



Ethics Program Review

United States Department of State

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Results

In 2016, the United States Office of Government Ethics (OGE) conducted a review of the ethics program of the United States Department of State (State). This program review generally covered program activities during calendar year 2015.

OGE’s program review determined that the staff of State’s Office of Ethics and Financial Disclosure is knowledgeable and dedicated to the ethics program’s mission. At the same time, OGE identified programmatic issues that need to be addressed. OGE has made 10 recommendations for addressing these issues and will conduct a follow-up review to assess State’s implementation of these recommendations.

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II. Objectives, Scope, and Methodology

The United States Office of Government Ethics (OGE) provides overall leadership and oversight of the executive branch ethics program, which is 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. *See* Title IV of the Ethics in Government Act, 5 U.S.C. app. § 402 and 5 C.F.R. part 2638. Therefore, as a key component of its oversight role, OGE conducts reviews of individual agency ethics programs. The purpose of a program review is to identify and report on the strengths and weaknesses of an agency’s 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.

To evaluate State's ethics program, OGE examined a variety of materials including State's responses to OGE's 2015 Agency Ethics Program Questionnaire, samples of public and confidential financial disclosure reports filed by regular and special Government employees, records of initial and annual ethics training, and ethics advice rendered to employees in 2015. OGE also met with State's DAEO, Alternate DAEO, and other ethics officials to discuss information collected, clarify issues identified during the program review, assess ethics program operations in detail, and formulate recommendations for needed program improvements. Prior to issuing this report, OGE provided State with a draft copy of the report for comment.

III. Program Administration

The Department of State is the lead U.S. foreign affairs agency within the executive branch and the lead institution for the conduct of American diplomacy. The department is led by the Secretary of State, who is nominated by the President and confirmed by the Senate. The Secretary of State is the President's principal foreign policy advisor and carries out the President's foreign policies through the department's employees. State is headquartered in Washington, D.C. and has an extensive global presence, with more than 270 embassies, consulates, and other posts in over 180 countries. State also operates several other types of offices and centers throughout the United States. At the end of 2015, State was comprised of approximately 73,000 employees.

A. Ethics Program Structure

Primary Ethics Office (L/EFD)

One of State's four Deputy Legal Advisers serves as the Designated Agency Ethics Official (DAEO). The DAEO is a member of the career Senior Executive Service. As with the other Deputy Legal Advisers, the DAEO reports to the Presidentially appointed, Senate-confirmed Legal Adviser in State's Office of the Legal Adviser (L). The DAEO oversees six offices responsible for a variety of legal functions. One of these offices, the Office of Ethics and Financial Disclosure (L/EFD), manages State's ethics program.

An Assistant Legal Adviser leads L/EFD and serves as the Alternate DAEO. This position is also in the career Senior Executive Service. OGE notes that the current incumbent did not hold the position during the period covered by this program review.

L/EFD is comprised of 13 employees. In addition to the Alternate DAEO, L/EFD employs seven attorney-advisers who are responsible for providing ethics counseling, conducting training, and assisting in the review of financial disclosure reports. It also consists of five ethics professionals who are dedicated solely to State's financial disclosure program. One of the five serves as the Chief of Financial Disclosure.

Secondary Support

State's size and worldwide geographic distribution present challenges for its ethics program. In an effort to address these challenges, State has assigned various ethics

responsibilities to officials outside its ethics office, primarily to bureau Executive Directors and, overseas, to Management Officers.¹ For example, the Under Secretary for Management has assigned to the Executive Directors and Management Officers the responsibility for conducting initial reviews of certain financial disclosure reports before forwarding them to L/EFD for review and certification.² While the Executive Directors and Management Officers do not fall within L/EFD's chain of authority, the Alternate DAEO advised that the Under Secretary for Management supports L/EFD and holds Executive Directors and Management Officers responsible in the performance of their duties with respect to the ethics program.

Executive Directors and Management Officers perform a broad array of functions in addition to their assigned ethics duties. In their support of State's ethics program, however, they are responsible for ensuring that department employees complete ethics training and submit financial disclosure reports.

State's Executive Directors and Management Officers also provide information on basic ethics matters to employees at all levels, including Senate-confirmed Presidential appointees. However, they typically consult with L/EFD attorneys on non-routine and more complex issues involving gifts and other ethics matters.

State has developed educational courses and materials to prepare Executive Directors, Management Officers, and initial financial disclosure report reviewers for their assigned ethics responsibilities. For example, initial financial disclosure report reviewers are required to complete an online training module on financial disclosure (Financial Disclosure Initial Reviewer Training-PA456). This module is administered by State's Foreign Service Institute (FSI). According to L/EFD officials, this one-hour course, as well as the other online ethics-related courses administered by FSI, is the result of a collaborative effort between L/EFD and FSI; L/EFD provides the content while FSI provides the technical expertise. In addition, L/EFD sought and received OGE's review and comments on the course content. The module provides a brief overview of the responsibilities of initial reviewers, criteria for designating financial disclosure filers, the electronic filing system, financial disclosure requirements, procedures for conducting technical reviews of financial disclosure reports, and the identification of potential conflicts of interest.³ The module makes clear that initial reviewers are not expected to make legal determinations as to conflicts of interest; instead, they are asked to flag financial interests that may pose conflicts for review by L/EFD. The Alternate DAEO explained that initial reviewers are in the best position to help identify potential issues because they are familiar with the official activities of the filers.

Executive Directors and Management Officers are required to attend annual regional workshops, which include offerings related to government ethics and their duties with respect to

¹ The department collectively refers to these individuals as Management Officials, but this report will refer to them by their separate titles to avoid confusion.

² The policies and procedures for administering the ethics program, including the roles and responsibilities of L/EFD, Management Officials, and initial reviewers of financial disclosure reports, are spelled out in the Ethics and Financial Disclosure section of the Foreign Affairs Manual. *See* 11 FAM 600.

³ During its examination of PA456, OGE noted that the course refers to the old OGE Form 278 and has not yet been updated to include reference to the current OGE Form 278e. L/EFD officials explained that they plan to update PA456 in the near future to delete and replace out-of-date references to the OGE Form 278.

administering State's ethics program. Because Executive Directors and Management Officers file financial disclosure reports, they also receive the same basic annual ethics training State is required to provide to all financial disclosure filers. Executive Directors sometimes also receive ethics information during meetings chaired by the Undersecretary of State for Management. In addition, Executive Directors and Management Officers attend classes at FSI that typically include one to three-hour blocks of ethics instruction taught by L/EFD attorneys.

On an ongoing basis, State also provides Executive Directors and Management Officers with ethics-related information. L/EFD officials explained that information is communicated through department notices, written guidance, and meetings with ethics officials. They added that the Executive Directors and Management Officers are expected to familiarize themselves with the applicable ethics program procedures and responsibilities contained in the Foreign Affairs Manual (FAM). The FAM is a comprehensive source for the organizational structures, policies, and procedures of the State Department, the Foreign Service and, when applicable, other federal agencies.⁴ It is a vital resource for all State employees. Within this collection of guidance documents are sections containing information on a variety of ethics issues.⁵

L/EFD officials noted that L/EFD also provides direct support to both Executive Directors and Management Officers. Executive Directors and Management Officers can contact ethics attorneys directly or send questions to a general "Ethics Attorney" email account monitored by L/EFD attorneys. Also, FSI conducts a Management Official Tradecraft Course that newly selected Management Officers attend, usually prior to traveling to their posts. As part of this course, L/EFD attorneys provide one to two hours of ethics education geared towards the most common issues seen by the Management Officers. In addition, Management Officers newly assigned to some of the largest posts are provided individual training from an L/EFD ethics attorney before assuming their duties. The regional bureaus also organize annual regional workshops for the Management Officers. An L/EFD attorney attends these workshops and usually provides a plenary address, small-group seminars, and individual consultations.

B. Prior Review of State's Ethics Program

OGE's most recent review of State in 2012 found that the longstanding structure of the department's ethics program did not allow for its effective administration.⁶ In the report on that review, OGE noted that while State had made some improvements, additional improvements were needed. In particular, OGE made recommendations in the areas of financial disclosure, annual training, and ethics agreements:

⁴ The FAM is available online at <https://fam.state.gov/>.

⁵ For example, one brief section, 11 FAM 613.1-1, addresses gifts of free attendance at Widely Attended Gatherings. See <https://fam.state.gov/FAM/11FAM/11FAM0610.html> (site last viewed Sep. 9, 2016).

⁶ OGE conducted the review to assess State's nominee financial disclosure process. The primary objective was to assess the readiness of the ethics program to manage the anticipated increased workload associated with the turnover of Presidentially appointed, Senate-confirmed (PAS) officials in a post-election period. However, OGE's findings and recommendations necessarily addressed systemic issues impacting other aspects of the State's ethics program, as well. See "Post-Election Readiness Review: Department of State," available at [https://www.oge.gov/Web/OGEnsf/0/F7B53B6A513552B385257EF80066DEC2/\\$FILE/State%20Final.pdf](https://www.oge.gov/Web/OGEnsf/0/F7B53B6A513552B385257EF80066DEC2/$FILE/State%20Final.pdf).

- (1) Revisit the ethics program staffing model to support the post-election period and address persistent backlogs for reviewing and certifying financial disclosure reports.
- (2) Develop an action plan to ensure that covered employees complete annual ethics training by the end of each calendar year.
- (3) Reassess and document the ethics agreement process and consider ways to formalize tracking of compliance. Also, develop a plan to address the increased volume of ethics agreements during the post-election period and consider strategies to assign a higher priority to this aspect of PAS processing.

Following up on OGE's review, State's Office of Inspector General (OIG) then conducted its own review the department's ethics program in 2013.⁷ The OIG's report included the following findings and recommendations:

- (1) Regarding OGE's first recommendation, the OIG noted that L/EFD had made significant progress toward eliminating the backlogs of financial disclosure reports. During OGE's current review, L/EFD officials noted that they have eliminated the entire backlog of financial disclosure reports since the OIG follow-up review.
- (2) Regarding OGE's second recommendation, the OIG found that L/EFD, with FSI, had implemented an online ethics course to make training readily available. The OIG noted, however, that State was still not enforcing training requirements. The OIG recommended that State should track the completion of required training and implement penalties for individuals who failed to complete training.⁸
- (3) With regard to OGE's third recommendation, the OIG found that L/EFD continued to lack a systematic procedure for monitoring ethics agreements and providing reminders to appointees regarding measures those agreements required. The OIG recommended that L/EFD implement a database function to track compliance with ethics agreements that would generate reports showing whether an ethics agreement exists, the individual provisions of the agreements, the dates of reminders and communications, and the dates of actions taken to comply with ethics agreements. L/EFD has implemented a tracking database for compliance as OIG recommended.

Financial Disclosure

Title I of the Ethics in Government Act requires agencies to 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. Toward this end, Title I requires high-level federal officials to disclose their personal financial interests publicly. Title I also authorizes OGE to establish a system in which agencies may require certain less senior executive branch personnel

⁷ United States Department of State and the Broadcasting Board of Governors Office of Inspector General, "Review of the Department of State Ethics Program," available at <https://oig.state.gov/system/files/217416.pdf>.

⁸ As discussed later in this report, State has yet to implement any penalties against employees who have failed to complete annual ethics training.

to file confidential financial disclosure reports. Financial disclosure enables agencies to prevent, identify, and resolve conflicts of interest by providing for a systematic review of the financial interests of officers and employees. *See* 5 C.F.R. part 2634.

A. Written Procedures

Section 402(d)(1) of the Ethics in Government Act requires that each executive branch agency establish written procedures for collecting, reviewing, evaluating, and—when applicable—making publicly available the financial disclosure reports of the agency’s leaders. The written procedures for administering State’s financial disclosure program are spelled out in the department’s Foreign Affairs Manual at 11 FAM 617 and meet the content requirements of section 402(d)(1).

B. Identification of Filers and Collection of Reports

L/EFD relies on Executive Directors and Management Officers to notify candidates for employment, current employees transferred or promoted to new positions, and detailees to State when they are required to file public or confidential financial disclosure reports. L/EFD receives an automatic system notice through the electronic filing system whenever an Executive Director or Management Officer submits a “New FDM User Account Request” after determining that an employee is subject to financial disclosure requirements. Alternatively, the FAM provides that an Executive Director or Management Officer may request advance review prior to a prospective employee’s appointment, in order to ensure that the prospective employee does not have unresolvable conflicts of interest. During the review, OGE asked how often L/EFD receives requests to provide such an advance review or “pre-clearance.” The Alternate DAEO responded that there is a significant volume of pre-clearance requests each year and that there were more than 400 requests in 2015 alone.

C. Review of Reports

With regard to the review of financial disclosure reports, Executive Directors and Management Officers are responsible for: (1) designating initial reviewers, (2) ensuring that initial reviewers review the reports within 30 days of filing, and (3) ensuring that initial reviewers complete the FSI online training module (PA456-Ethics Financial Disclosure Initial Reviewer Training) prior to their first review cycle. After the initial review is complete, all financial disclosure reports are forwarded to L/EFD for final review and certification.

D. Sampling of Public Financial Disclosure Reports Filed by PAS Appointees

In 2015, approximately 260 PAS appointee public financial disclosure reports were required to be filed at State. To evaluate State’s administration of its public financial disclosure program for these officials, OGE examined a sample of 64 PAS annual and 13 termination financial disclosure reports that were filed in 2015. Table 1 below presents the results of OGE’s examination.

Table 1. OGE Examination of PAS Public Financial Disclosure Reports

	Annual	Termination	Total
Public Reports Sampled	64	13	77
Filed Timely	61 (95%)	12 (92%)	73 (95%)
Certified within 60 Days	47 (73%)	9 (69%)	56 (73%)

OGE’s examination of the sample of PAS reports determined that the reports were generally filed timely. Regarding the one late termination report, State waived the late filing fee for this filer. With regard to the three late annual reports, State waived the late filing fee for one filer, received the late fee from another, and has requested a late fee from the remaining filer.

OGE’s examination also determined that State did not complete the certification of approximately one quarter of the annual and termination reports OGE selected within 60 days. However, L/EFD officials indicated that 92% of all sampled PAS reports—and 97% of sampled PAS annual reports—were reviewed within 60 days. Moreover, in 2015, State met OGE’s request to have all PAS reports certified before the end of the calendar year.

E. Sampling of Public Financial Disclosure Reports Filed by Non-PAS Employees

According to a master list provided by L/EFD, non-PAS State officials were required to file a total of 1,558 new entrant, annual, and termination public financial disclosure reports in calendar year 2015. To evaluate State’s administration of its public financial disclosure program for non-PAS filers, OGE selected a sample of 144 of these reports to examine. Table 2 below presents the results of OGE’s examination.

Table 2. OGE Examination of Non-PAS Public Financial Disclosure Reports

	New Entrant	Annual	Termination	Total
Public Reports Sampled	40	64	40	144
Filed Timely	35 (88%)	61 (95%)	28 (70%)	124 (86%)
Certified within 60 Days	30 (75%)	40 (62%)	29 (76%)	99 (70%)

Based on the results of OGE’s examination, State needs to improve the pace for completing its certification of non-PAS employees’ new entrant, annual, and termination

financial disclosure reports. State conducted initial reviews of 88% of all non-PAS sampled reports—and 95% of the sample of annual reports— within 60 days. As noted in Table 2 above, however, State’s certification of these reports within 60 days ranged from 62% to 76%.

Also as noted in Table 2 above, only 70% of the termination reports were filed timely. With regard to 12 former public filers who failed to timely file termination financial disclosure reports, State granted late filing fee waivers to 6 of them and has requested payment of the late filing fee from 4 others. The two remaining late termination reports had not been filed at the time of OGE’s review. One of the reports was due in May 2015 and L/EFD officials sent letters to this individual via certified mail in June and October 2015 and again in May 2016 directing her to file her termination report. The second report was due January 2016 and L/EFD officials sent a certified letter to this official in May 2016 directing her to file.

With regard to the sample of 40 new entrant reports that OGE’s program reviewers examined, 5 of the reports were filed late. State granted waivers of the \$200 late filing fee to four of the filers and collected the late fee from the remaining filer.

Finally, with regard to the sample of 64 annual reports that OGE’s program reviewers examined, 3 of the reports were filed late. State granted a waiver of the \$200 late filing fee to one of the filers and collected the fee from another. At the time of our review, State had requested payment of the late filing fee from the remaining late filer but had not yet received the fee.

A memorandum that was sent to delinquent filers in 2015 titled, “Failure to Timely File 2014 Financial Disclosure Forms and Complete Ethics Training,” warns that if a public filer fails to file an annual public financial disclosure report by August 31, 2015, State will consider taking disciplinary action against that filer. The notification also warns delinquent Foreign Service Officers that disciplinary action can negatively impact promotion prospects. In 2015, L/EFD submitted a list of 11 delinquent public filers to the Human Resources Office of Employee Relations, Conduct, Suitability and Discipline. As a result, six of these delinquent filers received a Letter of Reprimand which was placed in their personnel file.

Recommendations

1. Develop and implement a plan for reducing the time it takes for State to complete the processing of non-PAS public financial disclosure reports.
2. Revise State’s public financial disclosure procedures to include mandatory escalation procedures when public filers either fail to file public financial disclosure reports or fail to respond to requests for additional information regarding such reports, including referral to the Department of Justice in appropriate cases.
3. Improve State’s procedures for collecting non-PAS termination public financial disclosure reports, and ensure that termination reports are timely collected.

F. Sampling of Confidential Financial Disclosure Reports

According to a master list provided by L/EFD, State employees were required to file 5,359 confidential financial disclosure reports in calendar year 2015. To evaluate the administration of State's confidential financial disclosure program, OGE examined a sample of 98 new entrant and annual confidential reports that were required to be filed in 2015. Table 3 below presents the results of OGE's examination.

Table 3. OGE Examination of Confidential Financial Disclosure Reports

	New Entrant	Annual	Total
Confidential Reports Sampled	49	49	98
Filed Timely	27 (55%)	40 (82%)	67 (68%)
Certified within 60 Days	32 (65%)	38 (78%)	70 (71%)

Based on the findings noted in Table 3 above, State needs to improve the timeliness of new entrant confidential report filing. Only 55% of the sampled new entrant reports were filed timely. OGE also determined that only 71% of all sampled reports were certified by L/EFD within 60 days. However, 88% of the sampled reports were reviewed within this timeframe.

Recommendation

4. Establish new procedures to ensure that new entrant confidential financial disclosure reports are filed in a timely manner.

G. Cyclical Preparations for Presidential Transitions

Although outside the scope of this review, OGE asked State to address its preparations for the Presidential transition. In the course of a Presidential transition, most of the top positions in the executive branch turn over. As a result, ethics officials review a significantly higher than normal volume of financial disclosure reports of Presidential nominees, and they work with the nominees to resolve potential conflicts of interest. This critically important work can strain the resources of agency ethics programs, particularly with regard to agencies like State that have large numbers of positions requiring Senate confirmation. With this in mind, State and OGE officials met for a discussion regarding the upcoming Presidential transition. During the meeting, State's DAEO and Alternate DAEO described a number of concrete steps they have taken to actively prepare for the Presidential transition. Based on these discussions, OGE is satisfied that State appreciates both the importance of these preparations and the need to continually monitor its performance with regard to the ethics review of nominees during the transition.

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

A. Initial Ethics Orientation

OGE regulations require that, within 90 days of beginning work for an agency, all new employees receive contact information for agency ethics officials, along with the following material: (1) the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and any agency supplemental Standards, or summaries of the Standards, (2) copies of any agency supplemental Standards, and (3) the Principles of Ethical Conduct (the Principles) to keep. Employees must receive one hour of official duty time to review these materials. *See* 5 C.F.R. § 2638.703.

State's initial ethics orientation procedures and requirements, described in 11 FAM 619, make Executive Directors and Management Officers responsible for ensuring that new employees complete initial ethics orientations within 90 days of entering on duty. The content of the orientation and the mechanisms through which it is provided varies depending on the category of new employee.

Orientation for New Civil Service and Foreign Service Officers

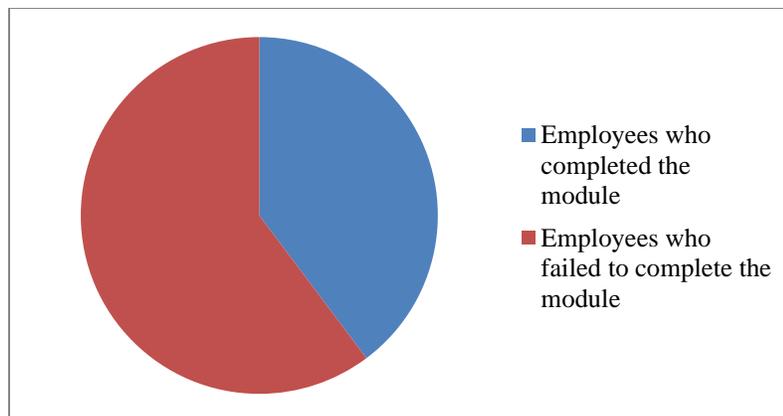
L/EFD indicated that the primary means for new employees to satisfy the initial ethics orientation requirement is by completing an interactive, computer-based training module developed by L/EFD and administered by FSI that takes one hour to complete, PA451-Ethics Orientation for New Employees (PA451). This module covers the Standards of Conduct and the conflict of interest laws, focusing particularly on the areas of gifts, conflicting financial interests and relationships, seeking employment, misuse of position, and outside activities.

In order to identify new employees and notify them of the initial ethics orientation requirement, FSI pulls data on new hires from a human resources database. FSI then sends new hires automatic notifications both 45 and 60 days after entering on duty, reminding them to complete the orientation. Executive Directors and Management Officers may track completion of PA451 through State's Knowledge Information Center. However, L/EFD officials stated that State did not take disciplinary action during 2015 against employees who missed the deadline or failed to complete the training.

While PA451 is mandatory, State records provided to OGE indicate that only 40% of new hires completed the module in 2015. Specifically, the records showed that in 2015, State appointed 3,192 new employees, and 1,923 (60%) of them failed to complete the PA451 training module. Based on the information provided, it appears that State's automated system for identifying new hires and ensuring that they take PA451 is deficient. According to L/EFD

officials, they are working to better understand and address this deficiency in the implementation of PA451.

Figure 1: State's Rate of Completion for PA451



State indicated that all new civil service employees and Foreign Service Officers are also required to attend a new employee orientation program. Each of these programs includes at least one hour of live instruction presented by an L/EFD attorney.

L/EFD officials explained that the initial ethics orientation for civil service employees is conducted as part of the larger Civil Service Orientation program offered in Washington, DC. The ethics instruction portion of the program covers the basic obligations of government service and the sources of the ethics rules, and provides an overview of various ethics issues, including conflicts of interest, impartiality, bribery, supplementation of salary, misuse of position, gifts, outside activities, seeking employment, and political activities.

L/EFD officials further explained that new employees do not attend the Civil Service Orientation program before they begin their job and many do not attend this program (and therefore do not receive the ethics orientation) within 90 days of entering on duty. However, they are required to take PA451 within 90 days of entering on duty. L/EFD officials stated that Human Resources and FSI recently announced an effort to ensure that all new civil service employees are provided this orientation within 90 days. They added that civil service employees hired since 2014 who have not yet taken the Civil Service Orientation are expected to do so promptly. In order to make the Civil Service Orientation available to all who are required to take it, FSI will offer expanded orientation opportunities in 2017 and may offer limited sessions in Charleston, SC, which has a large State office.

The live initial ethics orientation course for new Foreign Service Officers is provided as part of a larger six-week orientation held in Washington, DC, that all new Foreign Service Officers must complete *before their first assignment*. This course, conducted by L/EFD attorneys, consists of a presentation and a discussion of the ethics rules in the context of eight scenarios which address some of the more common questions L/EFD receives from Foreign Service Officers.

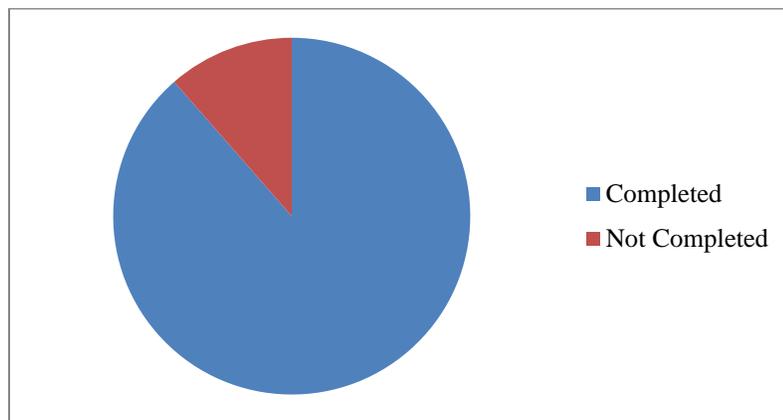
Recommendation

5. Develop and implement new procedures to ensure that all new hires complete initial ethics orientation within 90 days of entering on duty.

Orientation for Locally Employed Staff

In addition to employing civil service employees and Foreign Service Officers, State employs foreign nationals and resident American citizens in foreign posts (Locally Employed Staff). State requires all new Locally Employed Staff to receive initial ethics orientation by directing them to complete an FSI computer-based training module, PA453-Ethics Orientation for Locally Employed Staff (PA453). This module—which State offers in English, Arabic, French, Russian, and Spanish—includes questions and examples that are tailored to the circumstances of Locally Employed Staff. According to State’s records, State hired 2,430 individuals as Locally Employed Staff in 2015, and 2,125 (89%) of them completed PA453.

Figure 2: 2015 Initial Ethics Orientation for Locally Employed Staff



Orientation for Ambassadorial Candidates

Prior to reporting to post, Ambassadorial candidates are required to attend State’s Ambassadorial Seminar, which is held in Washington, DC. This seminar, designed to prepare Ambassadorial candidates for their leadership positions at missions abroad, includes a one-hour presentation by State’s DAEO and Alternate DAEO on the Standards of Conduct and ethics issues that are likely to arise at post. The presentation largely consists of hypothetical case studies and discussions on relevant ethics laws and regulations. Attendees are also provided with copies of their public financial disclosure report, their ethics agreement, and the Desk Book for Senior Officials. The Desk Book is intended to serve as the “go to” guide for PAS appointees, assisting them in identifying typical ethical challenges and answering basic day-to-day ethics questions they may encounter. It is arranged by topic, covering conflicts of interest, impartiality, misuse of position, gifts, outside activities, post-employment, and seeking employment. Notably, the introduction to the Desk Book stresses the importance of ethics training and identifies the resources available to PAS appointees to comply with the training requirements.

Orientation for Non-Ambassadorial PAS Appointees

State indicates that it provides live, in-person initial ethics orientations for new PAS appointees who are not in Ambassadorial positions (e.g., the Secretary, Under Secretaries, Assistant Secretaries, etc.). The DAEO, Alternate DAEO or another member of the L/EFD staff presents each orientation. As part of the orientation, these new PAS officials are provided copies of their public financial disclosure report, their ethics agreement and the Desk Book for Senior Officials

B. Annual Ethics Training Plan

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

L/EFD did not develop a written training plan specifically for calendar year 2015. L/EFD officials indicated that a general plan for ethics training is reflected in 11 FAM 619. While this section of the FAM does not contain estimates of the number of employees who will receive verbal and written training, as currently required by 5 C.F.R. § 2638.706, L/EFD officials reasoned that the number of people required to be trained can be ascertained at any time using the electronic financial disclosure system because all of these individuals are financial disclosure filers and are therefore required to receive annual ethics training. Moreover, because the FSI computer-based module, PA454-Annual Ethics Training, is recognized by L/EFD as the only training method that filers can use to meet the annual training requirement, L/EFD does not see a need to estimate the number of employees who will receive written training in lieu of verbal training. While State's approach to the annual training plan is not strictly compliant with the regulatory requirements, OGE is more concerned about the results of State's training program than about the technical compliance of its annual ethics training plan.⁹

C. Annual Ethics Training

OGE regulations require that all covered employees receive annual ethics training consisting of a review of: (1) the Principles, (2) the Standards of Conduct, (3) any agency supplemental standards; (4) the criminal conflict of interest statutes, and (5) ethics official contact information. Requirements for training length and delivery method for employees vary according to their status as either public financial disclosure filers or confidential financial disclosure filers. *See* 5 C.F.R. §§ 2638.704 and 705.

In order to meet annual ethics training requirements, L/EFD provides live training to the Secretary and the Deputy Secretaries. In 2015, annual training for other covered employees was available in a number of formats, but the primary method of training was the FSI online training module, PA454-Annual Ethics Training (PA454). This module focuses on the key subjects of conflicts of interest, impartiality, misuse of position, and gifts. OGE notes that this module also

⁹ At this time, OGE is not issuing a recommendation regarding the training plan. The cited FAM section complies with new requirements in a final rule amending 5 C.F.R. part 2638 on November 2, 2016.

includes a description of the repercussions for failing to timely file a financial disclosure report, including late filing fees, disciplinary action, denial of performance pay, negative impact on promotion potential, and referral to the OIG or to the Department of Justice.

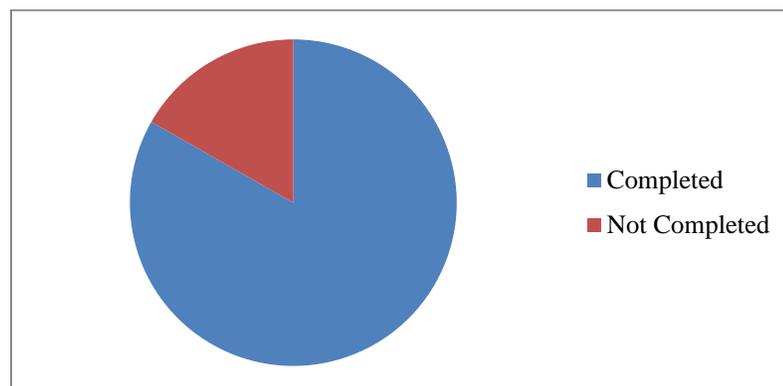
To receive credit for completing PA454, covered employees must read each screen in sequential order and answer the review questions at the end of each section. They must then pass an exam with a score of 80% or better. Employees may repeat the exam until they meet or exceed the passing score. After an employee successfully passes the exam, the course is automatically recorded as completed.

State piloted the module in 2013. In late 2014, State began emphasizing PA454 for annual training, and in late 2015, the requirement to complete annual training using PA454 was memorialized in the FAM. State intends to update some information, make some additional substantive changes in the module, and vary the content in the near future. However, State has no immediate plans to completely overhaul or replace the module.

Annual Ethics Training for PAS Appointees

State made annual ethics training available to PAS appointees in a number of formats in 2015, but primarily used the FSI computer-based module PA454 to provide the training. Indeed, in late 2015, State revised its procedures to require *all* annual training to be completed using PA454. Based on an evaluation of State's training records and follow-up information provided by L/EFD, OGE determined that approximately 85% of State's PAS appointees received annual ethics training in 2015. State indicates that no action has been taken against the remaining 15% of its PAS officials who did not complete the required annual ethics training. OGE's program reviewers focused in particular on training for State's senior officials, most of who are in PAS positions, and identified deficiencies with regard to the delivery and tracking of training for these officials. The failure to consistently provide and/or accurately track training, including for State's most senior leaders, is concerning, as this puts officials at risk of not fully understanding their ethics obligations. L/EFD officials stated that they have developed a plan for ensuring that all PAS officials, as well as all other senior officials, receive ethics training each year. This plan includes providing PAS officials frequent training reminders, making personal contacts with them during the training period, and improving the tracking of the training provided.

Figure 3: 2015 Annual Ethics Training for PAS Officials

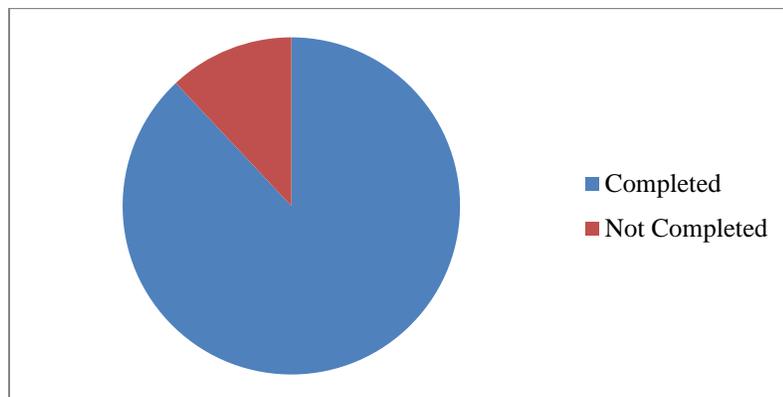


Annual Ethics Training for Non-PAS Public Filers

For 2015, non-PAS public filers could meet the annual ethics training requirement by attending live training events, watching videotaped presentations, or completing online training such as PA454. While State bureaus reported to L/EFD on aggregate training numbers for the year, PA454 was the primary method of annual training, and the only one that tracks and memorializes each individual's participation.

L/EFD provided OGE's program reviewers with a master list indicating that 1,558 non-PAS employees were required to file public financial disclosure reports in calendar year 2015. As public filers, OGE's regulations require State to provide these employees with annual ethics training. Per L/EFD, State bureaus reported that approximately 88% of these employees completed annual ethics training in 2015. OGE's independent comparison of the non-PAS public filer master list against FSI automated training records determined that approximately 66% of these officials took the online PA454 course to meet the annual training requirement.

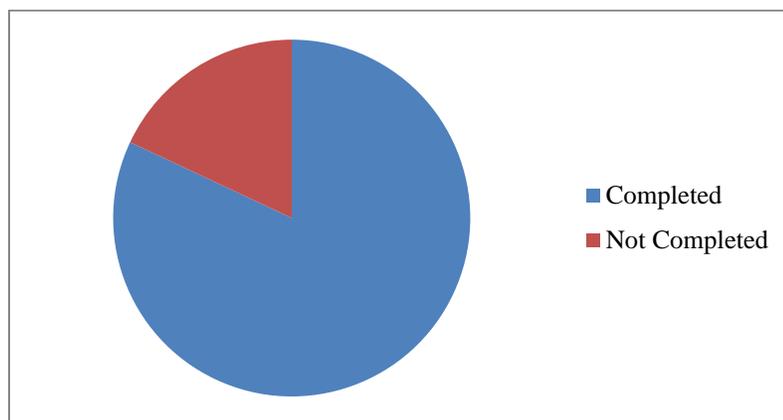
Figure 4: 2015 Annual Ethics Training for non-PAS Public Filers



Annual Ethics Training for Confidential Filers

L/EFD provided OGE's program reviewers with a master list indicating that 5,359 confidential filers were required to receive annual training in calendar year 2015. As with public filers, confidential filers could satisfy their training requirement by attending live training, watching videotaped presentations, or completing online training such as PA454. According to L/EFD, State bureaus indicated that 82% of confidential filers completed annual training in 2015. OGE's comparison of the master list of confidential filers against the automated FSI training list of employees who completed the automated training module that year determined that approximately 65% of these officials took the online PA454 course to meet the annual training requirement.

Figure 5: 2015 Annual Ethics Training for Confidential Filers



Discussion of Tracking Completion of Annual Ethics Training

As noted above, ethics training for all State employees was provided through a variety of methods in 2015. However, training provided through FSI's online PA454 course is the only method that automatically tracks completion. As also noted above, for other methods of training, L/EFD has been reliant upon information provided by the bureaus and has not been able to track this type of training in a centralized, comprehensive way. Moreover, while neither L/EFD nor OGE has reason to question the validity of the data provided by the bureaus, L/EFD officials acknowledge that they cannot independently verify the data. It is for these reasons, among others, that beginning in late 2015 State shifted to an exclusive reliance on PA454 to meet and track completion of the annual ethics training requirements.

Additional Training for Management Officers, Deputy Chiefs of Mission, and Principle Officers at Embassies

State's Management Officers are stationed at posts throughout the world. State provides Management Officers Workshops to provide information regarding the management of their posts. L/EFD routinely conducts ethics training at these workshops. This training is not intended as a substitute for the annual ethics training for Management Officers. In calendar year 2015, L/EFD provided training to approximately 350 Workshop participants, who included Management Officers and administrative personnel. Sample presentations provided to OGE by L/EFD covered a wide variety of topics, such as promoting an ethical culture, fostering public-private partnerships, use of the Ambassador's residence, and the basic requirements of government ethics (e.g., conflicts of interest, gift acceptance, and financial disclosure). As with most of the training provided by L/EFD, these courses also include instructions for contacting L/EFD with any questions that might arise at post.

In addition to Management Officers, Deputy Chiefs of Mission at embassies support Ambassadors with day-to-day ethics guidance. In order to prepare Deputy Chiefs of Mission for effectively managing their posts, FSI also conducts a three-week Deputy Chief of Mission Seminar. As part of the seminar, L/EFD provides one 90-minute training session focusing on the areas that are most applicable to the roles and responsibilities of a Deputy Chief of Mission. The session is scenario-based and involves discussions related to identifying and resolving potential ethics issues that an Ambassador is likely to encounter.

Other Ethics Information

In addition to the formal automated and live training, L/EFD also issues or makes available ethics-related information department-wide. For example, L/EFD prepares “Ethics Tips” for occasional inclusion in the department’s “Tip of the Day” program, which posts brief tips on employees’ computer screens when they log into the IT network. These “Ethics Tips” also provide contact information for L/EFD officials. L/EFD also publishes a monthly column titled “Ethics Answers” in the department’s *State Magazine*, which can be accessed online by any State employee. The column addresses common ethics issues and includes L/EFD’s contact information.

Recommendation

6. Develop and implement procedures to ensure that all covered employees receive annual ethics training by completing PA454. These procedures should also include the steps State will take to address employees who fail to complete the training.

Advice and Counseling

The DAEO is required to carry out a counseling program for employees and former employees of the agency concerning ethics, including post-employment matters. *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.

L/EFD attorneys provide the vast majority of ethics-related advice and counseling within the department, although a number of other officials handle discrete ethics functions and assist in identifying ethics issues. For example, Management Officers at overseas posts and Executive Directors at the headquarters bureaus are authorized to approve attendance at widely attended gatherings by applying the factors outlined in the applicable FAM provision. They contact L/EFD when they need assistance. Other non-ethics attorneys within the Office of the Legal Adviser may also identify situations that involve potential ethics issues and bring them to the attention of L/EFD, as necessary.

According to information provided by L/EFD officials, requests for advice come into their office in a number of ways. The majority of requests are emailed to the generic “Ethics Attorney” email account, and L/EFD assigns its seven attorneys on a rotating basis to monitor that account. The Alternate DAEO indicated L/EFD attorneys received and responded to approximately 5,200 requests for ethics-related advice and counseling in 2015 through the

“Ethics Attorney” email account. Department employees may also call the main telephone number for L/EFD and ask to be transferred to an “on duty” attorney or a specific ethics attorney with whom they have worked in the past. L/EFD attorneys field several hundred of these types of contacts each year and hundreds more related solely to financial disclosure matters. Finally, the department’s senior leadership may contact the DAEO directly with ethics questions.

To evaluate State’s ethics advice and counseling program, OGE examined 40 samples of written ethics advice prepared by L/EFD officials in 2015. Fourteen of the documents OGE examined were 18 U.S.C. § 208(b)(1) waivers. Based on OGE’s examination of the waivers, State appears to have applied the relevant factors articulated in OGE’s implementing regulation at 5 C.F.R § 2640.301 and consulted OGE. However, State had not provided OGE with executed copies of 6 of these 14 waivers, as required by 5 C.F.R. § 2640.303, prior to OGE requesting them as part of the ethics program review process.

The remaining 26 advice documents OGE examined covered various ethics-related topics including financial conflicts of interest, outside activities, endorsements, impartiality, and gift acceptance. OGE has concerns regarding 3 of these 26 non-waiver samples. However, the underlying issues in these instances reflect a lack of thorough, pro-active consideration of ethics issues or recourse to ethics guidance in a timely fashion on the part of the employees, not on the quality of the counseling ultimately provided by L/EFD.

Recommendation

7. Develop and implement effective procedures to ensure that copies of all waivers under 18 U.S.C. § 208(b) are promptly provided to OGE.

Conflict Remedies

The criminal conflict of interest law at 18 U.S.C. § 208 prohibits an employee from participating in an official capacity in a particular matter in which he or she has a financial interest. Congress included two provisions that permit an agency to issue a waiver of the prohibition in individual cases. Under Executive Order 12674, agencies are to consult with OGE, when practicable, prior to issuing a waiver under section 208. Agencies are also required to provide OGE with copies of the executed waivers. As discussed earlier, State failed to provide OGE with a number of its executed waivers, and OGE has issued a recommendation to correct this deficiency.

The Ethics in Government Act requires written notice of the specific actions PAS nominees will take in order to alleviate or avoid conflicts of interest, a requirement that is carried out through the execution and subsequent implementation of an “ethics agreement.” In calendar year 2015, the Senate confirmed 11 nominees for PAS positions at State. Each of these appointees had entered into an ethics agreement prior to confirmation. State confirmed that all of these appointees complied with the requirements of their ethics agreements within 90 days. State provided OGE with evidence of compliance in a timely manner, as required by 5 U.S.C. app § 110 and 5 C.F.R. §§ 2634.802 and .804. However, in 2015, OGE declined to certify periodic transaction reports filed by two other PAS appointees: One because the filer repurchased assets

that had previously been divested pursuant to ethics agreements, the other because of the length of time it took for L/EFD to certify and transmit the report to OGE

Recommendation

8. Implement training, counseling and financial disclosure review mechanisms to ensure that employees do not acquire assets identified in their ethics agreements as conflicting or subject to divestiture.

Enforcement

Executive branch offices are required to notify OGE when they refer potential violations of criminal conflict of interest statutes to the Department of Justice. They are also required to notify OGE whether the Department of Justice prosecutes or declines to prosecute the employee involved and whether the employing agency takes corrective action. *See* 5 C.F.R. § 2638.603. L/EFD officials confirmed that State did not make any such referrals to the Department of Justice in 2015.

In their responses to OGE's statutorily mandated Annual Agency Ethics Program Questionnaire (Annual Questionnaire), agencies are required to indicate the number of disciplinary actions related to violations of the Standards of Conduct they imposed in any calendar year. State's response for calendar year 2015 indicates that it disciplined five employees for violating the Standards of Conduct. L/EFD provided OGE with the following additional information regarding these five reported cases:

- One employee violated 5 C.F.R. § 2635.704 and was disciplined based upon a finding that he falsified a hotel receipt for official travel in order to receive an inflated reimbursement amount. Annual leave and salary were withheld to make restitution.
- One employee violated 5 C.F.R. § 2635.702 and may have engaged in other unspecified misconduct. The employee's security clearance was revoked and the employee was terminated.
- One employee was found to have violated 5 C.F.R. § 2635.502 by participating in a particular matter in which a former employer was a party, within one year of ceasing to work for that former employer. The employee received a letter of reprimand.
- One of the individuals reported was an employee of another federal agency, which has its own Designated Agency Ethics Official. This item should not have been included in State's response to the Annual Questionnaire.
- One employee was disciplined for exercising poor judgment in taking outside employment with a private company for which the employee had official responsibilities and failing to consult with the employee's supervisor. The employee received a letter of reprimand which referenced 5 C.F.R part 2635, subparts E and H.

Special Government Employees

A special Government employees (SGE) is any officer or employee of the executive or legislative branch who is retained, designated, appointed or employed with the expectation of performing official duties for not more than 130 days in any 365-day period. Some SGEs serve on agency advisory committees, boards or commissions. Some SGEs serve in other non-advisory capacities, such as experts and consultants.

SGE Designations

In February 2016, L/EFD submitted a response to OGE's Annual Questionnaire disclosing that State employed 72 SGEs in 2015. L/EFD separately submitted information to OGE's program reviewers, during the pre-review phase of this program review, disclosing that State employed 136 SGEs in 2015. When asked about the inconsistency between the disclosures of 72 SGEs and 136 SGEs, respectively, L/EFD explained that the 72 SGE's disclosed in response to OGE's Annual Questionnaire was not the total number of SGEs employed in 2015; rather, it was the number of SGEs who filed financial disclosure reports.

L/EFD explained that State does not maintain a master list of the SGEs it employs. The individual bureaus within State designate employees as SGEs, and they are responsible for documenting these designations. The bureaus are also responsible for collecting financial disclosure reports from SGEs and forwarding them to L/EFD for review and certification.

According to L/EFD, State has been working to formalize SGE designation and tracking procedures. L/EFD explained that State's Bureau of Human Resources issued a number of policy documents regarding SGEs in 2014, in consultation with the L/EFD. These documents addressed the designation and tracking of SGEs after human resources officials appoint them. In April 2016, the Bureau of Human Resources also centralized the SGE designation process by requiring the bureaus to obtain clearance for all SGE designations from State's Office of Civil Service Human Resources Management (CSHRM). The new procedures also require bureaus to inform CSHRM when a designation is formally made and when a designation is no longer necessary. L/EFD officials anticipate that this new process will enable more accurate tracking of SGEs.

Recommendation

9. Evaluate the new SGE designation process for one full year after its implementation, which will close at approximately the end of April 2017.

Initial Ethics Orientation for SGEs

To comply with the regulatory requirement to provide SGEs with initial ethics orientations, State offers the FSI computer-based training module titled PA452-Ethics Orientation for New Special Government Employees (PA452). Like the modules for other new employees, PA452 focuses on ethics subjects such as conflicts of interest, impartiality, misuse of position, and gifts. The content and test questions also include several items designed to reflect situations and requirements of particular relevance to SGEs.

L/EFD indicated that SGEs also receive a brief written summary of the applicable ethics rules when they go through ethics pre-clearance as part of the SGE designation process. State requires each SGE to sign an acknowledgment upon receipt of the summary. L/EFD officials provided OGE with copies of signed acknowledgments that State collected in 2015 for all SGEs from whom L/EFD received financial disclosure reports.

Financial Disclosure for SGEs

L/EFD indicated that most State SGEs meet the criteria for filing confidential financial disclosure reports. L/EFD provided OGE with two lists of SGEs required to file confidential financial disclosure reports in 2015. The first list identified SGEs who served on Federal Advisory Committee Act (FACA) committees, and the second list identified SGEs who did not serve on committees.

State administered 23 FACA committees in 2015. State has determined that members of 5 of these 23 committees are SGEs. Unless excluded from filing requirements, they must file new entrant financial disclosure reports upon appointment. Unless excluded from filing requirements, they must also file new entrant reports each year upon reappointment; or, in the case of individuals serving on term appointments exceeding one year, on the anniversary of their initial appointments.

State's DAEO has waived the financial disclosure requirements, pursuant to 5 C.F.R. § 2634.904(b), for SGEs serving on 2 of these 5 advisory committees: the Advisory Committee on International Law and the Advisory Committee on Historical Diplomatic Documentation. L/EFD indicated that the DAEO, in consultation with each committee's Designated Federal Officer, evaluates the appropriateness of these waivers from time to time. According to the Alternate DAEO, the waiver for the Advisory Committee on International Law was reevaluated in 2016 and it was decided that no changes would be made. The Advisory Committee on Historical Diplomatic Documentation has not been reevaluated since the original waiver was issued and there are no immediate plans to do so.

State did not collect financial disclosure reports from any of the members of the Cultural Property Advisory Committee (CPAC) in 2015. State failed to timely designate these committee members as SGEs in 2015. State has since designated CPAC members as SGEs and is in the process of collecting financial disclosure reports from them.

OGE examined the confidential financial disclosure reports filed in 2015 by the SGE members of the two remaining FACA committees: the Foreign Affairs Policy Board (FAPB) and the International Security Advisory Board (IASB).¹⁰ The results of OGE's examination are summarized in Table 4 below.

¹⁰ As previously noted, members of the Cultural Property Advisory Committee were not properly designated as SGEs in 2015 and were not notified of the requirement to file.

Table 4. OGE Examination of FACA SGE Confidential Disclosure Reports

	Number of Reports Required to be Filed	Number of Reports Filed Timely	Number of Reports Certified within 60 Days
FAPB	18	15 (93%)	13 (72%)
ISAB	28	28 (100%)	27 (92%)

Recommendation

10. Conduct an analysis of the underlying causes of State’s failure to collect, review, and certify a number of FACA committee reports in a timely fashion, and make appropriate adjustment to the relevant processes.

Non-FACA Committee SGEs

According to a list provided by L/EFD, 39 non-FACA committee SGEs were required to file confidential financial disclosure reports in 2015. To evaluate the administration of the Department of State’s confidential financial disclosure program for these SGEs, OGE examined 33 of these reports. OGE’s examination determined that 32 (97%) of these reports were filed timely and 29 (88%) were certified timely.

Agency Comments

State’s comments in response to this report are attached as a separate letter below.



United States Department of State

The Legal Adviser

Washington, D.C. 20520

January 19, 2017

The Honorable Walter M. Shaub, Jr.
Director
U.S. Office of Government Ethics
1201 New York Ave., NW Suite 500
Washington, D.C. 20005-3917

Dear Mr. Shaub:

We appreciate the opportunity to review and comment on the U.S. Office of Government Ethics (OGE) Ethics Program Review Report for the U.S. Department of State covering calendar year 2015. We thoroughly appreciate the professionalism of your team and the time it has dedicated to this review. We appreciate too, your willingness to engage in discussion and exchange to produce the final report.

The Department of State is firmly committed to maintaining a strong culture of ethics, and we have a dedicated, highly professional ethics office that spearheads this effort with the support of the Department's senior leadership. We maintain a robust, multi-faceted training and guidance program and certify financial disclosure reports for more than 7,000 employees. As the report notes, the Department of State faces challenges because of its world-wide workforce and the large number of Presidentially-appointed, Senate-confirmed positions at the Department. Our ethics office relies on collaboration and support from management officers and others in multiple bureaus and posts around the world.

The Department of State's ethics program has made a number of significant improvements over the last few years, as attorney staffing has increased and the Department has embraced technology both to handle financial disclosure reports more efficiently and to provide effective, accessible training for employees, both in the United States and at our missions abroad. Having introduced many changes, our task now is to evaluate results, identify flaws, and continue to make improvements. In that regard, the program review helped identify areas in which we need to focus our efforts.

We have reviewed the final report and concur with all of the recommendations. We have already begun taking measures to implement some of the recommendations. Others will require that we gather more information before deciding upon the best course of action. Full implementation will take time, but it will be our focus going forward and we will use the report as a measure for

our ethics program's continued growth. We look forward to keeping you updated on our progress.

Again, we appreciate OGE's commitment to supporting agency ethics programs. We thank the OGE program review team, and we look forward to constructive collaboration with OGE in the years ahead.

Sincerely,

A handwritten signature in black ink that reads "Katherine D. McManus". The signature is written in a cursive style with a large, stylized initial 'K'.

Katherine D. McManus
Deputy Legal Adviser and Designated
Agency Ethics Official