

United States Office of Government Ethics

Compliance Division

Ethics Program Review

Department of the Army Headquarters

The United States Office of Government Ethics (OGE) conducted a review of the Department of the Army Headquarters (Army HQ) ethics program in January and February 2017. The following report 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 Army HQ ethics program. These elements included program administration, public and confidential financial disclosure, ethics education and training, ethics counseling, agency-specific ethics rules, conflict remedies, enforcement, and special government employees.

Methodology: OGE conducted the review of the Army HQ ethics program in January and February 2017. As part of its review, OGE examined a variety of documents provided by Army HQ ethics officials, including Army’s response to OGE’s 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, and a sample of ethics counseling provided to employees. In addition, OGE met with Army HQ 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 title IV of the Ethics in Government Act, 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

Agency Background

The Department of the Army is one of the three military departments within the Department of Defense. The Secretary of the Army is the Army's top civilian official and is appointed by the President and confirmed by the Senate. The Chief of Staff of the Army (CSA) is the Army's highest-ranking military officer and a member of the Joint Chiefs of Staff. The Army's mission is to provide necessary forces and capabilities to the Combatant Commanders in support of the National Security and Defense Strategies. Army HQ exercises supervisory control over the Army and is comprised of the Army Secretariat and the Army Staff.

Program Administration

The Army's General Counsel is the department's Designated Agency Ethics Official (DAEO). In this role, the General Counsel is responsible for overall oversight of the Army ethics program and exercises final authority within the Army for all ethics matters.

The Army has a decentralized ethics program with over 75 full-time and over 1,000 part-time ethics counselors providing ethics services to the department's employees. The DAEO has designated eight Deputy DAEOs to manage the day-to-day ethics functions within their respective organizations.²

The ethics program at Army HQ is also decentralized; the Army Secretariat and the Army Staff have separate legal and ethics staffs.

Army Secretariat

The Army's Deputy General Counsel-Ethics & Fiscal (DGC-E&F) is the department's Alternate DAEO and also serves as the Army Secretariat's Deputy DAEO. Three full-time ethics counselors, a full-time manager for the Army's electronic financial disclosure system, a full-time paralegal, and seven part-time officials assist the DGC-E&F in managing the Army Secretariat ethics program.

Army Staff

The Army's Judge Advocate General (TJAG) serves as the Army Staff's Deputy DAEO. Personnel assigned to the Ethics, Legislation, and Government Information Practices Branch (ELGIP) within the Office of the TJAG administer the Army Staff ethics program. These personnel include the ELGIP Chief, a full-time civilian ethics counselor, and a part-time military ethics counselor. A paralegal within the Office of the TJAG assists ELGIP by serving as an ethics point of contact.

² The DAEO has delegated as Deputy DAEOs 1) the Principal Deputy General Counsel, 2) the Deputy General Counsel – Ethics & Fiscal, 3) The Judge Advocate General – U.S. Army, 4) the Deputy Judge Advocate General – U.S. Army, 5) The Assistant Judge Advocate General for Military Law and Operations – U.S. Army, 6) the Chief (Administrative Law) Office of the Judge Advocate General, 7) the Command Counsel – U.S. Army Material Command, and 8) the Chief Counsel – U.S. Army Corps of Engineers.

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 the Army HQ financial disclosure systems, OGE examined the written procedures for administering the systems and a sample of public and confidential financial disclosure reports required to be filed by Army Secretariat and Army Staff employees.

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 OGE examined the Army Secretariat's and Army Staff's written procedures and determined they meet applicable requirements.

Public Financial Disclosure

Army Secretariat

To evaluate the timelines of public financial disclosure filing and certification at the Army Secretariat, OGE examined all 10 new entrant, a sample of 40 annual, and all 5 termination reports that were required to be filed in 2016. Table 1 below depicts the results of OGE's examination.

Table 1. OGE's Examination of Army Secretariat Public Financial Disclosure Reports

	New Entrant	Annual	Termination	Total
Reports Sampled	10	40	5	55
Filed Timely	7 (70%)	39 (98%)	5 (100%)	51 (93%)
Certified Timely	9 (90%)	35 (88%)	5 (100%)	49 (89%)

As indicated in Table 1 above, OGE found that public reports examined were generally filed and certified timely. While 3 new entrant reports were filed more than 60 days after the filers' entry into their positions, OGE did not find this to be a systemic deficiency. The delays appeared to be inadvertent and ethics officials were aware of the necessary corrections. OGE also found that two filers who had left the Army Secretariat in 2015 did not file the required

³ See 5 U.S.C. app. § 402(d)(1).

termination reports. Upon OGE’s inquiry the Army Secretariat ethics officials initiated collection of the reports.

OGE’s examination of the Army Secretariat public reports did not reveal material deficiencies in the ethics officials’ review of the reports. OGE found that ethics officials provided assistance and followed up with filers during their review of the reports.

Army Staff

To evaluate the timelines of public financial disclosure filing and certification at the Army Staff, OGE examined all 4 new entrant, a sample of 40 annual, and all 11 termination non-PAS reports that were required to be filed in 2016. Table 2 below depicts the results of OGE’s examination.

Table 2. OGE’s Examination of Army Staff Public Financial Disclosure Reports

	New Entrant		Annual		Termination		Total	
Reports Examined	4		40		11		55	
Filed Timely	4	(100%)	38	(95%)	10	(91%)	52	(95%)
Certified Timely	2	(50%)	29	(73%)	9	(82%)	40	(73%)

OGE found that overall, reports were filed timely but not certified timely. Army Staff officials cited travel and workload as reasons for the late certifications. Failure to timely review and certify financial disclosure reports puts filers at risk of running afoul of the ethics rules by acting in an official capacity on matters that may affect their financial interests. Therefore, OGE recommends that Army Staff officials identify and train alternates who can review and certify reports during periods when the primary reviewer is unavailable.

OGE’s examination of the Army Staff reports did not reveal any material deficiencies in the ethics officials’ substantive review of the reports.

Recommendation

1. Establish alternate reviewers to ensure the timely certification of public financial disclosure reports.

Confidential Financial Disclosure

Army Secretariat

To evaluate the timeliness of confidential financial disclosure filing and certification at the Army Secretariat, OGE examined a sample of 30 new entrant and 30 annual reports filed in 2016. Table 3 below depicts the results of OGE’s examination.

Table 3. OGE’s Examination of Army Secretariat Confidential Financial Disclosure Reports

	New Entrant		Annual		Total	
Reports Examined	30		30		60	
Filed Timely	21	(70%)	29	(97%)	50	(83%)
Certified Timely	28	(93%)	30	(100%)	58	(97%)

OGE’s examination of the Army Secretariat confidential reports found that the annual reports were generally filed timely and both annual and new entrant reports were generally certified timely. OGE did not find material deficiencies in ethics officials’ review of the reports.

However, 9 of the 30 new entrant reports OGE examined were filed more than 60 days after the filers entered into their positions. Army Secretariat ethics officials explained that the late filings occurred because the filers were not notified of the requirement to file in a timely manner. Unlike the system for public filers in which the human resources office provides routine monthly notifications to DGC-E&F of new employees entering covered public filing positions, there is no such routine notification system for confidential filers. DGC-E&F relies on representatives within the human resources office to provide notices of new employees. However, DGC-E&F is not always notified in a timely manner. As a result of OGE’s inquiries into the matter, DGC-E&F updated its standard operating procedures to emphasize the responsibilities of human resources personnel to track and provide timely notifications of new confidential filers. DGC-E&F is also investigating other process changes to improve the timely filing of new entrant confidential financial disclosure reports.

Recommendation

2. Army Secretariat monitor the updated standard operating procedures, as well as any other process changes, to ensure that they result in the improved filing timeliness of new entrant confidential reports.

Army Staff

To evaluate the timeliness of confidential financial disclosure filing and certification at Army Staff, OGE examined a sample of 30 new entrant and 30 annual reports filed in 2016. Table 4 below depicts the results of OGE’s examination.

Table 4. OGE’s Examination of Army Staff Confidential Financial Disclosure Reports

	New Entrant		Annual		Total	
450 Reports Sampled	30		30		60	
Filed Timely	26	(87%)	30	(100%)	56	(93%)
Certified Timely	24	(80%)	29	(97%)	53	(88%)

OGE’s examination of the Army Staff confidential reports indicated generally timely filing and certification. OGE did not find material deficiencies in the ethics officials’ review of the reports.

Education and Training

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. 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 new employees and annual ethics training for covered employees.⁴

Initial Ethics Orientation

To meet initial ethics orientation (IEO) requirements at the time of this review, 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.

OGE reviewed the materials that the Army Secretariat and the Army Staff employees received as their IEO and determined that the materials met the applicable content requirements. OGE also determined that the employees were provided the IEO material within 90 days, as required. IEO for civilian employees is part of the headquarters personnel offices’ civilian employee in-processing and includes verbal presentations, as well as the written materials. New military personnel receive IEO through their basic training or officer basic training course.

Annual Ethics Training

To meet the annual ethics training requirements at the time of this review, covered employees were required to receive annual training consisting of a review of: (1) the Principles; (2) the Standards of Conduct; (3) any agency supplemental standards of conduct; (4) the criminal

⁴ 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.

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.

Army Secretariat

OGE reviewed the contents of the Army Secretariat's annual ethics training and determined that it met applicable content requirements. Most covered employees completed their training either on-line or during monthly, in-person sessions conducted from June through December. PAS officials received one-on-one training from the DGC-E&F Ethics Counselors. Training completion for Army employees is tracked using in the Army's electronic financial disclosure system. OGE's examination of that system determined that all covered employees from the Army Secretariat received annual ethics training in 2016.

Army Staff

OGE reviewed the contents of the Army Staff's annual ethics training and determined that it met applicable content requirements. Employees were trained through an on-line presentation or through in-person sessions. The CSA received in-person training from an ELGIP Ethics Counselor. OGE's examination of the training records determined that all covered Army Staff employees received annual ethics training in 2016.

Ethics Counseling

The DAEO is required to ensure that a counseling program for agency employees, concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program.

OGE reviewed a sample of counseling that ethics officials provided to Army Secretariat and Army Staff employees. This counseling addressed conflict-of-interest, misuse of position, impartiality, and gifts. It appeared to be 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.⁵ 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.

The Army, including Army HQ, is subject to the Department of Defense supplemental standards of conduct regulation.⁶ Among other things, this regulation requires financial

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

⁶ See 5 C.F.R. part 3601.

disclosure report filers to obtain approval prior to engaging in outside activities with a prohibited source.⁷

OGE's examination of a sample of Army Secretariat and Army Staff outside activity requests indicates that approvals and other guidance provided by DGC-E&F and ELGIP were in accordance with the Department of Defense supplemental standards of conduct 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.⁸ Congress included two provisions that permit an agency to issue a waiver of the prohibition in individual cases. Agencies must consult with OGE, where practicable, prior to issuing such a waiver.⁹ In 2016, Army HQ did not issue any waivers.

Additionally, the Ethics in Government Act expressly recognizes the need for Presidential nominees requiring Senate confirmation 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.¹⁰ This written notice is commonly known as an "ethics agreement." The Army Secretariat had one PAS official with an ethics agreement compliance due date occurring during the period under review. OGE found that compliance was achieved timely. OGE also noted that the ethics agreements and compliance documents for this PAS official and for other PAS officials who were appointed earlier were properly maintained in their files at the Army Secretariat, as required. There are no PAS positions within the Army Staff.

Enforcement

The Army Secretariat and Army Staff reported no disciplinary actions based wholly or in part upon violations of the criminal conflict of interest statutes and no disciplinary actions based wholly or in part upon violations of the Standards of Conduct during the period covered by OGE's review.

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.¹¹

⁷ See 5 C.F.R. § 3601.107.

⁸ See 18 U.S.C. § 208.

⁹ See Executive Order 12674.

¹⁰ See 5 U.S.C. app. § 110.

¹¹ See 18 U.S.C. § 202(a).

Army Secretariat SGE Financial Disclosure

Federal Advisory Committee Act SGEs

The Army Secretariat has ethics oversight responsibility for two groups established under the Federal Advisory Committee Act (FACA): the Army Science Board (ASB) and the Arlington National Cemetery Advisory Committee (ANCAC). The SGE members of these two FACA groups file confidential financial disclosure reports. OGE examined a sample of 20 ASB reports and all 7 ANCAC reports. Table 5 below depicts the results of OGE’s examination of the reports.

Table 5. OGE’s Examination of Army Secretariat FACA SGE Confidential Reports

Reports Examined	27
Filed Timely	26 (96%)
Certified Timely	27 (100%)

As indicated in Table 5 above, OGE found that the reports were generally filed and certified timely. OGE did not find material deficiencies in the ethics officials’ review of the reports.

Non-FACA SGEs

The Army Secretariat also has ethics oversight responsibility for the Civilian Aides to the Secretary of the Army (CASA) program. Members of the program are SGEs who agree to serve as representatives of the Secretary of the Army without salary, wages, or related benefits. They file an OGE-approved alternative confidential financial disclosure form annually as part of their yearly reappointment. OGE examined a sample of 20 CASA reports. Table 6 below depicts the results of OGE’s examination of the reports.

Table 6. OGE’s Examination of Army Secretariat CASA SGE Confidential Reports

Reports Examined	20
Filed Timely	20 (100%)
Certified Timely	19 (95%)

As noted in Table 6 above, OGE found that these confidential reports were filed and certified timely. OGE did not find material deficiencies in the ethics officials’ review of the reports.

Other SGEs

During the period covered by OGE’s review, the Army Secretariat had one SGE not affiliated with a board, committee, or other program. OGE examined this SGE’s confidential

report and found that it was filed and certified timely. Moreover, OGE did not find any material deficiencies in the ethics official's review of this report.

Army Staff SGE Financial Disclosure

During the period covered by OGE's review, the Army Staff had two SGEs, a public filer and a confidential filer, not affiliated with a board, committee, or other program. The confidential report was filed and certified timely. Although certified timely, the public report was filed more than 30 days late; however, the filer received a waiver from payment of the late fee. OGE determined that the waiver was issued in accordance with applicable regulations.¹²

SGE Training

OGE's review of the Army Secretariat and Army Staff SGE training materials determined that they met the applicable content requirements. Additionally, OGE's examination of the SGE training records confirmed that 53 out of 56 FACA SGEs and all non-FACA SGEs at the Army Secretariat and the Army Staff received ethics training, as required.

Agency Comments

Army HQ acknowledged OGE's recommendations and provided action plans to address the recommendations.

¹² See 5 C.F.R. § 2634.704.