

## ETHICS PROGRAM REVIEW FOLLOW-UP REPORT

Agency: Department of Justice Headquarters

Follow-up to OGE Report Number: 17-40

Report No.: 19-20F

Date: May 1, 2019



As a result of its review of the Department of Justice (DOJ) Headquarters ethics program, the Office of Government Ethics (OGE) issued five recommendations in its September 2017 program review report. OGE conducted a follow-up review to assess whether DOJ Headquarters has taken sufficient action to resolve the deficiencies underlying these recommendations. The results of the follow-up review are summarized below.

	<b>Recommendation</b>	<b>Agency Action and OGE Finding</b>	<b>Status</b>
1	Revise DOJ's public financial disclosure procedures to include steps describing actions to be taken to deal with public filers who fail to timely respond to requests for additional information.	OGE examined DOJ's revised public financial disclosure procedures and determined that the imposed time standards and escalation steps are appropriate to deal with public filers who are not responsive to requests from the Departmental Ethics Office (Ethics Office) for additional information.	Closed
2	Ensure that all public reports are certified timely.	<p>OGE's September 2017 report indicated that 45% of the reports examined were certified timely.</p> <p>OGE examined a sample of 30 public reports that were required to be filed in 2018. OGE notes that 16 reports (53%) included in the sample were found to have been certified within 60 days after submission. Delays in certification for the majority of the remaining 14 reports were due to ethics officials seeking additional information from filers.</p> <p>While timeliness in certification slightly improved from our September 2017 review finding, OGE will keep this recommendation open for additional follow-up.</p>	Open

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UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

Preventing Conflicts of Interest  
in the Executive Branch

3	<p>Ensure that all confidential reports filed by SGE members on all DOJ Federal Advisory Committee Act (FACA) committees, for which the Ethics Office has direct responsibility, are signed and dated by the filer and the reviewing official.</p>	<p>During OGE’s September 2017 program review, the Ethics Office was directly responsible for providing ethics services to one federal advisory committee—the National Commission on Forensic Science—the members of which were Special Government Employees (SGEs).</p> <p>The charter for this committee expired on April 23, 2017. OGE was advised that there were no plans to re-constitute the committee in the future.</p> <p>OGE was also advised that there was no other FACA committee currently in existence or being contemplated for which the Ethics Office would be directly responsible.</p>	Closed
4	<p>Ensure that all SGE members, for which the Ethics Office has direct responsibility, indicate their reporting status on the first page of the confidential reports as “New Entrant.”</p>	<p>This recommendation is closed based on the findings noted in recommendation 3.</p>	Closed
5	<p>Ensure that any other DOJ advisory committees, for which the Ethics Office does not have direct responsibility, are being provided the necessary ethics services, including the timely collection and certification of financial disclosure reports and the provision of ethics training.</p>	<p>The Ethics Office updated its written procedures regarding financial disclosure and ethics training for DOJ FACA committees. These procedures now indicate that on at least a quarterly basis, the Ethics Office will contact Deputy Designated Agency Ethics Officials for information identifying any FACA committees operating in their components so that they can offer guidance regarding the ethics requirements for SGEs in the committees.</p> <p>The Ethics Office is still refining the processes and procedures developed to maintain oversight of committees that are primarily managed by component offices.</p>	Open

Based on the results of OGE’s follow-up review, all recommendations except for recommendations 2 and 5 are closed. OGE will conduct an additional follow-up review in 2019 to assess whether the remaining two recommendations can be closed.



# Ethics Program Review

Department of Justice

Report No. 17-40  
September 2017



The United States Office of Government Ethics (OGE) has completed a review of the Department of Justice (DOJ) Headquarters ethics program. Based on the review findings, OGE is making five recommendations for improvement. The review also identified two model practices. The following summarizes the results of OGE’s review.

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## Objectives, Scope, and Methodology

**Objectives:** OGE provides overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest. The Ethics in Government Act gives OGE the authority to evaluate the effectiveness of executive agency ethics programs.<sup>1</sup> OGE uses this evaluation authority largely to conduct reviews of agency ethics programs. The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

**Scope:** OGE’s review focused on elements of the ethics program at DOJ headquarters. These elements included program administration, public and confidential financial disclosure, education and training, ethics counseling, agency-specific ethics rules, conflicts remedies, enforcement, and special government employees. The review primarily covered program activities for calendar year 2016.

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

<sup>1</sup> See 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

## Agency Background

DOJ is the cabinet-level department of the federal executive branch tasked with enforcing the law and defending the interests of the United States according to the law. According to its website, DOJ's mission is, "to enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic, to provide federal leadership in preventing and controlling crime, to seek just punishment for those guilty of unlawful behavior, and to ensure fair and impartial administration of justice for all Americans."

Led by the Attorney General, a presidentially appointed, Senate-confirmed (PAS) official, DOJ accomplishes its mission through the work of approximately 40 components having a broad array of national security, law enforcement, and criminal justice system responsibilities. Headquartered in Washington, DC, DOJ employs more than 100,000 people throughout the United States.

## Program Administration

The Assistant Attorney General for Administration within the Justice Management Division (JMD)<sup>2</sup> serves as DOJ's Designated Agency Ethics Official (DAEO). The Deputy Assistant Attorney General of Policy, Management and Planning serves as the Alternate DAEO (ADAEO).

Within JMD, the DAEO oversees several offices. One of these offices is the Departmental Ethics Office (Ethics Office). The Ethics Office is headed by a Director. At the time of OGE's onsite examination, the Ethics Office had a staff of four other full-time ethics officials, including a Deputy Director, two attorney advisors, and one ethics program specialist.<sup>3</sup> The Ethics Office develops policies and procedures for the overall operation of DOJ's ethics program and supervises the program department-wide. The Ethics Office also provides advice and training directly to the Department's Senior Management Offices, the Justice Management Division, and several smaller offices such as the Office of Tribal Justice and the Office of Privacy and Civil Liberties.

The Ethics Office also has ultimate responsibility for the administration of the DOJ ethics program department-wide, although many programmatic functions are decentralized with DOJ's components.

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<sup>2</sup> JMD is the administrative arm of DOJ. Under the direction of the Assistant Attorney General for Administration, the division's services include providing senior management officials with advice relating to basic department policy for budget and financial management, personnel management and training, procurement, ethics, equal employment opportunity, information processing, telecommunications, security, and all matters pertaining to organization, management, and administration.

<sup>3</sup> At the time of OGE's onsite examination, the Director was planning to retire from federal service. Prior to the conclusion of OGE's review, the Deputy Director was promoted to the Director position.

## Financial Disclosure

Title I of the Ethics in Government Act requires that agencies administer public and confidential financial disclosure systems.<sup>4</sup> Financial disclosure serves to prevent, identify, and resolve conflicts of interest by providing for a systematic review of the financial interests of officers and employees. The financial disclosure process also offers an opportunity for ethics officials to provide ethics-related counseling to disclosure report filers.

### Financial Disclosure Written Procedures

Each executive branch agency must establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available financial disclosure reports filed by the agency's officers and employees.<sup>5</sup> OGE examined DOJ's written procedures and determined that they met applicable requirements.

### Public Financial Disclosure

Within 30 days of assuming a covered public filing position, an individual must file a public financial disclosure report.<sup>6</sup> The individual must subsequently file an annual report by May 15 each year and a termination report within 30 days of departing the public filing position.<sup>7</sup> The reports are required to be reviewed for potential conflicts of interest and certified within 60 days of receipt by the ethics office, unless additional information is being sought from the filer or remedial action is being taken.<sup>8</sup>

In 2016, the Ethics Office was responsible for the review and certification of 104 public financial disclosure reports. OGE examined a sample of 62 of these reports. Table 1 below presents the results of OGE's examination.

**Table 1. OGE Examination of DOJ Headquarters Public Reports**

	New Entrant	Annual	Termination	Total
<b>Reports Examined</b>	4	48	10	62
<b>Filed Timely</b>	3 (75%)	47 (98%)	10 (100%)	60 (97%)
<b>Certified Timely</b>	1 (25%)	24 (50%)	3 (30%)	28 (45%)

<sup>4</sup> See 5 U.S.C. app.

<sup>5</sup> See 5 U.S.C. app. § 402(d)(1).

<sup>6</sup> See 5 C.F.R. § 2634.201(b).

<sup>7</sup> See 5 C.F.R. § 2634.201(a) and (e).

<sup>8</sup> See 5 C.F.R. § 2634.605.

As shown in Table 1 above, OGE found 97% of the reports examined were filed timely; however, only 45% were certified timely. Late certification ranged from 76 days to 329 days beyond the required 60-day timeframe and included 3 reports that had not been certified by the time of OGE's onsite examination in April 2017.

According to Ethics Office officials, in some instances reports were certified late due to email address problems associated with one of the Ethics Office's reviewers, which resulted in delays in routing some reports to the reviewer's queue within *Integrity*.<sup>9</sup> Ethics Office officials stated that this problem has since been corrected. Ethics Officials added that some late certifications also occurred as a result of some filers failing to respond to reviewers' repeated requests for additional information. Late certification of financial disclosure reports, especially due to lack of complete information from filers, diminishes an agency's ability to provide timely and specific advice to filers regarding potential conflicts of interest.

Despite the concerns regarding timeliness of certification, OGE was satisfied with the quality of the conflict of interest analyses the Ethics Office conducted.

### Recommendations

1. Revise DOJ's public financial disclosure procedures to include steps describing actions to be taken to deal with public filers who fail to timely respond to requests for additional information.
2. Ensure that all public reports are certified timely.

### **Confidential Financial Disclosure**

Within 30 days of assuming a covered confidential filing position, an individual must file a confidential financial disclosure report.<sup>10</sup> The individual must subsequently file an annual report by February 15 each year.<sup>11</sup> The reports are required to be reviewed for potential conflicts of interest and certified within 60 days of receipt by the ethics office, unless additional information is being sought from the filer or remedial action is being taken.<sup>12</sup>

In 2016, the Ethics Office was responsible for the review and certification of 37 confidential reports. OGE examined as sample of 28 of these reports. Table 2 below presents the results of OGE's examination.

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<sup>9</sup> In 2015, the Ethics Office began using *Integrity*, OGE's web-based electronic financial disclosure system.

<sup>10</sup> See 5 C.F.R. § 2634.903(b).

<sup>11</sup> See 5 C.F.R. § 2634.903(a).

<sup>12</sup> See 5 C.F.R. § 2634.605.

**Table 2. OGE’s Examination of DOJ Headquarters Confidential Reports**

	New Entrant		Annual		Total	
<b>Reports Sampled</b>	2		26		28	
<b>Filed Timely</b>	2	(100%)	24	(92%)	26	(93%)
<b>Certified Timely</b>	2	(100%)	20	(77%)	22	(79%)

As indicated in Table 2 above, the confidential reports OGE examined were generally filed timely. In addition, all of the new entrant reports were certified timely; however, room for improvement exists in the certification timeliness of annual reports. As with the public reports, OGE was satisfied with the quality of the conflict of interest analyses the Ethics Office conducted.

**Education and Training**

During the period covered by OGE’s review, each agency’s ethics training program was required to include at least an initial ethics orientation for all new employees and annual ethics training for covered employees.<sup>13</sup> An ethics training program is essential to raising awareness among employees about the ethics laws and rules that apply to them and the availability of agency ethics officials to provide ethics counseling.

**Initial Ethics Orientation**

To meet initial ethics orientation (IEO) requirements in 2016, all new agency employees were required to receive ethics official contact information along with the following material within 90 days of beginning work: (1) the Standards of Conduct for Employees of the Executive Branch (Standards of Conduct) and any agency supplemental standards of conduct to keep or review; or (2) summaries of the Standards of Conduct, any agency supplemental standards of conduct, and the Principles of Ethical Conduct (Principles) to keep. Employees were also to receive one hour of official duty time to review the material.

According to Ethics Office officials, new DOJ employees are provided IEO materials when they enter on duty. They added that new employees are also provided in-person training as part of the orientation.

OGE examined the materials used to provide IEO in 2016 and found them to be in compliance with all relevant requirements. OGE also determined that in 2016, IEO was provided to 99 percent of all new employees within 90 days of their starting work. According to Ethics Office officials, the remaining one percent of new employees who did not receive IEO or who received it beyond the required 90-day timeframe were either on military deployment, left the agency prior to receiving it, or attended live annual ethics training in lieu of IEO.

<sup>13</sup> Subsequent to the period covered by OGE’s review, the regulation governing executive branch agency ethics training at 5 C.F.R. part 2638 was amended. These amendments became effective January 1, 2017.



### Model Practice

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

- The Ethics Office developed an Ethics Handbook for on and off-duty conduct which summarizes the principal ethics laws and regulations governing the conduct of DOJ employees. The purpose of the handbook is to increase awareness of the ethics rules and their applications, including when DOJ employees are not in a duty status or are on leave. Every new employee is provided a copy of the handbook when they enter on duty.

### **Annual Ethics Training**

To meet the annual ethics training requirements in 2016, covered employees were required to receive training consisting of a review of: (1) the Principles; (2) the Standards of Conduct; (3) any agency supplemental standards of conduct; (4) the criminal conflict of interest statutes; and (5) ethics official contact information. Training length and delivery method could vary by an employee's financial disclosure filing status.

DOJ met the annual training requirement for 2016 by providing a combination of online and in-person training. OGE reviewed the training materials and the training completion records. Based on this review, OGE determined that DOJ's 2016 annual ethics training satisfied content requirements and that all covered employees were trained.

### Model Practice

- The Ethics Office provides discretionary training throughout the year to emphasize specific ethics rules and requirements to different audiences within DOJ.

### **Advice and Counseling**

The DAEO, acting directly or through other officials, is responsible for providing advice and counseling to prospective and current employees regarding government ethics laws and regulations, and providing former employees with advice and counseling regarding post-employment restrictions applicable to them.<sup>14</sup> A robust advice and counseling program is necessary to ensure that employees receive the guidance they need to comply with the ethics rules.

OGE examined a sample of the ethics-related counseling provided by the Ethics Office on a variety of issues. OGE found the counseling to be consistent with applicable laws and regulations.

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<sup>14</sup> See 5 C.F.R. § 2638.104(c)(4).

## Agency-Specific Ethics Rules

An agency may modify or supplement the Standards of Conduct, with the concurrence of OGE, to meet the particular needs of that agency. A supplemental standards of conduct regulation is issued jointly by the agency and OGE and is published in title 5 of the Code of Federal Regulations.

DOJ has issued jointly with OGE a supplemental standards of conduct regulation.<sup>15</sup> Among other things, this supplemental regulation requires employees, other than special government employees, to obtain prior written approval before engaging in certain outside employment.<sup>16</sup> Employees who wish to engage in outside employment for which advanced authorization is needed must obtain written approval from DOJ ethics officials.

To determine compliance with DOJ's supplemental regulation, OGE examined written approvals for eight outside activity requests and found them to be issued in accordance with the supplemental regulation.

## Conflict Remedies

The primary criminal conflict of interest law prohibits an employee from participating in an official capacity in a particular matter in which he or she has a financial interest.<sup>17</sup> Congress included two provisions that permit an agency to issue a waiver of this prohibition in individual cases. Agencies must consult with OGE, where practicable, prior to issuing such a waiver.<sup>18</sup> In 2016, DOJ issued two such waivers after having consulted with OGE.

Additionally, the Ethics in Government Act expressly recognizes the need for PAS nominees to address actual or apparent conflicts of interest by requiring written notice of the specific actions to be taken in order to alleviate the conflict of interest.<sup>19</sup> This written notice is commonly known as an "ethics agreement." OGE confirmed that all of the actions required to be taken pursuant to current PAS officials' ethics agreements were completed timely and requisite evidence of the actions taken was also submitted timely to OGE.<sup>20</sup>

## Enforcement

Executive branch offices are required to notify OGE when they refer a potential violation of a conflict of interest law for possible prosecution.<sup>21</sup> OGE confirmed that the DOJ Inspector General's Office is responsible for referring potential violations on behalf of DOJ and for

<sup>15</sup> See 5 C.F.R. part 3801.

<sup>16</sup> Employees are prohibited from engaging in outside employment that involves criminal matters, the paid practice of law or matters in which DOJ is a party or represents a party. Only the Deputy Attorney General may waive these prohibitions.

<sup>17</sup> See 18 U.S.C. § 208.

<sup>18</sup> See Executive Order 12674.

<sup>19</sup> See 5 U.S.C. app. § 110.

<sup>20</sup> See 5 C.F.R. § 2634.802(a).

<sup>21</sup> See 5 C.F.R. § 2638.206.

concurrently notifying OGE of the referral. OGE was initially notified of five referrals of alleged violations of the criminal conflict of interest statutes by DOJ employees that were made in 2015 and 2017 (there were none in 2016). OGE followed-up with the responsible DOJ Special Agent-In-Charge and was advised that two of the five referrals were reaching final conclusion and investigations for the remaining three were still ongoing. The Special Agent-In-Charge advised that OGE would be notified of the final disposition of all five referrals.

In addition to possibly facing criminal prosecution for violations of the conflict of interest laws, executive branch employees may also face disciplinary action for violations of the Standards of Conduct. According to DOJ’s response to the OGE Annual Agency Ethics Program Questionnaire, 338 disciplinary actions were taken against DOJ employees in 2016 based wholly or in part upon violations of the Standards of Conducts.

**Special Government Employees**

A special government employee (SGE) is an officer or employee of the executive or legislative branch retained, designated, appointed or employed to perform official duties, full-time or intermittently, for not more than 130 days in any 365-day period.<sup>22</sup> SGEs are required to file financial disclosure reports and receive ethics training.

The Ethics Office is responsible for providing ethics services to one federal advisory committee: the National Commission on Forensic Science (Commission), the members of which are SGEs. The Commission provides recommendations and advice to DOJ concerning national methods and strategies for strengthening scientific validity, reducing fragmentation, and improving federal coordination of forensic science.

**Financial Disclosure**

OGE examined a sample of 32 confidential reports that were required to be filed by SGE members of the Commission in 2016. Table 3 below presents the results of OGE’s examination.

**Table 3. OGE Examination of Commission Confidential Financial Disclosure Reports**

<b>Reports Examined</b>	32	
<b>Filed Timely</b>	1	(3%)
<b>Certified Timely</b>	2	(6%)

OGE’s examination uncovered a number of elements that failed to meet compliance requirements. With a few exceptions, the reports OGE examined were neither signed nor dated by the filer or a reviewing official. According to ethics officials, DOJ policy was to not require a filer or reviewer to sign the 450s. However, the Ethics Office confirmed with OGE that these reports were still reviewed each year for actual or potential conflicts of interest. Despite this confirmation, OGE reminds Ethics Office officials that actual certification of financial disclosure

<sup>22</sup> See 18 U.S.C. § 202(a).

reports is integral to affirming that a conflict of interest review was conducted in a thorough and compliant manner. Moreover, advisory committee SGE financial disclosure reports must be certified as being free from conflicts of interest to ensure that the SGE does not take an official action that may benefit them personally during what, in many cases, may be the only committee meeting of the year.

OGE also noted that none of the Commission filers indicated their reporting status on the first page of the confidential report as “New Entrant,” as required by regulation.<sup>23</sup> This is an important distinction, because a new entrant report covers different reporting periods than an annual report. Moreover, a new entrant filer, unlike an annual filer, does not have to report gifts or travel reimbursements.

### Recommendations

3. Ensure that all confidential reports filed by SGE members on all DOJ FACA committees are signed and dated by the filer and the reviewing official.
4. Ensure that all SGE members indicate their reporting status on the first page of the confidential reports as “New Entrant.”
5. Ensure that any other DOJ advisory committees for which the Ethics Office does not have direct responsibility are being provided the necessary ethics services, including the timely collection and certification of financial disclosure reports and the provision of ethics training.

### **Ethics Training**

In addition to its examination of the Commission’s financial disclosure reports, OGE determined that Commission member SGEs received required ethics training. The training includes information on the conflict of interest laws and ethics regulations that apply to Commission members and is provided when members first come on board and annually thereafter. OGE determined that the training provided met content requirements.

### **Agency Comments**

DOJ was given the opportunity to review a draft version of this report. DOJ concurred with the recommendations and provided suggestions for minor edits which were incorporated into the report. DOJ provided additional comments it wanted to be appended to the report to add context. Those comments are provided below.

### Public Financial Disclosure

The data in the table measures only whether reports were certified within 60 days; it does not reflect the timeliness of initial reviews or the depth of work that is completed before

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<sup>23</sup> See 5 C.F.R. § 2634.903(b).

certification can take place by the Department's senior leadership. Conflict identification, remediation, and guidance take place far earlier than does final certification of the report. The percentages thus do not reflect the many levels and completeness of review performed by the Department.

At OGE's suggestion, DEO is using fields in Integrity to register each stage of review that 287e reports undergo. This will help better reflect the comprehensiveness of DEO's review and conflict of interest analysis prior to certification, and will assist with tracking timeliness of report certification. In addition, DEO is working with OGE to maximize Integrity's tracking mechanisms. As DOJ reviewers and the Integrity system become more nimble, we fully expect that review and certification will become more measurably timely.

#### Confidential Financial Disclosure

As with review of 278es, DEO's review and certification processes of OGE Form 450s involve multiple reviewers before final certification by a senior level official. The initial review and conflict remediation required took place with 100% timeliness, which is not reflected in the table.

#### Special Government Employees

In addition to requiring yearly submission of 450s by members of the FACA committee, the Ethics Office called new members of the committee to provide advice based on the filers' New Entrant reports and, based on the contents of subsequent reports, alerted filers to any potential conflicts arising from changes in their reports. The FACA committee was disbanded in April 2017.