



# Ethics Program Review

U.S. Department of Transportation  
Office of the Secretary

Report No. 17-27  
June 2017



The United States Office of Government Ethics (OGE) conducted a review of the U.S. Department of Transportation’s (DOT) ethics program within the Office of the Secretary (OST) between January and April 2017. 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.<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 reviewed all elements of the DOT OST ethics program, including: program administration, financial disclosure, education and training, ethics counseling, services provided to special government employees, conflict remedies, and enforcement.

**Methodology:** OGE conducted the review of between January and April 2017. As part of its review, OGE examined a variety of documents provided by OST ethics officials, including the OST responses to OGE’s 2015 and 2016 Annual Agency Ethics Program Questionnaires, 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 the ethics counseling provided to employees. In addition, OGE met with OST 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 title IV of the Ethics in Government Act, 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

## **Agency Background**

DOT is a federal department whose mission is to serve the United States by ensuring a fast, safe, efficient, accessible, and convenient transportation system that meets the vital national interests and enhances the quality of life of the American people. DOT's top priorities are to keep the traveling public safe and secure, increase their mobility, reduce regulatory burden, increase automation and have U.S. transportation system contribute to the nation's economic growth.

Under the leadership of the Secretary of Transportation, a presidentially appointed, Senate-confirmed official, DOT employs almost 55,000 employees located within its headquarters office in Washington, D.C., and throughout the United States. The work of the department is organized into 10 operating administrations, each with its own management and organizational structure.

## **Program Administration**

OST's ethics program is administered from within the DOT Office of General Counsel (OGC). The career Deputy General Counsel is the Designated Agency Ethics Official (DAEO) and the Assistant General Counsel for General Law is the Alternate DAEO (ADAEO). A Senior Attorney who serves as the Deputy Ethics Official (DEO) manages the day-to-day operations of the ethics program along with a full-time ethics paralegal. Five other attorneys also perform ethics-related functions in addition to their other general law duties. According to the DEO, these five attorneys bring a deep understanding of DOT programs, which enhances the ethics advice provided to OST employees. The ADAEO supervises the DEO and the rest of the ethics team and along with the DEO, briefs and consults often with the DAEO on matters affecting senior leadership and the ethics program in general.

## **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 DOT OST financial disclosure systems, OGE evaluated the written procedures for administering the systems and a sample of public and confidential financial disclosure reports that were required to be filed by OST employees in 2016.

### **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>2</sup> OGE examined OST's written procedures and determined that they did not address the process for making reports publicly available, where applicable. Based on OGE's determination, OST amended its written procedures to comply with relevant requirements.

### Public Financial Disclosure

To evaluate the administration of the OST public financial disclosure system, OGE examined 22 new entrant, 40 annual, and 21 termination reports that were required to be filed in 2016. Table 1 below presents the results of OGE's examination.

**Table 1. OGE's Examination of OST Public Financial Disclosure Reports**

	New Entrant		Annual		Termination		Total	
<b>Reports Examined</b>	22		40		21		83	
<b>Filed Timely</b>	13	(59%)	34	(85%)	14	(67%)	61	(73%)
<b>Certified Timely</b>	11	(50%)	13	(33%)	14	(67%)	38	(46%)

As noted in Table 1, only 13 (59%) of the new entrant reports in OGE's sample were filed timely. Ethics officials explained that they had learned of these new entrant filers too late to advise them of filing requirements and collect their reports timely. Ethics officials indicated that they are working with the Human Resources Office (HR) to improve the process by which HR notifies them of employees promoted into public filer positions. Ethics officials stated that the new 5 C.F.R. part 2638 regulations should provide additional incentive for cooperation from HR. Finally, the ethics office has contracted for the design of a more effective tracking system, similar to that used by the Department of the Treasury Ethics Office. Ethics officials expect that this new system will improve their ability to track and notify filers of the requirements related to financial disclosure.

OGE also noted that only 14 (67%) termination reports were timely filed. OGE's examination also revealed that three filers failed to submit a required termination report; these termination reports remain to be collected. Ethics officials acknowledged that they did not know how to grant access to *Integrity*, the electronic filing system used by OST, to departed employees and had to collect several reports on paper, thus delaying the collection process. As noted above, OST ethics officials indicated that they have contracted for the design of a more effective tracking system. Ethics officials believe the new tracking system will assist in ensuring reports are submitted timely. Ethics officials also explained that they have resolved the issue of granting access to *Integrity* to former employees so that they can file their termination reports in the system.

Finally as noted in Table 1, only 11 (50%) of the new entrant reports, 13 (33%) of the annual reports and 14 (67%) of the termination reports OGE examined were certified timely. At least four reports had not been certified at the time of OGE's examination. Ethics officials

<sup>2</sup> See 5 U.S.C. § 402(d)(1) of the Ethics in Government Act.

indicated that in almost all cases reports were thoroughly reviewed at the staff level within 60 days, and in some instances the reviewers were awaiting additional information from filers. However, OGE noticed, and ethics officials acknowledged, that in some instances, a report had been returned to a filer in *Integrity*, and ethics officials did not realize that it had not been resubmitted by the filer until it was uncovered during OGE’s examination of the reports several months later. As a result of OGE’s finding, ethics officials indicated that they have instituted a new process whereby reports are not returned to the filer if there are questions unless they believe the filer was negligent in completing the report or has significant revisions. Instead, reviewers contact the filer for information and then ask for permission to make amendments to the report for the filer.

OGE reminds OST that the late collection and certification of financial disclosure reports increases the risk that employees might take official actions that affect their financial interests, in violation of criminal conflict of interest law.

Recommendations

1. Ensure that new entrant public reports are filed timely.
2. Collect the three outstanding termination reports and ensure that future termination reports are filed timely.
3. Ensure that all public reports are certified timely. This may be accomplished by continuing to implement corrective action to improve the review of the reports and expediting follow-ups with filers in order to eliminate unnecessary delays in certification.

**Confidential Financial Disclosure**

To evaluate the administration of the DOT OST confidential financial disclosure system, OGE examined a sample of 22 new entrant and 40 annual reports that were required to be filed in 2016. Table 2 below presents the results of OGE’s review.

**Table 2. OGE’s Examination of OST Confidential Financial Disclosure Reports**

	New Entrant		Annual		Total	
<b>Reports Examined</b>	22		40		62	
<b>Filed Timely</b>	13	(59%)	24	(60%)	37	(60%)
<b>Certified Timely</b>	21	(95%)	39	(98%)	60	(97%)

As indicated in Table 2, only 37 (60%) of the 62 reports OGE examined were filed timely. While eight of these reports were filed late, on average, by seven days or less, the remaining reports were significantly late. For example, 5 were reports filed more than 70 days after the filing deadline. As noted in the above in the public financial disclosure section of this

report, the late collection financial disclosure reports increases the risk that employees might take official actions that affect their financial interests, in violation of criminal conflict of interest law.

### Recommendation

4. Ensure that confidential financial disclosure reports are filed timely.

## **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.<sup>3</sup>

### **Initial Ethics Orientation**

To meet initial ethics orientation (IEO) requirements during the period covered in 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 OST used to provide IEO and determined that the materials met applicable content requirements. IEO was conducted at new employee orientation sessions during which required ethics materials were provided. Attendees were instructed to complete and return a certification of IEO attendance. DOT reported that 99% of the employees required to receive IEO had received it within 90 days of being hired.

### **Annual Ethics Training**

To meet the annual ethics training requirements during the period covered by 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 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.

OGE reviewed the materials OST used to provide annual ethics training and determined that the materials met applicable content requirements. The training was conducted in 10

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<sup>3</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.

originally scheduled sessions and several make-up sessions. OGE examined training records and determined that OST provided annual ethics training to 99% of covered employees.

### Model Practice

OGE identifies model practices that other agencies should consider adopting. The following is a model practice at OST.

- The former Secretary of Transportation visibly demonstrated support of the ethics program by expressing in a video to DOT employees his expectation that employees complete annual ethics training, conduct themselves with integrity, and adhere to ethical standards. OST plans to create a similar new video featuring the current Secretary of Transportation.

### **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 ethics counseling provided by DOT OST ethics officials to employees. The counseling addressed criminal conflict-of-interest statutes, impartiality, and gifts. It appeared to be responsive to the questions asked, timely, and consistent with applicable laws and regulations.

### **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>4</sup> SGEs generally serve as members of Federal Advisory Committee Act (FACA) committees or as individual experts and consultants. OST employees both types of SGEs and, as part of this review, OGE evaluated the ethics services provided to both.

### **FACA Committee SGEs**

OGE evaluated the ethics services provided to the SGE members of the one OST FACA committee that met during the period covered by OGE's review: the Port Performance Freight Statistics Working Group.

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<sup>4</sup> See 18 U.S.C. § 202(a).

## Confidential Financial Disclosure

In accordance with OGE’s financial disclosure regulation, executive-branch SGEs are required to file a new entrant confidential financial disclosure report within 30 days after their entry-on-duty date. They must also file a new financial disclosure report each year upon reappointment or re-designation. These reports must be filed before any advice is rendered by the SGE and in the case of FACA committee SGEs, before the first committee meeting.<sup>5</sup>

**Table 3. OGE’s Examination of Port Performance Freight Statistics Working Group SGE Confidential Financial Disclosure Reports**

Table 3. OGE’s Examination of Port Performance Freight Statistics Working Group SGE Confidential Financial Disclosure Reports		
<b>Reports Examined</b>	9	
<b>Filed Timely</b>	3	(33%)
<b>Certified Timely</b>	6	(67%)

As noted in Table 3 above, the majority of the reports OGE examined were filed late and/or reviewed and certified after the members had already attended their first committee meeting. Collecting reports late and reviewing and certifying them after the first committee meeting defeats the purpose of financial disclosure; reports of SGE FACA committee members in particular must be timely filed and reviewed for conflicts of interest to prevent an SGE from taking an official action that may benefit them personally during what, in many cases, may be the only committee meeting of the year.

### Recommendation

5. Ensure that confidential financial disclosure reports for Group members are filed timely and reviewed and certified before the first committee meeting.

### *Ethics Training*

OGE determined that the Group SGEs received ethics training immediately before their first meeting began in 2016. The annual training OST provided met content requirements.

### **Expert and Consultant SGEs**

OGE identified one SGE serving as an intermittent consultant in OST. The SGE’s confidential report was filed, reviewed and certified timely. OGE noticed that the reappointed SGE marked the “annual” box, on the OGE Form 450 indicating the type of report. OGE reminds ethics officials to instruct all SGEs to check the “new entrant” box on their financial

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

disclosure reports. This is important because the type of report determines the period covered by the filer's report. In the case of a new entrant, the reporting period is the 12 months preceding the date of filing.

The SGE also received ethics training in 2016. The ethics training met relevant requirements.

## 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.<sup>6</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>7</sup> OST issued five waivers in 2016 to professors of the U.S. Merchant Marine Academy (Academy) for the royalties received from the sale of their books to Academy students. However, OGE did not have any record of being consulted prior to the issuance of any of these waivers. OST officials indicated that they believed that an arrangement had been made several years ago between a now-retired OST ethics official and OGE that allowed for a standardized textbook waiver process that would not require consultation with OGE in each instance, as the sale of textbooks by Academy professors is a routine occurrence. However, neither OGE nor OST had any record of this arrangement. OST officials agreed to revisit this arrangement with OGE prior to issuing any more such waivers.

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>8</sup> This notice is commonly known as an "ethics agreement." OGE reviewed whether the agency maintains documentation of actions taken to comply with ethics agreements for all officials in PAS positions in 2016.<sup>9</sup> OGE found that OST had retained most, but not all, of the written documentation of the actions taken by the aforementioned PAS officials to comply with their respective ethics agreements. OST officials explained that some documents were lost in a computer crash. OGE reminds OST to ensure that the documentation of actions taken to comply with ethics agreements for all officials in PAS positions is maintained with the filer's financial disclosure files.

## Enforcement

DOT as a whole reported no disciplinary actions based wholly or in part upon violations of the criminal conflict of interest statutes but did report two disciplinary actions based wholly or in part upon violations of the Standards of Conduct.

DOT's Office of Inspector General (OIG) conducts investigations of potential violations of the criminal conflict of interest statutes and makes any necessary referrals to the Department

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<sup>6</sup> See 18 U.S.C. § 208.

<sup>7</sup> See Executive Order 12674.

<sup>8</sup> See 5 U.S.C. app. § 110.

<sup>9</sup> See 5 C.F.R. § 2634.804.

of Justice (DOJ). OIG concurrently notifies OGE of any such referrals. In 2016, DOT did not refer any violations to DOJ.

### Agency Comments

OST's comments in response to this report are attached as a separate letter below.



**U.S. Department  
of Transportation**

Office of the General Counsel

1200 New Jersey, S.E.  
Washington, D.C. 20590

May 31, 2017

The Honorable Walter M. Shaub, Jr.  
Director  
Office of Government Ethics  
1201 New York Avenue NW, Suite 500  
Washington, DC 20005

Dear Mr. Shaub:

Thank you for the opportunity to review and comment on the U.S. Office of Government Ethics (OGE) Ethics Program Review Report (Report) for the U.S. Department of Transportation (DOT) Office of the Secretary (OST). We appreciate the efforts of your team throughout this process.

DOT is committed to ensuring that all of its employees uphold the highest standards of ethical conduct. Our dedicated OST ethics team leads this effort for OST employees with the full support of Secretary of Transportation Elaine L. Chao. In my capacity as DOT's Designated Agency Ethics Official (DAEO), I meet several times each week with DOT's Alternative DAEO and members of the OST ethics team to discuss and provide advice on ethics matters. We, in turn, also meet with the Secretary's leadership team to discuss ethics issues several times each week. We are proud of our efforts to maintain the integrity and responsiveness of the OST ethics program.

We have reviewed and concur with the recommendations in your Report, and we are taking measures to implement corrective actions to fully address them. We have already implemented several of the recommendations in the report. For example, so far this year, approximately 96% of new entrant public financial disclosure reports, approximately 91% of termination public financial disclosure reports, and approximately 92% of new entrant annual confidential financial disclosure reports have been filed timely. We also have collected the three outstanding termination public financial disclosure reports from 2016 noted in your Report. We also are taking steps to ensure that all reports filed by the Port Performance Freight Statistics Working Group Special Government Employee members are filed timely and reviewed and certified before their first Group meeting.

In addition, we are pleased to report that all 2017 annual public financial disclosure reports were submitted timely or received limited extensions. As is our usual practice, we have already reviewed all annual reports at the staff level to ensure that all conflicts are identified and addressed. As to 2016 annual public financial disclosure reports, contrary to the concerns OGE expressed in the Report, we note that almost all reports were reviewed at the staff level within 60

days to identify and address possible conflicts. The staff-level reviewer identifies potential conflicts and works with the filer to address them as part of the staff-level review, so no conflicts are missed or unresolved while awaiting final certification by the DAEO or the Alternate DAEO.

In order to ensure that we continue to improve our performance in the areas that were identified in the Report, as well as accomplish a long-standing goal of creating greater efficiency for the Ethics Program by leveraging technology, we have contracted to create an Ethics Tracking Tool similar to that used by the Department of the Treasury's Ethics Program. This SharePoint-based tool will help ensure that financial disclosure reports are tracked from start to finish providing a nimble responsiveness that Integrity lacks and will also provide a more robust filing and retrieval system for ethics advice that has been provided to OST employees.

We are especially committed to maintaining a robust, interactive, and enjoyable ethics training program for OST employees. Annual ethics training is a focus area for our OST ethics team, and we are grateful for the support of DOT's senior leadership including the Secretary of Transportation. To that end, we appreciate OGE's recognition of the Secretary of Transportation's Annual Ethics Training welcome video to DOT employees demonstrating support of the ethics program as a model practice that other agencies should consider adopting.

Thank you for your support of the OST ethics program. We appreciate OGE's continued assistance and guidance as we help DOT employees uphold the highest standards of ethical conduct.

Sincerely,



Judith S. Kaleta  
Designated Agency Ethics Official