs) who are attorneys, a Financial Disclosure Program Manager, an Ethics Program Specialist, and a staff assistant.³

OGE was informed that while each Ethics Division official is capable of performing multiple types of ethics duties, the officials each have an ethics specialty area. For example, the Financial Disclosure Program Manager and the Ethics Program Specialist are devoted primarily to the review and certification of public and confidential financial disclosure reports filed by DHS Headquarters personnel and by special Government employees serving on DHS advisory committees. Two of the three DEOs, meanwhile, are primarily responsible for providing ethics training and advice and counseling services. The third DEO was hired in April 2013 for DHS's National Protection and Program Directorate (NPPD), which is responsible for supporting many of DHS's highest priority programs, including cyber security, infrastructure protection, and biometric fingerprint data collection and storage.

General responsibility for all ethics matters at DHS rests with the Ethics Division, including developing ethics-related policies and procedures. The DAEO relies on the cooperative efforts of a network of Chief Counsels and senior attorneys at the various DHS components who serve as Chief Deputy Ethics Officials (Chief DEO) to help manage and coordinate the ethics program within their respective DHS component. The DAEO informed us that the Ethics Division's oversight activities over the components included drafting procedures and distributing general policy guidance, telephone conversations with the Chief DEOs and their staff, hosting quarterly meetings with component ethics personnel to discuss current ethics issues, and status reports it may receive on various aspects of the ethics program. In addition, the DAEO indicated that there is a plan to have his staff conduct formal oversight reviews during calendar year 2013 and thereafter.

Standards of Conduct Procedures

OGE was informed that a revised Secretarial Directive on the Standards of Conduct had also been drafted and was under internal review by DHS Management. Ethics Division officials explained that this directive establishes the overall DHS policy on ethical conduct and responsibilities of employees and outlines the duties and responsibilities of ethics officials. Although these procedures are not required by ethics regulation, OGE considers the development of such procedures to be a valuable resource to both employees and ethics officials. Therefore, OGE suggests that the DAEO continue to work to formalize these procedures.

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. High-level Federal officials demonstrate this by

² The Deputy Associate General Counsel for Ethics position is a newly created position within the Ethics Division and was filled in November 2012.

³ The Ethics Program Specialist was hired in July 2012 while the Staff Assistant was hired in August 2012.

disclosing publicly their personal financial interests by completing OGE Form 278. Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest review. OGE implements this authority by requiring the covered executive branch personnel to complete OGE Form 450. Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts 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. § 2634.104(b).

The Ethics Division is responsible for the review and certification of 276 out of 1,174 public reports and 2,318 out of 15,207 confidential reports that are required to be filed throughout DHS. To evaluate the administration of DHS's financial disclosure program, OGE examined a sample of public and confidential financial disclosure reports that were required to be reviewed and certified within DHS Headquarters. OGE's review of the selected samples of public and confidential financial disclosure reports covered an examination of the timeliness of filing, review, and certification.

Written Procedures for the Financial Disclosure Program

Section 402(d)(1) of the Ethics in Government 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 employers.⁴ Establishing written procedures is an essential step in ensuring that agency personnel follow an appropriate methodology when filing, collecting, reviewing and evaluating financial disclosure reports. OGE found that while DHS's written procedures were compliant with the applicable statutory requirements and OGE guidance, they were in draft format during the time of the review. They were subsequently finalized and issued in April 2013.

Public Financial Disclosure

Pursuant to the provisions of 5 C.F.R. § 2638.204(a), the DAEO delegates the responsibility for managing the implementation of DHS's headquarters financial disclosure program, which includes notification, collection, tracking, correspondence, and document retention, to the Financial Disclosure Program Manager. The DAEO also delegates to the Financial Disclosure Program Manager the authority to review and certify all public financial disclosure reports, other than nominee reports, filed with the Ethics Division.

To evaluate the administration of the public system, OGE selected for examination 50 public reports due in May 2012 from the Ethics Division's master list of public filers.⁵ While OGE

⁴ See, OGE's DAEGRAM 09-03-92: Developing written procedures for the public and confidential financial disclosure systems

⁵ The Financial Disclosure Program Manager maintains the master list of DHS personnel required to file public reports. This list is updated based on regular reconciliations with the list of senior executives and political appointees provided by DHS's Office of Chief Human Capital Officer (CHCO).

found 94 percent of these reports to have been timely filed, 62 percent were certified late. This included 13 reports within the sample that had not yet been certified by the time of our on-site examination in October 2012. In some instances the late certifications were due to the Financial Disclosure Program Manager seeking additional information from filers. However, most certifications occurred late because this manager was the only certifying official processing nearly 2,600 combined public and confidential reports. To rectify this situation, the Ethics Division hired the Ethics Program Specialist in 2012 to process the confidential reports. In addition, despite the late certifications, we found detailed review annotations and documentation with each report.

During our review, we also identified the following conditions that warrant prompt corrective action:

- Selected within our sample of public reports was one public report that was not certified due to outstanding concerns over a potential 208 violation.⁶ OGE recommended that the Ethics Division take immediate action to remedy any real or potential conflict of interest identified within this report. In their response Ethics Division officials stated that the report has since been certified after a review of the filer's holdings, the filer's job responsibilities and activities and after counseling was provided to the filer.
- At the time of OGE's on-site examination, the Ethics Division still had two public filers who had not filed their reports. Regulations contained in 5 C.F.R. § 2634.704 require that public filers remit a late filing fee of \$200 to the appropriate agency, payable to the U.S. Treasury, if their financial disclosure report is filed more than thirty days late. For one of the public filers, for example, the Ethics Division planned to assess a late fee for both the 2011 new entrant and 2012 annual public reports. On September 28, 2012, the Ethics Division forwarded a notice informing the filer that the filer would be subject to a \$200 late filing fee upon filing each report and requested that payment along with both reports be filed within five days of receipt of the notice. However, as of December 2012, the filer had not responded to this request. Therefore, OGE recommended that the DAEO refer public filers who have failed to file their public reports to the Department of Justice (Justice), as required by 5 C.F.R. § 2634.701(a). At the time of publication of this report OGE was informed that DHS referred both filers to Justice in April 2013.

Confidential Financial Disclosure

OGE selected for review from the Ethics Division's master list of confidential filers, 50 confidential reports due in February 2012. However, of these 50 reports, DHS could only provide 39 reports to examine. OGE examined all 39 reports, which included 31 annual and 8 new entrant reports, and found nearly all (85 percent) to have been filed timely and all to have been reviewed and certified in a timely manner.

⁶ Under 18 U.S.C. § 208, Government employees are barred from participating personally and substantially in an official capacity in any particular Government matter that would have a direct and predictable effect on his own or his imputed financial interests.

With regard to the remaining 11 reports that OGE could not locate, Ethics Division officials had not yet determined why these reports had not been filed or whether they were required to be filed. For example, ethics officials could not determine whether the failures to file were due to the filer leaving DHS, the filer no longer being required to file, or the filer being in violation. At the time of OGE's review, there were filers listed on the master list that had filed confidential financial disclosure reports in the past, but had not filed during the 2011 filing cycle. Ethics Division officials acknowledged that the master list that was available during OGE's review was not reliable to properly identify the required filers. While the master list for the public filers had been regularly updated due to the higher scrutiny associated with public financial disclosure reports, the master list for confidential filers was not similarly updated. We were informed that this occurred due to the limited staff resources available to the financial disclosure program.

To rectify this situation, the Ethics Division assigned its Ethics Program Specialist to resolve all discrepancies in the master list and ensure an accurate listing of required confidential filers. Similar to the process for updating the master list for public filers, the Ethics Program Specialist now receives bi-weekly reports from the Chief Human Capital Officer (CHCO) in order to update the master list.

Identification of Filing Positions:

OGE was also informed by Ethics Division officials that the CHCO is responsible for ensuring that all DHS position descriptions and other appropriate records, such as employment announcements, include supervisors' determinations as to whether the duties of a position require the employee to file a financial disclosure report. Each year a computer printout of employees who meet the criteria for filing either a public or confidential report is sent by the CHCO to Ethics Division officials. However, DHS's ethics officials expressed a lack of confidence in whether some employees coded as confidential filers actually meet the criteria for filing. They were concerned that supervisors were not adequately trained in determining what positions are filing positions and therefore coded all positions under their authority as filing positions as a precaution. During the course of OGE's review, Ethics Division officials were taking the following steps to address this issue:

- **Coordination with CHCO officials** - Ethics Division officials met with CHCO officials to discuss reevaluating the filing determinations for all DHS headquarters confidential filers. It was agreed that each supervisor will be contacted and given the filing criteria for confidential filing to help accurate confidential financial disclosure filing determinations. It is expected that this will result in a reduction in the number of confidential filing positions within DHS's master list of confidential filers.
- **OGE Form 450 Filer Designation Worksheet:** To help supervisors determine whether or not new employees are required to file a confidential report, the Ethics Division requires supervisors to utilize a designation worksheet. The worksheet requires supervisors to address a series of "yes or no" questions that should result in a more consistent application of the confidential filer designation criteria.

Education and Training

The education and training program at DHS is decentralized. The Ethics Division is responsible for initial ethics orientations, developing an annual training plan, and conducting annual ethics training for all covered employees within DHS Headquarters, including all DHS political and senior-level officials. Under the general oversight of the DAEO, ethics officials within each DHS component are responsible for providing initial ethics orientation and annual ethics training to their component employees.

OGE concludes that the Ethics Division has implemented an ethics education and training program for DHS Headquarters employees that meets and exceeds the requirements of OGE's training regulation under 5 C.F.R. § 2638. In addition to conducting the requisite initial ethics orientation and annual ethics training, Ethics Division officials also provide discretionary training, as needed, throughout the year to help keep employees knowledgeable of ethics laws and regulations. For example, in 2012, in-person ethics briefings were provided at the Federal Protective Service Regional Directors conference and the annual Chief Financial Officer's conference, where both covered and non-covered employees were present.

Initial Ethics Orientations

OGE regulation requires 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 Principals) to keep. Employees must receive one hour of official duty time to review the material. *See* 5 C.F.R. § 2638.703.

OGE found the initial ethics orientation program exceeding the minimal training requirements, as evidenced by the Ethics Division's commitment to provide in-person initial ethics orientation briefings to new employees. Twice a month, during new employee in-processing, a member of the Ethics Division staff is allotted one hour to provide an initial ethics orientation briefing to new employees, usually on their first day of duty.⁷ Highlighted in the presentation and in the written material that employees receive are the Standards and the points of contact for the Ethics Division, which satisfies the requirements of 5 C.F.R. § 2638.703. Information on the agency's proposed supplemental ethics regulation is also shared with new employees.

During the on-site portion of our review, OGE observed a live training session and found it to be informative and well-g geared to the variety of ethics issues that a new DHS employee could face while on the job. OGE found the Ethics Division instructor to be knowledgeable of the training content and effective in engaging the employees in attendance. Training completion was tracked

⁷ According to the ADAEO, individual initial ethics orientation briefings are provided to some new DHS senior level appointees and other high-level DHS officials.

using a sign-in sheet that was collected by the instructor at the end of the class. According to the ADAEO, 601 new headquarters employees were provided an initial ethics orientation in 2012.

Annual Training in 2012

Executive agencies are required by 5 C.F.R. § 2638.704 and 5 C.F.R. § 2638.705 to provide covered employees annual ethics training that includes a review of the Principles, the Standards, any agency supplemental standards, the Federal conflict of interest statutes, and the names, titles, office address, and telephone numbers of the DAEO and other agency ethics officials available to advise the employee of ethics issues.

To satisfy the annual training requirement for 2012, the Ethics Division's training plan indicated an objective of providing in-person ethics training to all public filers and SGEs. Confidential filers were responsible for satisfying their annual training requirement via computer-based training and submitting their training completion certificates at the same time they filed their financial disclosure report.

During the review, OGE observed an annual training session provided to public filers and found the session to be informative and compliant with relevant annual training provisions. The training covered an overview of the Standards, the Principles, a summary of the criminal conflict-of-interest statutes, and guidance on post-employment, political activities, misuse of position, and the requirements of the Stop Trading on Congressional Knowledge Act (STOCK Act). OGE also found the Ethics Division instructor to be knowledgeable of the training content and effective in engaging the employees in attendance. Ethics Division officials confirmed that all but one of the 36 annual public filers we selected for review received their annual training. We were informed that the filer who did not receive the annual training had left the agency in September 2012.

OGE also attempted to verify whether confidential filers were provided annual training by reviewing whether training completion certificates were attached to the 50 financial disclosure reports that constituted our sample of confidential financial disclosure reports to be reviewed. As previously discussed, we were unable to locate 11 reports within our initial sample and also could not ascertain a training completion date for 10 of the 39 annual confidential reports that were examined. Subsequently we selected another 28 names from the master list of confidential filers to test whether training completion certificates existed for those filers. During follow-up discussions with Ethics Division officials, OGE was informed that 7 of the 28 filers completed their annual training for 2012. However, training completion could not be confirmed by Ethics Division officials for the remaining 21 filers. Because DHS did not have an accurate list of confidential filers, it could not demonstrate that all covered employees received training. As the Ethics Division prepares to satisfy the annual training requirement for 2013, OGE is recommending that ethics officials ensure that all covered employees receive annual ethics training by the end of this year.

Recommendation

- Develop a plan to ensure that all covered employees receive annual ethics training.

Advice and Counsel

The DAEO is required to ensure that a counseling program for agency employees that covers ethics and standards of conduct, 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.

At the time of our review the ADAEO and the two DEOs were primarily responsible for providing the advice to DHS headquarters employees, with the DAEO occasionally rendering advice as well.⁸ According to the ADAEO, headquarters employees are encouraged to contact the Ethics Division via all forms of communication, including e-mail, telephone, and in-person visits. However, most inquiries are made via e-mail. Written counseling files are stored on a shared electronic drive to which all ethics officials within the Ethics Division have access. While the Ethics Division does not currently have a written policy that outlines the circumstances under which ethics advice is to be provided in writing, the ADAEO indicated that the Ethics Division will address this as part of a more comprehensive policy on the ethics program.

OGE examined 31 pieces of e-mail advice and written memorandums by Ethics Division officials, which covered approximately a ten-month period. The majority of the advice OGE examined pertained to the receipt of gifts, participating in widely attended gatherings, and post-employment guidance. Other issues addressed included endorsements, Hatch Act, conflicts-of-interest, and the STOCK Act. OGE found DHS's ethics counseling program met the requirements of 5 C.F.R. § 2638.203 and found that records are kept, where appropriate, on advice rendered, as required by 5 C.F.R. § 2638.203(b)(8).

With regard to post-employment counseling, the Ethics Division provides in-person, post-employment briefings to those departing from Federal service as part of DHS's employee check-out process. In addition to the briefing, employees are provided with written materials that outline the basic post-employment restrictions. These post-employment reference guides include OGE's Rules for the Road pamphlet on seeking-employment and Understanding the Revolving Door pamphlet on post-employment. Should an employee have specific questions or request a formal ethics opinion, a post-Government service questionnaire is required to be used. The questionnaire provides the Ethics Division with the pertinent information needed to provide written counseling to the employee on post-Government service restrictions.

Agency Specific Ethics Rules

On October 12, 2011, DHS, with the concurrence of OGE, published in the Federal Register a proposed supplemental standard of ethical conduct for its employees. The proposed rule aims to prevent conflicts of interest and supplement OGE's Standards of Ethical Conduct rules. It will

⁸ The new Deputy Associate General Counsel for Ethics will also be expected to render advice and counseling to employees.

also replace legacy supplemental ethics regulations of those previously existing component agencies that were incorporated into DHS. Two significant areas to be addressed by the proposed DHS supplemental regulation will be to require prior approval for outside employment and the prohibition on the purchase of Government-owned, seized, or forfeited property by DHS employees.

OGE notes that by the time of its on-site examination in October 2012, a final rule had not been published. Ethics Division officials indicated that while they still plan to pursue this regulation, concerns had been raised during the public response period to the proposed rule. Therefore, a working group had to be established to help resolve stakeholder concerns. The concerns were mainly with the definition of outside employment. Ethics Division officials expect final approval and issuance of the regulation by the end of calendar year 2013.

Enforcement

During the review, OGE met with the DHS Counsel to the Inspector General (IG) and members of the IG's staff to discuss DHS's system of enforcement and determine the effectiveness of the working relationship between the Ethics Division and IG officials. Consistent with 5 C.F.R. § 2638.203(b)(12), OGE determined that communication and coordination between both Ethics Division and IG officials are generally effective. Since the IG has its own counsel, the IG staff does not have to rely entirely on the Department's Office of the General Counsel for legal advice. However, they do coordinate with the Ethics Division on matters of mutual interest, including ethics-related matters. OGE finds this to be important since the DAEO is required to ensure that prompt and effective action, including administrative action, is undertaken to remedy ethics violations.

OGE's review of DHS's system of enforcement focused primarily on the requirement at 5 C.F.R. § 2638.603 that agencies concurrently notify OGE of all referrals for prosecution 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 the referral. OGE was advised that the IG is responsible for referring potential violations to Justice and for concurrently notifying OGE of the referral.

While IG officials were aware of the requirement to concurrently notify OGE when referrals are made to Justice, IG officials acknowledged that they have not been routinely doing so, even though their own internal procedures reflected this requirement. According to OGE's internal records, DHS's last notification to OGE on a referral made to Justice regarding a potential criminal conflict of interest violation was in 2010. However, IG officials believed that there may have been referrals made to Justice in 2012. Prior to the conclusion of this review, OGE received information on three referrals that had been made by the IG to Justice in 2012 on potential 18 U.S.C. § 208 violations (acts affecting a personal financial interest).

Based on the actions taken and assurances from IG officials that they will begin to routinely notify OGE on all future referrals, OGE is not making a formal recommendation for improvement in this area. In addition, to address OGE's concern that the DAEO may not always be aware of a referral made by the IG to Justice, IG officials also agreed to notify the DAEO

concurrently whenever a referral is made. This will help the DAEO provide support to DHS's system of enforcement.

Independent Auditor's Report

Each year an outside private public accounting firm, under contract with the IG, performs an integrated audit of DHS's financial statements and internal control over financial reporting, as part of the IG's oversight responsibilities. Specifically, as part of the audit, the Ethics Division's procedural guidance on financial disclosure reporting and samples of financial disclosure reports are examined to assess whether internal controls are effective in ensuring that financial disclosure reports are timely filed and properly reviewed and certified.

DHS Independent Auditor's Report on DHS's FY 2012 Financial Statements and Internal Control over Financial Reporting also found control weaknesses over the administration of the financial disclosure process and a lack of finalized written procedures governing the financial disclosure program.

Special Government Employees

DHS charters and maintains several advisory committees. These committees are established to help provide advice and recommendations to the Secretary of DHS and to senior leadership on mission-related topics from academic engagement to privacy. At the time of examination, OGE was informed that the Ethics Division was responsible for eight advisory committees, including two new committees established in 2012. Pursuant to 5 C.F.R. § 2634.903(b), Ethics Division officials determined that 109 advisory committee members serving on six of the advisory committees are to be considered special Government employees (SGEs). SGEs file new entrant confidential reports upon nomination and subsequently file new entrant confidential reports each year thereafter.

With regard to the review and certification of confidential reports for SGEs, OGE was informed that reports are submitted by potential committee members as part of the initial ethics clearance process and reviewed by each committee's Designated Federal Official.⁹ The financial disclosure report is then forwarded to the Ethics Division's Financial Disclosure Program Manager for final review and certification. The filing schedule for collecting subsequent new entrant confidential reports annually from all SGEs was unique and tied to the anniversary date of each committee's charter.

To assess the collection and review of financial disclosure reports filed by SGEs, OGE selected reports from one of the larger DHS advisory committees, the Data Privacy and Integrity Advisory Committee for review. OGE examined 23 confidential reports that were required to be filed in 2012 for this Committee and found them to have been filed, reviewed, and certified

⁹ A Designated Federal Officer or employee of the Federal government chairs or sits in attendance of each advisory committee meeting and is so designated and authorized, whenever she/he determines it to be in the public interest, to adjourn any such meeting. The law further requires that no advisory committee shall conduct any meeting in the absence of that officer or employee.

timely. OGE also determined that ethics training was provided to these members on the conflict-of-interest laws and ethics regulations that apply to them when they first come on board and annually thereafter in accordance with 5 C.F.R. § 2638.703 and § 2638.705.

OGE confirmed that ethics training for SGEs are provided in-person by the DEOs during the first meeting held by each advisory committee. As part of this training, the DEOs are responsible for providing a presentation, which includes an overview on the most significant conflict-of-interest laws and ethics regulations that are applicable to SGEs. At the time of our examination, OGE was informed that all advisory committees active for 2012 had received the required training.

1353 Travel Acceptances

Federal agencies may allow its employees to accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under the authority of the General Services Administration (GSA) regulation at 41 C.F.R. chapter 304, implementing 31 U.S.C. § 1353. Semiannual reports of payments accepted under 31 U.S.C. § 1353 must be submitted to OGE by May 31 and November 30 of each year.

DHS allows its employees to accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel. The authority to approve the acceptance of these types of payments rests with either the employee's supervisor, a DHS official having cognizance of the subject matter of the meeting, if other than the supervisor, or an authorized approval official. The Ethics Division reviews each offer to ensure that it's free from conflict-of-interest concerns and in compliance with 31 U.S.C. §1353. Employees who seek approval under this authority are required to complete the DHS-Form 1560-01, Authorization For Acceptance Of Travel Payment From Non-Federal Source.

To meet the semiannual reporting requirement, DHS's Office of the Chief Financial Officer is responsible for compiling the information to be reported from all DHS components, drafting the semiannual report of payments of more than \$250 per event, and forwarding it to OGE. OGE examined DHS's two most recent semiannual reports, covering April 1, 2012 through September 30, 2012 and October 1, 2011 through March 31, 2012, and identified 94 and 93 payments had been accepted, respectively. OGE determined that both reports had been submitted to OGE in a timely manner.

Agency Comments

MANAGEMENT COMMENTS TO OGE PROGRAM REVIEW REPORT

We appreciate the thorough and thoughtful review by the U.S. Office of Government Ethics ("OGE") of our Headquarters ethics program. We agree with all of OGE's recommendations, and we have either completed or taken steps toward completing all of the recommendations in the report. Over the past year, we have made significant improvements to the processes and staffing of the ethics program at the Department of Homeland Security ("DHS"). These actions will enhance our ability to monitor, track and comply with the ethics rules overseen by OGE.

In addition, the DAEO has issued a written policy outlining financial disclosure procedures, responsibilities and obligations for Department personnel to ensure compliance with applicable statutory requirements and OGE guidance.

Confidential Financial Disclosure Program

Prior to and contemporaneously with the OGE site visit, we enhanced the financial disclosure program in a number of ways that align with the recommendations of OGE's report. For example, we have added to the available OGE regulations and instructions on financial disclosure by issuing additional guidance to DHS employees. This policy guidance further outlines financial disclosure procedures, responsibilities and obligations for Department personnel. We designed this guidance to enhance compliance with applicable statutory requirements and OGE guidance.

With respect to the reporting by filers required to file "confidential" disclosure reports, we have initiated systemic changes to increase the reliability of the master filer list. Prior to the OGE site visit, a newly hired program specialist reported to the Ethics Division and began initiating systemic enhancements to the confidential reporting system. We now validate information provided by the Office of the Chief Human Capital Officer ("human capital office") with designated program officials whom management has specifically appointed to support the financial disclosure process.

For the CY13 reports, the Ethics Division worked with each program official to ensure that program supervisors and managers reviewed the duties of each position under their authority and determined whether the duties of the position required a financial disclosure report. The new Ethics Division program specialist coordinated with each program official regarding adjustments to affected position descriptions. The positions identified as a result of this review formed the basis for the FY13 filer list. This filer list was entered into a new database that the Ethics Division created to track reports and training. The Ethics Division has found this process to be effective and intends to continue to follow this process to ensure reliability of the filer list for future filing years.

In addition, and to assist supervisors in understanding their responsibilities for identifying filers and for reviewing the report disclosures, the program specialist now offers targeted training on these issues for program supervisors. The training will focus on identifying the filers' and supervisors' roles in reviewing an employee's disclosures. The training will also explain coordination with the Ethics Division to resolve any potential conflicts. Additionally, the program specialist will offer training to filers to improve compliance with reporting requirements.

We have also taken steps to correct for any remaining deficiencies associated with the CY12 filer list. The Ethics Division provided a list of employees with outstanding CY12 reports to each program office and enlisted the program's support in collecting the reports. The filer list for CY12 was validated by each program and the Ethics Division followed up with the remaining filers, through the program management, to collect outstanding reports.

To improve the reliability of the information received from the human capital office, the Ethics Division, in conjunction with the human capital office, worked with each program to correct errors on the position descriptions. We now review the bi-weekly reports from the human capital office and verify the information on new filers with the program supervisors. We resolve any discrepancies with the relevant program and the human capital office.

For the eleven confidential reports for CY12 highlighted in the OGE report, the Ethics Division tracked each individual and resolved the missing reports. We will make available to OGE the details regarding those individuals.

Hiring within the Ethics Division posed a particular challenge during the time period reviewed by OGE. For example, it took longer than one year to fill a vacancy left by a departing financial disclosure specialist. This position requires a security clearance because of the nature of the work, and the time for obtaining that clearance, on top of the challenging hiring environment, left the Ethics Division short staffed during the period under review.

Public Financial Disclosure Program

The addition of staff to the financial disclosure program has recently increased our ability to timely certify both the confidential reports and the public reports. In addition, the Ethics Division created a database to supplement the Army Financial Disclosure Management System (FDM) for the purpose of tracking certain filer actions. This database tracks the types of reports filed, report due dates, extensions, and guidance on conflicts and potential conflicts. The database also associates filers with their mandatory training. With the exception of the two outstanding reports noted in OGE's review, all other filers' reports have been collected. In April 2013, the Ethics Division referred the two filers with outstanding reports to the Department of Justice, and will continue to provide required coordination with Department of Justice attorneys assigned to the cases. The one previously remaining uncertified report has been certified and the filer has been provided with guidance regarding potential conflicts of interest. We thoroughly reviewed the filer's holdings, the filer's job responsibilities and activities, and we provided oral counseling to the individual. After taking these steps, we are confident that the filed report is in compliance with the disclosure regulations, and we found no evidence of any conflict violations.

To improve the process for FY13, and to support timely certification, the program manager for financial disclosure began earlier than in past years actively to encourage filing. These efforts have already shown results, with a number of filers already submitting their reports in advance of the May 15 due date. This will allow a greater spread and evening of the workload for the financial disclosure program.

Training

The new databases described above, which we created for the financial disclosure program, also provide a tool for tracking completion of mandatory training. This will aid in implementing OGE's recommendation regarding training. The databases include fields for tracking initial, annual, and specialized training. These fields are associated with each financial disclosure filer.

All “public” filers on the rolls at the end of calendar year 2012 received one hour of annual ethics training by the end of CY12. In the current year, public filers are required to sign attendance sheets at live training and the training date will be tracked for CY13 in the public financial disclosure program database.

We now have a new tracking method for “confidential” filers. Confidential filers for CY13 were instructed to attach to their financial disclosure reports a certification attesting to their completion of the annual ethics training. We now enter the certification dates into the confidential financial disclosure program database, enabling the Ethics Division to run regular reports to assess training status. The Ethics Division is following up with filers who did not return a certificate and any training delinquencies will be referred to the program management and the DAEO.

Program Administration

Progress was delayed on the Secretarial Directive and Supplemental Regulation due to the unanticipated requirements and timelines under the Stock Act and related resource issues. Both of these efforts are currently underway and the Ethics Division anticipates completing these efforts in CY13. We continue to work to address resource constraints, and we have made recent progress on that front.