



Ethics Program Review

Department of the Treasury
Departmental Offices

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The United States Office of Government Ethics (OGE) conducted a review of the Department of the Treasury (Treasury) Departmental Offices ethics program from April through July 2018. The following summarizes the results of that 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.¹ 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 examined all elements of the Departmental Offices ethics program administered by Treasury ethics officials including, program administration, financial disclosure, education and training, ethics advice and counseling, and agency-specific ethics rules on outside employment.²

Methodology: OGE conducted the review of the Departmental Offices ethics program from April through June 2018. As part of its review, OGE examined a variety of documents provided by Treasury ethics officials, including the Treasury response to OGE’s 2018 Agency Ethics Program Questionnaire, written procedures for administering the ethics program, samples of public and confidential financial disclosure reports filed in 2017, ethics training materials, and a sample of the ethics advice and counseling provided to employees. In addition, OGE met with ethics officials to clarify the information gathered, follow up on issues identified during the review, and discuss ethics program operations in further detail.

¹ See 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

² Treasury has a supplemental standards of conduct regulation at 5 C.F.R. part 3101 requiring employees to obtain approval prior to engaging in outside employment.

Agency Background

An executive agency established in 1789, Treasury is tasked with stewarding the U.S. economic and financial systems. Its activities include producing coins and currency, disbursing payments, collecting revenue, and borrowing funds necessary to run the federal government. The Secretary of the Treasury, a presidentially appointed and Senate-confirmed (PAS) official, leads a workforce of nearly 100,000 who are assigned to Treasury's Departmental Offices and operating bureaus. The Departmental Offices are primarily responsible for policy formulation and overall management of the Department, while the operating bureaus have specialized responsibilities.

Program Administration

Treasury's ethics program structure has not changed significantly since OGE's May 2015 ethics program review report. The program continues to operate under a decentralized structure where the operating bureaus' ethics programs are managed by their own ethics officials while the headquarters ethics office provides guidance to the bureau ethics programs, in addition to managing the ethics services provided to employees of Departmental Offices and all PAS employees. As noted above, OGE's review focused on the activities of the headquarters ethics office as they relate to the Departmental Offices.

The headquarters ethics office is organizationally within the General Counsel's office, and the Assistant General Counsel for General Law, Ethics, and Regulation is the Designated Agency Ethics Official (DAEO). The Deputy Assistant General Counsel for Ethics is the Alternate DAEO (ADAEO). The DAEO and ADAEO are assisted by three attorneys with predominately ethics-related duties, two attorneys with part-time ethics duties, and a non-attorney full-time Ethics Program Manager to run the day-to-day operations of the program.

Financial Disclosure

Title I of the Ethics in Government Act requires that agencies administer public and confidential financial disclosure systems. 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 report filers.

To evaluate Treasury's financial disclosure systems, OGE evaluated the required written procedures for administering the systems and a sample of public and confidential financial disclosure reports that were required to be filed by Treasury Departmental Office employees. OGE also evaluated whether Treasury has established procedures to ensure that human resources promptly notifies the ethics office of new and departing employees and whether new employees and supervisors are notified of their ethics responsibilities.

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.³ Treasury has separate detailed written procedures for both public and confidential financial disclosure. OGE examined both sets of procedures and determined they met applicable requirements.

Notices to DAEO

The lead human resources official is required to notify the DAEO of all appointments to positions that require incumbents to file public or confidential financial disclosure reports no later than 15 days after the appointment. The lead human resources official must also notify the DAEO of terminations of employees in positions that require incumbents to file public financial disclosure reports no later than 15 days after termination.⁴ This helps to ensure the timely collection of financial disclosure reports.

OGE found there is reasonable assurance that Treasury's human resources promptly notifies the ethics office of appointments to and terminations from positions that require incumbents to file public financial disclosure reports.

Public Financial Disclosure

Within 30 days of assuming a covered public filing position, an individual must file a public financial disclosure report.⁵ 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.⁶ 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.⁷

To evaluate the administration of Treasury's public financial disclosure system, OGE examined a sample of 40 new entrant, 40 annual and 40 termination reports that were required to be filed by Departmental Office employees in 2017. Table 1 below presents the results of OGE's examination.

Table 1. OGE's Examination of Treasury Departmental Office Public Financial Disclosure Reports

	New Entrant		Annual		Termination		Total	
Reports Examined	40		40		40		120	
Filed Timely	38	(95%)	36	(90%)	38	(95%)	112	(93%)
Reviewed Timely	38	(95%)	38	(95%)	33	(83%)	109	(91%)
Certified Within 60 Days	29	(73%)	6	(15%)	27	(68%)	62	(52%)

³ See 5 U.S.C. app. § 402(d)(1).

⁴ See 5 C.F.R. § 2638.105(a)(1) and (2).

⁵ See 5 C.F.R. § 2634.201(b).

⁶ See 5 C.F.R. § 2634.201(a) and (e).

⁷ See 5 C.F.R. § 2634.605.

OGE’s examination of the sampled reports indicated timely filing and review and did not identify any concerns regarding Treasury’s review of the reports for potential financial conflicts. However certification of a significant number of the reports did not occur within 60 days. According to Treasury ethics officials the certification delays occurred primarily because of priority given to matters related to the presidential transition in 2017, including meetings with upper management and new political appointees to discuss the importance of ethics and conflicts of interest. Additionally, the ethics office experienced staffing attrition, including the retirement of the DAEO in 2017. Treasury ethics officials stated they remain committed to improving the certification timeliness of their OGE 278 reviews.

Recommendation

1. Improve the certification timeliness of public financial disclosure reports.

Confidential Financial Disclosure

Within 30 days of assuming a covered confidential filing position, an individual must file a confidential financial disclosure report.⁸ The individual must also subsequently file an annual report by February 15 each year.⁹ 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.¹⁰

To evaluate the administration of Treasury’s confidential financial disclosure system, OGE examined a sample of 30 new entrant and 40 annual reports that were required to be filed by Departmental Office employees in 2017. Table 3 below presents the results of OGE’s examination.

Table 2. OGE’s Examination of Treasury Departmental Office Confidential Financial Disclosure Reports

	New Entrant		Annual		Total	
Reports Examined	30		30		60	
Filed Timely	26	(87%)	28	(93%)	54	(90%)
Reviewed Timely	26	(87%)	29	(97%)	55	(92%)
Certified Timely	26	(87%)	29	(97%)	55	(92%)

OGE’s examination of the sampled reports indicated generally timely filing, review, and certification and did not raise any concerns regarding the Treasury’s review of the reports for potential financial conflicts.

⁸ See 5 C.F.R. § 2634.903(b).

⁹ See 5 C.F.R. § 2634.903(a).

¹⁰ See 5 C.F.R. § 2634.605.

Education and Training

Each executive branch agency must carry out a government ethics education program to teach employees how to identify government ethics issues and obtain assistance in complying with government ethics laws and regulations. The training program is to include: briefings for certain PAS employees; notices for prospective employees and newly appointed supervisors regarding their ethics-related obligations; initial ethics training for new employees; and annual ethics training for public and confidential financial disclosure report filers and certain other employees.¹¹ An ethics education 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.

Ethics Briefing for Certain Agency Leaders

Senate-confirmed Presidential appointees, except for those in positions identified in 5 C.F.R. § 2634.201(c)(2), must complete an ethics briefing to discuss their immediate ethics obligations no later than 15 days after their appointment, unless the DAEO grants an extension. Any extension of more than 15 days requires the DAEO to make a written determination that extraordinary circumstances make it necessary to provide the briefing at a later date.¹²

OGE confirmed that the 11 new PAS officials completed an ethics briefing within 15 days of appointment in 2017. The briefings were provided by the ADAEO.

Notices to Prospective Employees

Written offers of employment for positions covered by the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct) must include: a statement regarding the agency's commitment to government ethics; notice that the individual will be subject to the Standards of Conduct and the criminal conflict of interest statutes; information on how to obtain additional information on applicable ethics requirements; and, where applicable, notice of the time frame for completing initial ethics training and information regarding the filing of new entrant financial disclosure reports.¹³

OGE's review found that Treasury has established procedures to notify new employees of their ethics responsibilities in their written offers of employment.

Notices to New Supervisors

An agency must provide each employee upon initial appointment to a supervisory position with certain written materials within one year of the appointment. The written materials must include contact information for the agency's ethics office and the text of 5 C.F.R. § 2638.103; a copy of, a hyperlink to, or the address of a web site containing the Principles of

¹¹ See 5 C.F.R. Part 2638 subpart C.

¹² See 5 C.F.R. § 2638.305.

¹³ See 5 C.F.R. § 2638.303.

Ethical Conduct; and such other information as the DAEO deems necessary for new supervisors.¹⁴

OGE found that Treasury has established procedures to provide new supervisors with the required written materials. In fact, OGE notes that the notices to new supervisors contain material beyond the minimum requirements of OGE's regulation and include training on key ethics topics and scenarios that the new supervisor may encounter.

Model Practice

- Treasury's notices to new supervisors exceed the minimum OGE regulatory requirements and include training on ethics topics and scenarios the supervisor may encounter.

Initial Ethics Training

Each new employee of the agency subject to the Standards of Conduct must complete initial ethics training (IET) that meets the requirements of 5 C.F.R. § 2638.304 within three months of appointment, unless excluded by the DAEO. The training must be interactive and focus on government ethics laws and regulations that the DAEO deems appropriate. The training must address: financial conflicts of interest; impartiality; misuse of position; and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and, instructions for contacting the agency's ethics office.¹⁵ Agencies must also establish written procedures for IET that the DAEO annually reviews.

OGE reviewed the IET Treasury provided in 2017 and determined that it met applicable content and format requirements. OGE also determined that Treasury provided IET to all new employees within three months, as required. Finally, OGE determined that Treasury has established written procedures for IET, which the DAEO reviews annually.

To meet the IET requirements, new employees receive guidance from human resources about completing the online training and are also provided copies of Treasury's ethics handbook, which contains the ethics contact information for all Treasury ethics officials and an extensive discussion of the Standards of Conduct and Treasury's supplemental standards of conduct regulation. The more senior Treasury employees receive in-person briefings that are held periodically in a group setting.

Annual Ethics Training for Public Filers

Generally, live training must be provided each calendar year to each employee whose pay is set at Level I or Level II of the Executive Schedule. Live training must also be provided to other employees who are required to file public financial disclosure reports pursuant to 5 C.F.R.

¹⁴ See 5 C.F.R. § 2638.306.

¹⁵ See 5 C.F.R. § 2638.304.

§ 2634.201(a) every other year, with interactive training provided in the intervening years. The training presentation, whether live or interactive, must focus on government ethics laws and regulations that the DAEO deems appropriate. The training, whether live or interactive, must address: financial conflicts of interest; impartiality; misuse of position; and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and, instructions for contacting the agency's ethics office.¹⁶

OGE reviewed the annual training provided to public filers in 2017 and determined that it met applicable content and format requirements. OGE also examined training records and determined that Treasury provided annual ethics training to all Departmental Office public filers in 2017-- PAS officials received live one-on-one training while non-PAS public filers received live training provided in group sessions.

Annual Ethics Training for Confidential Filers and Certain Other Employees

Generally, interactive training is required to be provided each calendar year to employees who are required to file a confidential financial disclosure report pursuant to 5 C.F.R. § 2634.904; employees appointed by the President and employees of the Executive Office of the President; contracting officers described in 41 U.S.C. § 2101; and, other employees designated by the head of the agency. The training presentation must focus on government ethics laws and regulations that the DAEO deems appropriate. The training must address: financial conflicts of interest; impartiality; misuse of position; and gifts. In addition to the training presentation, the agency must provide the employee with either written copies of or written instructions for accessing: the summary of the Standards of Conduct distributed by OGE or an equivalent summary prepared by the agency; provisions of the agency's supplemental regulations or a summary thereof, as determined appropriate by the DAEO; and, instructions for contacting the agency's ethics office.¹⁷

OGE reviewed the annual training provided to confidential filers in 2017 and determined that it met applicable content and format requirements. OGE also examined training records and determined that Treasury provided the online interactive annual ethics training to all Departmental Office confidential filers in 2017.

Other Ethics Guidance

In addition to the required initial and annual training, during the course of the year Treasury also issues guidance to employees on ethics topics such as gifts and conflicts of interest. The guidance is typically provided in the form of agency-wide email newsletters which may cover several matters of interest to Treasury employees, with an ethics topic included among the other topics discussed.

¹⁶ See 5 C.F.R. § 2638.308.

¹⁷ See 5 C.F.R. § 2638.307.

Model Practice

- Treasury provides ethics guidance to employees, beyond the minimal requirements covered by OGE's ethics education regulations.

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.¹⁸ A robust ethics counseling program is necessary to ensure that employees receive the guidance they need to comply with the ethics rules.

OGE reviewed a sample of counseling and advice ethics officials provided to Treasury Departmental Office employees. The advice examined addressed financial conflicts, gifts, impartiality, misuse of position, outside activities, and seeking outside employment. The advice appeared to be responsive to the questions asked, timely, and consistent with applicable laws and regulations.

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.¹⁹ 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.

Treasury's supplemental standards of conduct regulation requires that all Treasury employees receive prior written approval before engaging in any outside employment or business activities, unless an exemption is issued. In addition, Treasury Legal Division attorneys are prohibited from engaging in the outside practice of law that would require the attorney to: (1) take a position that is or appears to be in conflict with the interests of Treasury; or (2) interpret any statute, regulation or rule administered or issued by Treasury.

To evaluate the administration of Treasury's supplemental regulations, OGE reviewed the outside activities reported on the sample of public and confidential financial disclosure reports OGE examined to determine whether proper approvals existed for the reported activities. OGE identified 25 instances of outside employment or activities disclosed in the sample of reports and determined that the reported outside activities either received appropriate approvals or were exempt from the approval requirement, based on internal departmental guidance. Additionally, OGE did not find any instances of the outside practice of law prohibited by Treasury's supplemental regulation.

¹⁸ See 5 C.F.R. § 2638.104 (c)(4).

¹⁹ See Executive Order 12674 and 5 C.F.R. § 2635.105.

Conflict Remedies

The 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.²⁰ 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.²¹ Treasury issued nine waivers in 2017 and OGE was consulted on each one.

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,²² commonly known as an “ethics agreement.” In 2017, Treasury had 10 PAS officials with ethics agreements and all of these officials complied with the terms of their agreements.

Enforcement

Executive branch offices are required to notify OGE when they refer a potential violation of a conflict of interest law to the Department of Justice (DOJ).²³ During the course of the review, OGE was informed that Treasury’s Office of Inspector General was responsible for making referrals to DOJ and notifying OGE. OIG referred one potential violation to DOJ in 2017 but did not notify OGE. OIG officials explained that the lapse occurred because the requirement to notify OGE was not included in the OIG’s Investigating Agent’s Handbook. OIG officials stated they would update the Investigating Agent’s Handbook to include the appropriate guidance.

Special Government Employees

Special government employees (SGE) are officers or employees of the executive or legislative branch retained, designated, appointed or employed to perform their duties, full-time or intermittently, for not more than 130 days in any 365-day period. SGEs typically serve on agency advisory boards or commissions and are required to file financial disclosure reports and receive ethics training.²⁴

The Treasury ethics office provides ethics services to the Internal Revenue Service Oversight Board, which had one PAS member designated as an SGE in 2017. OGE confirmed the timely filing and review of this official’s financial disclosure report and the receipt of the required ethics training in 2017.

Treasury also hired one non-advisory committee SGE in 2017. As with the other SGE, OGE confirmed the timely filing and review of this employee’s financial disclosure report and the receipt of ethics training in 2017.

²⁰ See 18 U.S.C. § 208.

²¹ See Executive Order 12674.

²² See 5 U.S.C. app. § 110.

²³ See 5 C.F.R. § 2638.206.

²⁴ See 18 U.S.C. § 202(a).

Agency Comments

Treasury found OGE to be accommodating with its scheduling and very reasonable in providing an opportunity to respond to its questions throughout the review.