

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



May 18, 2016

Tammy L. Kennedy
Chief Counsel, Southeast District (North) and
Designated Agency Ethics Official
Department of Veterans Affairs
3322 West End Avenue, Suite 509
Nashville, TN 37203

Dear Ms. Kennedy:

In September 2014, the United States Office of Government Ethics (OGE) issued a report on the results of its review of the ethics program of the U.S. Department of Veterans Affairs (VA). Since the issuance of OGE's report, VA has made several changes to its ethics program. Most notable of these changes was your appointment as the new Designated Agency Ethics Official (DAEO) in October 2015.

Upon learning of your appointment, OGE initially expressed concern that reassigning the DAEO function to a district office far from VA Central Office could limit the DAEO's access to agency leadership and negatively impact the effectiveness of VA's ethics program. In response, you explained that, prior to your appointment as DAEO, you previously served as VA's Principal Deputy General Counsel and as Acting General Counsel. You indicated that, having held these high-level positions, you have close working relationships with VA's leadership. Therefore, you indicated that you and members of VA's Ethics Specialty Team have ready access to VA's leadership in order to prevent ethics issues from arising.

As the time since your assignment in VA Central Office increases, it will be important for you to ensure that you continue to have regular contact with the Secretary and other top VA leaders. The need for proactive effort will be especially acute as VA experiences turnover in leadership positions. To support your effort in this regard, VA might consider adopting a model practice in place at the U.S. Department of Agriculture. There, the DAEO opens all of the Secretary's senior staff meetings with a five-minute briefing on a government ethics topic. If you are unable to attend the VA Secretary's meetings in person, you might consider participating by phone or video conference. As an example of another best practice VA might consider adopting, the VA Secretary could mandate the annual ethics training for all political appointees be conducted in person.

In the 2014 program review report, OGE raised a concern about the size of VA's ethics staff, relative to the size of VA's workforce. As discussed in the findings below, VA has begun to address this concern. VA has slightly increased the size of its ethics staff by delegating some ethics responsibilities to attorneys in its district offices. VA has also carried out its plan of maintaining a specialized team of attorneys devoted exclusively to government ethics and has

made a priority of deepening their expertise to make them even more effective. In addition, you have explained that you are exploring efficiencies to extend the reach and increase the impact of VA's ethics staff.

OGE encourages you to continue exploring efficiencies that would increase the reach and impact of VA's ethics program. For example, as noted in OGE's 2014 program review report, OGE is concerned that the Ethics Specialty Team does not have sufficient knowledge of the duties of such an organizationally and geographically dispersed group of financial disclosure filers to conduct effective conflict of interest reviews of their reports. As discussed with you during the National Government Ethics Summit last month, VA could increase its capacity to identify conflicts of interest by adopting a model practice that the Department of Defense has instituted. There, filers' supervisors conduct reviews of their financial disclosure reports for conflicts of interest before routing the reports to the ethics office for additional review. VA supervisors should know the nature of their subordinates' duties and, with a little ethics training, would be well-situated to timely identify potential conflicts by comparing filers' reported financial interests with their duties. VA might also consider using regional staff attorneys to conduct campaigns to increase the awareness among VA employees that government ethics advice is available, to assist in funneling government ethics questions from VA facilities nationwide to the Ethics Specialty Team, and to conduct fact-gathering interviews when the Ethics Specialty Team needs additional information in order to respond to complex ethics questions.

These and other steps might serve to increase the reach and impact of VA's ethics program. We ask that you keep OGE apprised as you implement creative approaches to address OGE's concern about the size of VA's ethics office. In addition, please feel free to contact your OGE Desk Officer to collaborate in the development of additional approaches and to discuss any questions or concerns as you continue your efforts to strengthen VA's ethics program. Finally, before turning to the results of OGE's 2016 review of VA's ethics program, I want to emphasize that VA's ethics staff continues to be much smaller, relative to the size of its workforce, than all of the other executive branch departments. OGE continues to believe that VA would benefit from a significant increase in the size of its ethics staff.

Your response to OGE's above suggestions and to the results of the findings of OGE's second review of VA's ethics program is attached.

Result of OGE's Second Review

OGE issued 22 recommendations in its September 2014 report, 6 of which were addressed during the course of the original review and have been closed. OGE recently conducted a second review to assess whether VA has taken action to resolve or sufficiently mitigate the deficiencies underlying the remaining 16 recommendations. The results of the second review are summarized below.

#	Recommendation	Agency Action	Status
1	OGE recommends that VA consider either increasing the size of its ethics program, leveraging existing human capital by having personnel in other offices take on certain responsibilities associated with the ethics program, or exploring other efficiencies that could increase the capacity of VA's ethics program.	<p>In response to OGE's recommendation, VA's Ethics Specialty Team (EST) increased the capacity of its ethics program by training regional staff attorneys (RSAs) to respond to less complex ethics questions and assist the EST with live ethics training. According to VA, RSAs contributed 2,000 hours of ethics work – approximately one full-time equivalent (FTE) – in 2015 to supplement the EST's efforts. The EST also leveraged technology to further increase the capacity of VA's ethics program. The EST uses teleconferencing to provide employees with ethics counseling as well as to train RSAs. Recordings of the RSA training can be viewed by VA employees online at any time.</p> <p>The EST has further leveraged technology by transitioning to OGE's electronic financial disclosure system, <i>Integrity</i>, to process VA public financial disclosure reports. The use of <i>Integrity</i> should create additional efficiencies in VA's public financial disclosure program by increasing filing timeliness and reporting accuracy and streamlining the review process through the system's report comparison functionality.</p>	Closed
3	OGE recommends that VA ensure that its public filers file their reports before the filing deadline.	<p>During its 2014 program review, OGE examined a sample of 110 public financial disclosure reports required to be filed in 2013. During OGE's 2016 program review, OGE examined a sample of 75 public financial disclosure reports required to be filed in 2015. Upon review of the second sample set, OGE determined that filing timeliness had significantly decreased in most categories:</p> <ul style="list-style-type: none"> • 2016 review – all report types: 57% filed timely • 2014 review – all report types: 76% filed timely • 2016 review – new entrant: 32% filed timely • 2014 review – new entrant: 62% filed timely • 2016 review – annual: 92% filed timely • 2014 review – annual: 85% filed timely • 2016 review – termination: 48% filed timely • 2014 review – termination: 83% filed timely 	Open

#	Recommendation	Agency Action	Status
		<p>While the filing timeliness of annual reports improved somewhat, the filing timeliness of new entrant and termination reports significantly decreased between 2014 and 2016. The disparity between the filing rates suggests a breakdown in communication because the EST is dependent on VA's Human Resources office for notice as to VA's hiring of new entrant filers and the separation of termination filers. In contrast, the EST has been able to improve the timely filing rate of annual filers, whose identities are known to the EST.</p> <p>In an effort to improve the filing timeliness of new entrant and termination reports, VA established in July 2015 new procedures for VA's Human Resources office to provide the EST with notice of VA's hiring of new entrant filers and of the separation of termination filers. At the time of OGE's 2016 program review, the new procedures had not been in place long enough for OGE to evaluate their effectiveness because the deadline for filing annual public financial disclosure reports is May 16, 2016.</p>	
4	<p>OGE recommends that VA advise departing public filers that counseling regarding post-employment restrictions is available to both current and former VA employees.</p>	<p>VA provided OGE with a memorandum that directs departing public filers to consult with an EST attorney regarding post-employment restrictions. An attachment to the memorandum provides departing public filers with contact information for EST attorneys.</p>	Closed
5	<p>OGE recommends that VA increase its capacity to perform conflict of interest reviews of public financial disclosure reports.</p>	<p>Since the time of OGE's 2014 report, the number of EST members who have completed training and begun reviewing public financial disclosure reports for conflicts of interest has doubled.</p> <p>As noted above, VA has also transitioned to <i>Integrity</i> in order to streamline financial disclosure reviews for new entrant public filers. VA's expanded use of <i>Integrity</i> may create additional efficiencies that will provide reviewers with more time to focus on identifying conflicts of interest.</p>	Open

#	Recommendation	Agency Action	Status
		<p>Despite these improvements, OGE remains concerned about VA's ability to identify potential conflicts among such a geographically and organizationally dispersed group of filers. For this reason, OGE reiterates its suggestion that VA consider instituting that supervisors of public filers conduct initial reviews of their financial disclosure reports for conflicts of interest.</p>	
7	<p>OGE recommends that VA ensure that employees required to file confidential financial disclosure reports file their reports before the filing deadline.</p>	<p>During its 2014 program review, OGE examined a sample of 60 confidential reports required to be filed in 2013. During OGE's 2016 program review, OGE examined a sample of 40 reports required to be filed in 2015. Upon review of the second sample set, OGE determined that filing timeliness of annual reports decreased and that filing timeliness of new entrant reports improved only marginally:¹</p> <ul style="list-style-type: none"> • 2016 review – all report types: 48% filed timely • 2014 review – all report types: 45% filed timely • 2016 review – new entrant: 20% filed timely • 2014 review – new entrant: 0% filed timely • 2016 review – annual: 75% filed timely • 2014 review – annual: 90% filed timely <p>In an effort to improve the filing timeliness of new entrant reports, VA established in July 2015 new procedures for VA's Human Resources office to provide the EST with notice of VA's hiring of new entrant filers. At the time of OGE's 2016 program review, the new procedures had not been in place long enough for OGE to evaluate their effectiveness. VA also identified several options to improve annual filing timeliness including increasing leadership involvement in the filing process, expanding filing reminders, and increasing EST coordination with local HR offices. This recommendation remains open until OGE can better evaluate the effectiveness of VA's improvement efforts.</p>	Open

¹ Only new entrant and annual reports are addressed because confidential filers do not file termination reports.

#	Recommendation	Agency Action	Status
8	OGE recommends that VA increase its capacity to perform conflict of interest reviews of confidential financial disclosure reports.	VA made four changes to increase its capacity to perform conflict of interest reviews of confidential financial disclosure reports. First, VA expanded its triage process for incoming reports, allowing EST paralegals to identify and initially review the large number of incoming reports with no reportable assets. This change freed EST attorneys to focus on reports with reviewable holdings. Second, VA approved overtime to ensure that paralegal support was available during the 2016 confidential financial disclosure filing season. Third, VA published a financial disclosure handbook that clarifies specific roles and responsibilities in the confidential financial disclosure review process. Lastly, starting with the current 2016 filing season, EST attorneys will begin peer reviewing a statistically significant portion of confidential reports reviewed by other EST attorneys.	Closed
9	OGE recommends that VA complete the destruction of confidential financial disclosure reports that no longer meet the retention requirements at 5 C.F.R. § 2634.604.	VA confirmed that it has completed the destruction of confidential financial disclosure reports that no longer meet the retention requirements at 5 C.F.R. § 2634.604.	Closed
10	OGE recommends that VA confirm that all 23 of its Offices of Regional Counsel have completed their destruction of confidential financial disclosure reports that no longer meet the retention requirements at 5 C.F.R. § 2634.604, and, if they continue to maintain reports in their offices, that they have updated their procedures for conducting routine destructions.	VA confirmed all Offices of Regional Counsel have completed their destruction of confidential financial disclosure reports that no longer meet the retention requirements at 5 C.F.R. § 2634.604.	Closed

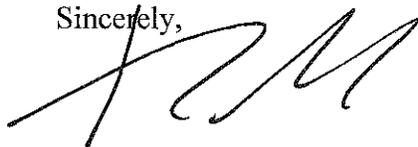
#	Recommendation	Agency Action	Status
12a	OGE recommends that VA ensure that public financial disclosure filers complete the required ethics training each year.	VA provided OGE with documentation showing that 99% of its public financial disclosure filers completed the required annual ethics training in 2015.	Closed
12b	OGE recommends that VA ensure that confidential financial disclosure filers complete the required ethics training each year.	VA provided OGE with documentation showing that 95% of its confidential filers completed the required annual ethics training in 2015.	Closed
13	OGE also recommends that VA ensure that its tracking of this training is accurate.	<p>During OGE's 2014 program review of VA, the EST noted that training records for confidential filers may not have been entirely accurate due to some technical issues related to VA's Talent Management System (TMS), the electronic system which tracks training completion. In particular, EST officials noted the relative newness of the system, as well as its mid-year deployment in 2013, as potentially contributing to the lack of accuracy.</p> <p>During OGE's 2016 program review, OGE determined that the majority of VA's confidential filers received annual training electronically through the TMS, which also automatically tracks completed training. VA manually inputs the names of the confidential filers who received non-electronic training into the same tracking system. At the end of the year, VA reconciles the list of confidential filers who have completed annual ethics against the master list of all confidential filers. VA officials confirmed that these tracking mechanisms, coupled with the maturation of the TMS, increased the accuracy of its tracking of training.</p>	Closed
14	OGE recommends that VA create a training plan at the beginning of each year and retain a copy of that training plan.	VA created a training plan at the beginning of 2015 covering all required elements, and VA has retained a copy of that training plan. VA has also created an electronic calendar reminder regarding the development of the plan each year.	Closed

#	Recommendation	Agency Action	Status
16	<p>OGE recommends that VA review its blanket exemptions for special government employees and determine whether some or all of these officials should be designated as financial disclosure filers. OGE recommends that VA document its determination in writing, with a discussion of the factors that VA considered in making its determination, and provide OGE with a copy of the written determination.</p>	<p>The EST conducted an in-depth review of the blanket exemptions for each committee and provided OGE with written determinations that discuss the factors the EST considered during its review.</p>	Closed
17	<p>OGE recommends that VA establish safeguards to ensure that special government employees (SGE) file all required financial disclosure reports.</p>	<p>OGE verified that VA established two additional safeguards to ensure that SGEs file all required financial disclosure reports.</p> <p>First, VA improved coordination between the EST and SGE advisory committees' Designated Federal Officials (DFOs) by adding a second EST attorney, with SGE financial disclosure experience, to support the coordination and filing process.</p> <p>Second, DFOs now work closely with SGE filers and the EST to ensure that financial disclosure reports are filed prior to the filer's first advisory committee meeting of the year.</p>	Closed
18	<p>OGE recommends that VA complete its review of each financial disclosure report filed by a special government employee and resolve any conflicts of interest prior to the filer's first advisory committee meeting each year.</p>	<p>VA completed reviews of 97% of SGE financial disclosure reports prior to the SGE filer's first advisory committee meeting of the year.</p> <p>The remaining 3% of reports were filed by SGEs who served on a single committee. Collection of this committee's reports was hindered by the extended and unavoidable absence of the committee's DFO. VA has now trained a new DFO</p>	Closed

#	Recommendation	Agency Action	Status
		and alternate DFO to collect this committee's reports, and continues to train new and alternate DFOs throughout VA to collect financial disclosure reports.	
19	OGE recommends that VA increase its capacity to perform conflict of interest reviews of SGE financial disclosure reports. OGE recommends that conflict of interest reviews include a review of advisory committee meeting agendas.	VA increased its capacity to perform conflict of interest reviews of SGE financial disclosure reports by assigning an additional EST attorney to assist with conflict of interest reviews whenever necessary. For 2016, VA will further increase capacity by training DFOs to conduct initial conflict of interest reviews of financial disclosure reports before the reports are forwarded to EST for further review. OGE verified that conflict of interest reviews now include a review of advisory committee meeting agendas.	Closed
21	OGE recommends that VA provide annual ethics training to all of its SGEs.	OGE verified that VA provided annual ethics training to all SGEs required to receive it.	Closed

Thank you for the assistance that you and your staff provided during the program review process. As indicated in the table above, OGE has closed 13 of the recommendations that OGE previously made in its 2014 program review report. OGE will coordinate with you later this year to evaluate VA's progress in addressing the 3 recommendations that remain open.

Sincerely,



Dale Christopher
Deputy Director for Compliance

Attachment



DEPARTMENT OF VETERANS AFFAIRS
Designated Agency Ethics Official

May 6, 2016

Mr. Dale Christopher
Deputy Director for Compliance
U.S. Office of Government Ethics
1201 New York Avenue, N.W., Suite 500
Washington, DC 20005

Dear Mr. Christopher:

This letter provides VA's comments on the OGE draft report from the recent program review. Your office's considered review of the information we provided is appreciated. The 2016 OGE Summit gave me, VA's DAEO, and OGE Director Walter Shaub the opportunity to meet and discuss mutual concerns. This was most helpful.

Your draft report suggested that VA consider having the DAEO open senior leadership meetings with an ethics "moment". We agree with this suggestion and are discussing its implementation or some variation thereof with senior Office of General Counsel (OGC) leadership. We feel that leadership will be willing to emphasize the importance of government ethics as part of VA's core values: Integrity, Commitment, Advocacy, Respect and Excellence (ICARE).

VA already follows some of best practices suggested in the draft report. The Ethics Specialty Team, like the Office of Government Ethics, effectively leverages technology to ensure all VA employees receive quality ethics counseling and training. For instance, the Secretary, via the Chief of Staff, mandated in 2012 that all VA employees take annual ethics training. This training is prepared by OGC's Ethics Specialty Team (EST) and placed in VA's electronic Talent Management System (TMS), where it is assigned to each employee. To receive credit for the training, employees must complete two distinct tasks: viewing the hour-long interactive training presentation and viewing the list of Ethics Specialty Team contacts. Each employee is thus advised on how to contact an agency ethics official for advice and counseling. Additionally, hyperlinks to the EST contact list and general ethics guidance are on the VA intranet homepage and the Office of General Counsel homepage. Printable posters have been sent electronically to all VA facilities for posting so managers can notify VA employees of the availability of ethics advice and counseling. See attached.

I note that OGC has long had a practice of providing ethics training for VA's political appointees on a face to face basis, often one to one. The EST continues this practice. All senior employees at VA Central Office must attend live ethics training presentations presented by an ethics attorney annually. EST staff schedules multiple training sessions at VACO and outlying VA offices in Washington beginning in August. There are plenty of opportunities for attendance at live training. EST provides live training for non-VACO senior employees annually via teleconference or videoconferencing. There are also live training presentations at management meetings and upon request by any VA employee. All EST attorneys have presented ethics trainings at multiple facilities.

Mr. Dale Christopher
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Since January 1, 2016, EST attorneys have conducted approximately fifty training sessions, some of which have been multi-day training sessions.

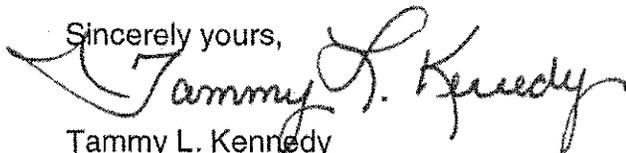
Recommendations #3 and #4: The EST and OGC leadership will be requesting that very senior VA leadership send a memo at the end of the filing season discussing the overall timeliness of employees' annual reports. We plan to request that this memo be followed later in the year by another message re-emphasizing the importance of government ethics to VA's ICARE values and reminding employees that filing season begins in January. The object is to remind employees of the importance of timely completion of their confidential and public financial disclosure reports. As discussed, EST paralegal Victor Robinson meets biweekly with the Corporate Senior Executive Management Office (CSEMO) staff to learn about incoming and departing senior employees. Mr. Robinson coordinates new entrant and termination public financial disclosure reports, which will enhance timeliness. Recommendation #4 is complete. Mr. Robinson gives the attached Termination Public Financial Disclosure Report and Post-Government Employment Counseling for Separating Employees to senior employees when CSEMO advises that a senior employee is leaving VA.

Recommendations #5 and #7 (there was no #6): The EST discussed the timeliness concerns expressed in the program review and agrees that timeliness will be emphasized. Follow-up with delinquent filers will be more aggressive, utilizing the Financial Data Management (FDM) system to contact filers, their immediate supervisors, and facility directors. During the year, EST will continue strengthening its relationships with the facility HR points of contact. At my direction, the Ethics Specialty Team will conduct a cross-review of a statistically significant sampling of the 2016 CFD reports for conflict of interest issues. Attorneys will review reports reviewed by other attorneys, with the results provided to me, and used as training for all EST attorneys and paralegals.

As to Recommendation #16, review of FACA committee filing exemptions is complete. All exemptions have been reviewed and updated. Copies of the written determinations will be provided electronically.

Thank you for the opportunity to review the draft and provide comments. If you have additional questions, please contact ADAEO Mark Jaynes at (254) 297-5307 or mark.jaynes@va.gov.

Sincerely yours,



Tammy L. Kennedy
Designated Agency Ethics Official

Attachments