



March 2019

FEDERAL ETHICS PROGRAMS

Government-wide Political Appointee Data and Some Ethics Oversight Procedures at Interior and SBA Could Be Improved

Accessible Version

GAO Highlights

Highlights of [GAO-19-249](#), a report to congressional requesters

Why GAO Did This Study

Federal agencies' ethics programs seek to prevent conflicts of interest and safeguard the integrity of governmental decision-making.

GAO was asked to review compliance with ethics requirements for political appointees in the executive branch. This report examines the extent to which (1) existing data identify political appointees serving in the executive branch, and (2) selected agencies use internal controls to reasonably ensure that their ethics programs are designed and implemented to meet statutory and regulatory requirements.

GAO reviewed available data on political appointees. GAO also reviewed three case study agencies selected to provide a range in agency size and number of political appointees. GAO reviewed ethics documentation for a nongeneralizable sample of political appointees at the three agencies at any point between January 2017 and 2018 and interviewed officials from the agencies and two non-governmental organizations.

What GAO Recommends

Congress should consider legislation requiring the publication of political appointees serving in the executive branch. GAO also recommends three actions: SBA should document that training was completed; Interior should conduct more strategic planning for its ethics workforce and document ethics program policies and procedures. SBA neither agreed nor disagreed with GAO's recommendation, but provided documentation that partially addresses the recommendation. Interior agreed with GAO's recommendations.

View [GAO-19-249](#). For more information, contact Tranchau (Kris) T. Nguyen at (202) 512-6806 or NguyenTT@gao.gov.

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Government-wide Political Appointee Data and Some Ethics Oversight Procedures at Interior and SBA Could Be Improved

What GAO Found

There is no single source of data on political appointees serving in the executive branch that is publicly available, comprehensive, and timely. Political appointees make or advocate policy for a presidential administration or support those positions. The Office of Personnel Management (OPM) and two nongovernmental organizations collect, and in some cases, report data on political appointees, but the data are incomplete. For example, the data did not include information on political appointee positions within the Executive Office of the President. The White House Office of Presidential Personnel (PPO) maintains data but does not make them publicly available.

The public has an interest in knowing the political appointees serving and this information would facilitate congressional oversight and hold leaders accountable. As of March 2019, no agency in the federal government is required to publicly report comprehensive and timely data on political appointees serving in the executive branch. OPM is positioned to maintain and make political appointee data publicly available on a timely basis but is limited in its ability to provide comprehensive data. PPO has more comprehensive data but may not be positioned to publish data on a recurring basis. Ultimately, it is a policy decision as to which agency is best positioned to report comprehensive and timely data on political appointees.

All three agencies GAO reviewed generally used appropriate internal controls to ensure they met basic ethics program requirements, though two of the agencies could take actions to strengthen their ethics programs.

- The Departments of Health and Human Services (HHS), and the Interior (Interior), and the Small Business Administration (SBA) all have procedures for administering their financial disclosure systems. HHS and Interior had procedures for providing initial ethics training as required beginning in January 2017. Prior to February 2019 SBA did not have written procedures for initial ethics training and did not adequately document political appointees' training dates. SBA's written procedures now reflect the requirements of initial ethics training and SBA developed a tracking sheet to indicate appointees completed training. GAO will assess the implementation of the tracking sheet to confirm the process is sufficient for documenting appointees' completion of initial ethics training.
- Interior's ethics program has human capital and workforce continuity challenges. Interior reported that four out of 14 full-time positions were vacant. Interior officials attributed the vacancies to a recent transformation of the ethics program and prioritizing the staffing at individual bureaus such as the National Park Service. However, vacancies affected the ethics program's ability to properly document policies and procedures as well as file and review financial disclosure forms. According to Interior officials, steps are being taken to address vacancies and document policies and procedures. However, GAO found that a more strategic and documented approach would enable Interior to better manage human capital, fill key positions, and maintain institutional knowledge.

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Abbreviations

DAEO	Designated Agency Ethics Official
DOJ	Department of Justice
EHRI	Enterprise Human Resources Integration
EOP	Executive Office of the President
FOIA	Freedom of Information Act
HHS	Department of Health and Human Services
Interior	Department of the Interior
OIG	Office of Inspector General
OGE	Office of Government Ethics
OMB	Office of Management and Budget
OPM	Office of Personnel Management
PAS	Presidential Appointee with Senate confirmation
Plum Book	<i>United States Government Policy and Supporting Positions</i>
PPO	Office of Presidential Personnel
SBA	Small Business Administration
SES	Senior Executive Service

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March 14, 2019

The Honorable Gary C. Peters
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Thomas R. Carper
Ranking Member
Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Elijah E. Cummings
Chairman
Committee on Oversight and Reform
House of Representatives

The basic obligation of public service is to place loyalty to the Constitution, laws, and ethical principles above private gain. By acting ethically, government officials can increase public confidence in the integrity of the federal government. Federal agencies' ethics programs are to support ethical behavior by seeking to prevent conflicts of interest and safeguard the integrity of governmental decision-making. Ethics programs establish a foundation on which to build and sustain an ethical culture in the executive branch, including among the political appointees who can constitute the top management of executive branch agencies.¹

You asked us to review compliance with ethics requirements as they relate to political appointees in the executive branch. This report examines the extent to which (1) existing data identify political appointees serving in the executive branch at any point in time, and (2) selected agencies use appropriate internal controls to reasonably ensure that their ethics programs are designed and implemented to meet statutory and regulatory requirements. This report does not assess the overall objectives of federal agencies ethics programs and if those objectives are being effectively met.

¹5 C.F.R. § 2638.101.

For the first objective, we reviewed relevant laws and standards and the *United States Government Policy and Supporting Positions* (Plum Book).² We interviewed officials from the Office of Personnel Management (OPM) to understand the data they collect on political appointees. We also interviewed officials from two nongovernmental organizations, ProPublica and the Partnership for Public Service, which track political appointees serving in the executive branch at any point in time. We contacted the White House Office of Presidential Personnel (PPO) to discuss and request information on how it tracks, maintains, and uses data on political appointees. PPO redirected our request for information to the White House Counsel's Office. As of March 2019, the White House Counsel's Office had not responded to our requests for information. We interviewed two senior PPO officials from the two previous administrations to understand how they tracked and used data on political appointees. We assessed the information we gathered against principles for internal control regarding external communication and directives for the transparency and public availability of government data.³

For the second objective, we interviewed officials from the Office of Government Ethics (OGE), which sets policy for the executive branch ethics program and monitors ethics program compliance. We selected four agencies as case studies for review of their ethics programs. We selected the four agencies to provide a range in the number and type of political appointees in each agency,⁴ a range in agency size, and a range in the strength of their ethics programs, as determined by prior OGE program reviews.⁵ We conducted case studies on three of the agencies

²Every 4 years, just after the Presidential election, the Plum Book is published, alternately, by the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Oversight and Government Reform. The Plum Book lists civil service leadership and support positions that may be subject to noncompetitive status.

³GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014); and Office of Management and Budget, *Open Government Directive*, M-10-06 (Washington, D.C.: Dec. 8, 2009).

⁴The four major types of political appointees include: presidential appointees with Senate confirmation, presidential appointees, noncareer Senior Executive Service, and Schedule Cs. A Schedule C employee is an employee in a position that is excepted from the competitive service because of its policy-determining nature, or because it involves a close and confidential working relationship with the agency head or other top appointed official.

⁵OGE reviews assess individual agency compliance with executive branch ethics laws, regulations, and policies and evaluate the agency's systems, processes, and procedures for administering its ethics program. Reviews are generally conducted every 4 to 5 years.

we selected: the Departments of Health and Human Services (HHS), the Interior (Interior), and the Small Business Administration (SBA). The fourth agency selected was the Executive Office of the President (EOP). We contacted the White House Counsel's Office in February 2018 to solicit the EOP's perspective on the ethics program in place at the White House, and oversight of ethics compliance for political appointees in the executive branch. As of March 2019, the White House Counsel's Office had not responded to our requests for information. Therefore, we did not review the EOP ethics program.

To evaluate the extent to which the three case study agencies have and use appropriate internal controls, we reviewed selected principles from the Standards for Internal Control in the Federal Government (Standards for Internal Control). These standards call for management to design control activities, such as policies and procedures to achieve objectives. Based on our review, analysis, and professional judgment, we selected the internal control principles that were most relevant to effectively executing an executive branch ethics program. We provided each agency with an identical set of questions based on the selected internal control principles and components. We reviewed agency responses to our questions and supporting program and appointee documentation to evaluate whether agencies' policies and processes for overseeing ethics compliance for political appointees were consistent with these principles.

In addition, we acquired data from HHS, Interior, and SBA, on political appointees serving at any point between January 20, 2017 and January 28, 2018. To assess the reliability of the data, we asked each agency's officials about how the data were obtained, where the data came from, and what steps, if any, each agency took to assure the accuracy and completeness of the data. Based on responses provided by HHS, Interior, and SBA, we determined that those agencies' data were sufficiently reliable to indicate each agency's political appointees, with start and end dates, for use selecting a sample of appointees' at each agency. Next, we used a nongeneralizable random sampling method to select political appointees at each agency. We selected 12 political appointees at both

HHS and Interior, and 10 political appointees at SBA.⁶ We reviewed relevant documentation for these appointees to determine whether agency internal controls were sufficient to ensure that certain ethics program requirements, such as signing the ethics pledge, completing initial ethics training, and submitting a financial disclosure report, were met. In addition, we interviewed agency ethics officials, as needed, to discuss the documentation and information they provided. Our review of political appointees' documentation was limited to testing the agencies' ethics program processes and procedures. We did not review individual financial disclosure forms with the intent of identifying conflicts of interest nor did we perform a conflict of interest analysis. See appendix I for a more detailed description of our scope and methodology.

We conducted this performance audit from October 2017 to March 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Executive Branch Ethics Program

The Ethics in Government Act of 1978 was enacted to preserve and promote the accountability and integrity of public officials, and the institutions of the federal government.⁷ The act requires political appointees and high-ranking government officials to complete a public financial disclosure report to help prevent and mitigate conflicts of interest for the purpose of increasing public confidence in the integrity of

⁶To ensure we included certain types of political appointees in our review, we grouped the political appointees from each agency into three groups: (1) individuals in PAS positions, (2) individuals who left the agency during the time frame of our review, and (3) all remaining individuals. We randomly selected three appointees from the first group, three appointees from the second group, and six political appointees from the last group. At SBA, the total PAS appointees and total individuals who left the agency during our review time frame was less than six. As a result, there were fewer total appointees in our SBA sample compared to HHS and Interior.

⁷Pub. L. No. 95-521, 92 Stat. 1824 (1978), *codified, as amended at* 5 U.S.C. App. §§ 101–505 and in scattered sections of titles 2, 5, 18, 28, United States Code.

government. The act also established restrictions on postemployment activities of certain employees, and created OGE.

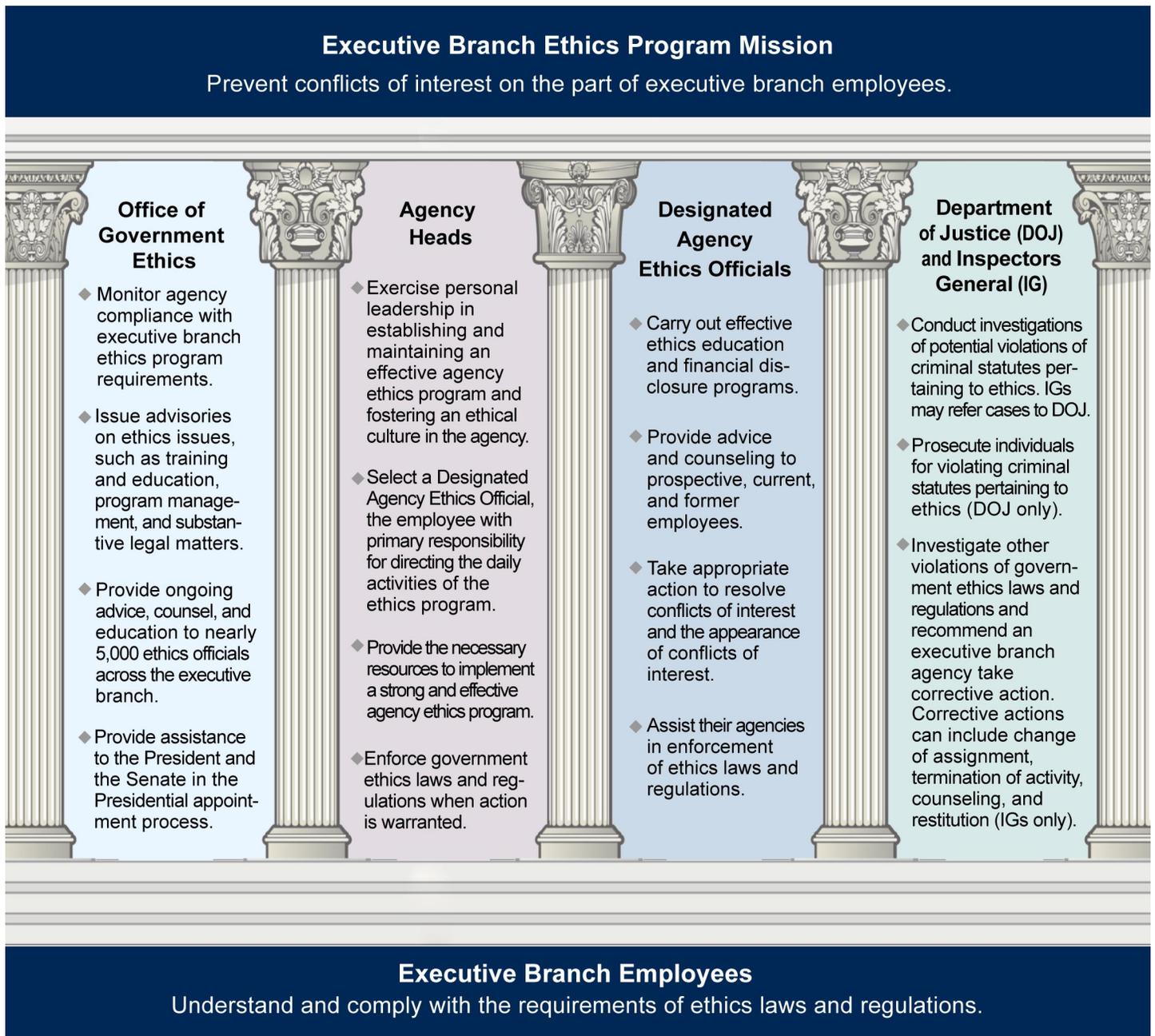
The primary mission of the executive branch ethics program is to prevent conflicts of interest on the part of executive branch employees.⁸ The executive branch ethics program is a shared responsibility across government (see figure 1).

- **OGE** is the supervising ethics office for the executive branch and sets policy for the entire executive branch ethics program.
- **Executive branch agency heads** are responsible for leading their agency's ethics program. Agency leaders are ultimately responsible for their organizations' ethical culture. Their actions can demonstrate the level of commitment to ethics and set a powerful example for their employees.⁹
- **Designated Agency Ethics Officials (DAEO)** and other agency ethics staff carry out ethics program responsibilities and coordinate with OGE.
- **Inspectors General and the Department of Justice** are authorized to investigate potential violations of criminal statutes pertaining to ethics.
- **Executive branch employees** are individually responsible for understanding and complying with the requirements of ethics laws and regulations, and are collectively responsible for making ethical conduct a standard of government service.

⁸5 C.F.R. § 2638.101(a).

⁹OGE Memorandum, *The Role of Agency Leaders in Promoting an Ethical Culture*, (Oct. 5, 2017).

Figure 1: Executive Branch Ethics Program Mission, Roles, and Selected Responsibilities



Source: GAO analysis of laws and regulations. | GAO-19-249

Ethics Laws for Executive Branch Employees

Executive branch employees are ultimately responsible for understanding and abiding by the various ethics laws. Generally, executive branch employees are prohibited from working on government matters that will affect their personal financial interest or the financial interests of a spouse or minor child; general partner; any organization in which they serve as an officer, director, or trustee; and any person or organization with whom they are negotiating or have an arrangement for future employment.¹⁰

Executive branch employees are also subject to

- criminal statutes prohibiting bribery and illegal gratuities;
- civil statutes requiring public financial disclosure; and
- employee standards of conduct, such as acting at all times in the public's interest, serving as good stewards of public resources, and refraining from misusing their office for private gain.¹¹

Agency Offices of Inspectors General (OIG) have a responsibility to investigate potential ethics violations.¹² Among our three case study agencies, since January 2017, the HHS and Interior OIG have investigated potential travel and ethics issues involving political appointees while the SBA OIG did not initiate any similar investigations. The HHS OIG investigated the former Secretary of HHS's use of chartered and commercial aircraft and found that it did not always comply with applicable federal travel regulations and HHS policies and procedures.¹³ In response to its OIG's findings, HHS implemented additional steps for political appointees' travel approval. Since January 2017, the Interior OIG has initiated five investigations into potential ethics violations involving the former Secretary of the Interior.¹⁴ As of March 1,

¹⁰18 U.S.C. § 208; 5 C.F.R. § 2635.402(a), (b)(2).

¹¹5 C.F.R. § 2638.102.

¹²5 C.F.R. § 2638.106.

¹³Office of the Inspector General, U.S. Department of Health and Human Services, *The Office of the Secretary of Health and Human Services Did Not Comply with Federal Regulations for Chartered Aircraft and Other Government Travel Related to Former Secretary Price* Report No.: A-12-17-00002 (July 2018).

¹⁴The Interior OIG initiated an investigation related to the unprofessional behavior of another political appointee at Interior. The OIG ended the investigation after the appointee resigned.

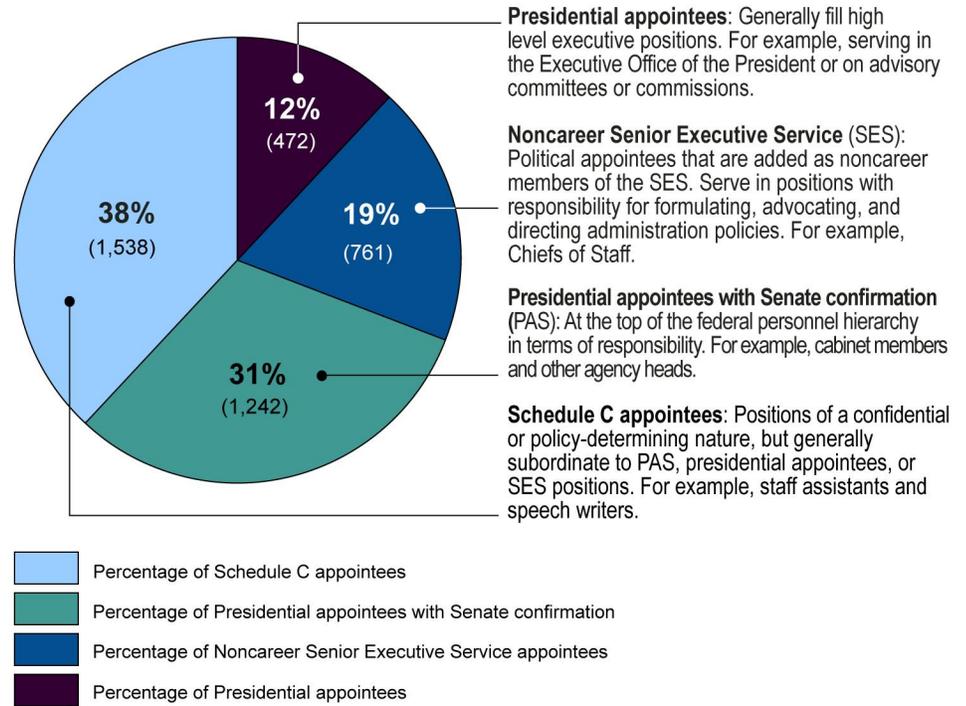
2019, three investigations related to the former Secretary were completed. As a result of the first completed investigation, the Interior OIG found that “incomplete information” about the former Secretary’s travel and use of chartered flights during 2017 was provided to the DAEO for review. The other two completed investigations found no evidence that the former Secretary violated ethics laws. Two investigations remained open as of March 2019. Interior’s DAEO described multiple strategies that were implemented to address issues observed within the ethics program after he was hired in April 2018, such as establishing weekly meetings with the former Secretary of the Interior to discuss ethics matters.

Executive Branch Political Appointees

Executive Branch political appointees are subject to more ethics restrictions than other executive branch employees. Appointees make or advocate policy for a presidential administration or support those positions. Appointees generally serve at the pleasure of the appointing authority and do not have the civil service protections afforded to other federal employees.

There are four major categories of political appointees: Presidential Appointees with Senate confirmation (PAS); presidential appointees; noncareer employees in the Senior Executive Service (SES); and Schedule C employees. The most recent Plum Book, which was published on December 1, 2016, identified about 4,000 political appointee positions from these four major categories across the entire executive branch as of June 30, 2016 (see figure 2). The Plum Book identifies presidentially appointed positions within the federal government using data from the Office of Personnel Management. It is published every 4 years just after the presidential election, alternately, by the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform.

Figure 2: Most Recently Published Data on the Number and Type of Political Appointees Positions, as of June 2016



Source: GAO analysis of data from the 2016 Plum Book. | GAO-19-249

In addition to the ethics laws for executive branch employees, several recent presidential administrations have issued an order requiring political appointees in executive branch agencies to sign an ethics pledge.¹⁵ Some of the restrictions in the ethics pledge relate to areas already covered under existing ethics provisions, such as restrictions on accepting gifts and postemployment restrictions. Political appointees may receive an ethics pledge waiver from the President or his designee of certain or all ethics restrictions and authorizations enabling them to participate in otherwise prohibited activities. Political appointees that sign

¹⁵President Trump issued Executive Order No. 13770 (EO 13770), "Ethics Commitments by Executive Branch Appointees," on January 28, 2017. 82 Fed. Reg. 9333 (Feb. 3, 2017). Prior administrations issued their own ethics pledges, including President Obama (EO 13490) and President Clinton (EO 12834). 74 Fed. Reg. 4673 (Jan. 26, 2009); 58 Fed. Reg. 5911 (Jan. 22, 1993). President Clinton revoked EO 12834 effective January 20, 2001, and President George W. Bush did not issue a new executive order with an ethics pledge. 66 Fed. Reg. 679 (Jan. 3, 2001).

the pledge are contractually bound to adhere to its restrictions. If violated, the restrictions in the pledge could only be enforced through civil actions.

Transparency and Ethics

To foster transparency, federal law permits members of the public to access various government records. OGE provides online access to certified copies of public financial disclosure reports for PAS and certain other executive branch employees, as well as any applicable ethics agreements, certification of compliance for the ethics agreement, and certificates of divestiture for PAS.¹⁶ OGE also provides online access to copies of ethics pledge waivers for appointees at agencies.¹⁷ Members of the public can use this information to assist in holding government officials accountable for carrying out their duties free from conflicts of interest.

No Single Source of Data on Political Appointees Exists That Is Comprehensive, Timely, and Publicly Available

OPM, PPO, and two nongovernmental organizations provide some data on political appointees serving in the executive branch, but the data have limitations that impede their usefulness. The Senate Homeland Security and Governmental Affairs Committee and the House Oversight and Government Reform Committee publish OPM data on political appointees after each presidential election in the Plum Book.¹⁸ Data include name, title, type of appointment, salary, and location of employment. The data reflect the positions and the individuals who are filling the positions at a single point in time, about 5 months prior to the report's publication. While

¹⁶Executive branch agencies or OGE can direct an employee to sell, or otherwise divest, an asset to avoid a conflict of interest or the appearance of one. If selling the asset will result in a capital gain, certain persons may be eligible for a certificate of divestiture to postpone the tax burden of complying with the government's conflict of interest requirements. 5 C.F.R. § 2635.402(e).

¹⁷Copies of ethics pledge waivers granted to Executive Office of the President and Office of the Vice President employees are available at <https://www.whitehouse.gov/disclosures/>, accessed Nov. 9, 2018.

¹⁸The Plum Book is generally published in December after the presidential election and is based on agency data reported to OPM as of the June prior to the election.

the data are comprehensive and publicly available, they are not timely. Because the Plum Book is a snapshot in time, it does not reflect changes that occur in between publications, such as changes to who is holding a certain position, the position title, and vacancies.

OPM also maintains more timely data on federal personnel; however, these data are not comprehensive or publicly accessible for identifying individuals serving in political appointee positions. OPM maintains data in the Executive and Schedule C System and the Enterprise Human Resources Integration (EHRI) system—the latter serves as OPM’s primary repository for human capital data.¹⁹ We found both systems have limitations, several of which were also identified by OPM officials.²⁰ The Executive and Schedule C System is not comprehensive. It includes data on Schedule C and noncareer SES political appointees, but generally does not include data on presidential appointees or PAS. Publicly available EHRI data do not identify political appointees, either at the individual or group level. In addition, the EHRI source data is not publicly available. Political appointees can be identified from a combination of multiple variables, but these combinations are not consistent within or across appointee types. OPM provided some data on political appointees serving in the executive branch as of June 2018 from the Executive and Schedule C System. We reviewed the data and found errors and omissions. For example, we found instances in which individuals appeared to be holding political appointee positions that they departed several months prior and individuals known to currently hold political appointee positions were not identified. We also found that the data are incomplete. For example, the data did not include information on political appointee positions within the EOP. The EOP provides data to OPM only every 4 years for inclusion in the Plum Book.

In addition to OPM, the White House maintains timely data on political appointees that are likely more comprehensive than OPM’s data but are not publicly available. Historically, PPO maintained data on political appointees as part of its responsibilities to recruit, vet, and place political appointees in positions across the government. PPO data on political appointees have not been made publicly available by the Trump, Obama,

¹⁹According to OPM officials, the accuracy and timeliness of information in the Executive and Schedule C System and EHRI is largely based upon agency input.

²⁰GAO, *Federal Human Resources Data: OPM Should Improve the Availability and Reliability of Payroll Data to Support Accountability and Workforce Analytics*, [GAO-17-127](#) (Washington, D.C.: Oct. 7, 2016).

or Bush administrations. According to former officials from the Bush and Obama administrations, PPO maintained and used data on political appointees to carry out its responsibilities. For example, during the Obama administration, PPO established a database to help with filling political appointee positions and managing the overall appointee process. The database included preliminary information on candidates, such as names, application status, and where the applicant was in the vetting process. After a position was filled, the database tracked information such as the name of the appointee, position, federal department or agency, and start and departure dates. The primary limitation of the data was that departure dates of political appointees were unreliable. The former Obama administration official attributed this limitation to the lack of a process for agencies to formally notify PPO when an appointee left a position. To address this gap, PPO met regularly with staff in federal agencies to review data for accuracy.

There are requests by members of the public to obtain data on political appointees serving in the executive branch. For example, between January 2017 and November 2018, OPM received approximately 32 requests through the Freedom of Information Act (FOIA) for data on political appointments across federal agencies. According to OPM officials, requests for data on political appointees are common and tend to increase at the start of a new administration. Former PPO officials also stated that when they served at PPO they received requests for data on political appointees serving in the executive branch.

In the absence of comprehensive and timely data on political appointees serving in the executive branch, two nongovernmental organizations—the Partnership for Public Service and ProPublica—stated that they collect and report some data themselves.²¹ The Partnership for Public Service primarily tracks and reports data on PAS appointments, which are compiled from publicly available sources such as Congress.gov and agency websites. According to the Partnership for Public Service, accurately tracking departure dates is the most significant limitation. Some PAS departures, such as cabinet level officials, are typically reported in the media; however, lower-level PAS departures may not be reported.

²¹The Partnership for Public Service is a nonprofit, nonpartisan organization that seeks to improve government. ProPublica is an independent, nonprofit newsroom that produces investigative journalism.

ProPublica collects and reports data on all types of political appointees serving in the executive branch. To obtain and compile its data, ProPublica makes FOIA requests to OPM and departments and agencies across the executive branch for political appointee staffing lists. ProPublica also makes requests for other data, such as financial disclosure forms through an administrative process required by the Ethics in Government Act of 1978. ProPublica said it has had more than 166,000 unique visitors to its database since it launched in March 2018. According to officials at ProPublica, one limitation is that they rely on agency responses to FOIA requests and therefore the data may not be comprehensive or timely.

The public has an interest in knowing who is serving in the government and making policy decisions. The Office of Management and Budget (OMB) stated that transparency promotes accountability by providing the public with information about what the government is doing. In a 2009 memorandum, OMB directed agencies to make information available online and to use modern technology to disseminate useful information, rather than waiting for specific requests under FOIA.²² Although some data are publicly available on political appointees and FOIA requests can be used to varying effect to obtain data on political appointees, neither option results in comprehensive, timely, and publicly available data. Until the names of political appointees and their position, position type, agency or department name, start and end dates are publicly available at least quarterly, it will be difficult for the public to access comprehensive and reliable information.

Making such information available would promote transparency. The public, including independent researchers, the media, and nongovernmental organizations, can use these data to perform independent analyses to identify gaps and challenges for filling political appointee positions or to identify potential conflicts of interest. Such analyses would also facilitate congressional oversight of executive branch appointees by providing a comprehensive and timely source of information on political appointees.

As of March 2019, no agency in the federal government was required to publicly report comprehensive and timely data on political appointees serving in the executive branch. As the leader of human resources and

²²Office of Management and Budget *Open Government Directive*, M-10-06 (Dec. 8, 2009).

personnel policy, OPM is positioned to collect, maintain, and make political appointee data publicly available on a frequent and recurring basis. However, OPM is limited in its ability to provide comprehensive data, in part because it does not regularly receive data from each agency that has political appointees, such as the EOP, which has approximately 225 political appointee positions based on the 2016 Plum Book. PPO is positioned to make more comprehensive data on political appointees publicly available. However, PPO is reestablished with each new presidential administration, which could be a barrier to establishing a consistent process for maintaining and publishing data on a recurring basis. Ultimately, it is a policy decision as to which agency is best positioned to report comprehensive and timely data on political appointees.

SBA and Interior Ethics Programs Did Not Meet All Documentation Requirements and Interior and HHS Had Workforce Continuity Challenges

All three agencies we reviewed—HHS, Interior, and SBA—generally used appropriate internal controls to ensure they met basic ethics program requirements, such as financial disclosure, though two of the agencies—Interior and SBA—could do more to strengthen their ethics programs. SBA and Interior had not fully documented some of their procedures for ethics training and the ethics pledge, respectively. In implementing their ethics programs, each agency addressed human capital issues and workforce continuity challenges; however, we found that vacancies and staff turnover had negative effects on Interior’s ethics program. For the full results of our assessment of agencies’ internal controls, see appendix II.

Reviewed Agencies Generally Met Basic Requirements for Financial Disclosure and Ethics Training, but Interior and SBA Did Not Document Some Procedures

Financial Disclosure

All three agencies we reviewed met the minimum statutory and regulatory requirement to have written procedures for financial disclosure.²³ Federal law requires agencies to develop written procedures to collect, review, and evaluate financial disclosure reports (see sidebar).²⁴

Financial Disclosure Requirements

Agencies:

- Administer public and confidential financial disclosure systems.
- Establish written procedures for collecting, reviewing, evaluating, and where applicable, making available to the public financial disclosure reports filed by the agency's employees.

Political Appointees:

- File a new entrant public financial disclosure report within 30 days of assuming a public filing position.
- If appointed to a position requiring Senate confirmation, file a nominee report within 5 days of transmittal of the President's nomination to the Senate for confirmation.
- File a termination report within 30 days of leaving office.

Source: GAO analysis of financial disclosure statutes and regulations. | GAO-19-249

Each agency established financial disclosure processes in addition to what is required to reduce the risk of political appointees performing agency work while they may have conflicts of interest. For example, prior to an HHS political appointee's first day, the HHS process requires the appointee's financial disclosure report to be submitted and reviewed, and any potential conflicts be either resolved or identified, and an ethics agreement put in place with a timeline for conflict of interest resolution. This process aims to ensure that appointees are in compliance with ethics laws and regulations when they begin government service, rather than 30 days or more into their appointment.

HHS and SBA have additional processes that include written procedures which reflect OGE's guidance for reviewing reports, such as following up with appointees when a financial disclosure report appears incomplete. OGE officials told us that engaging with an appointee during the review process allows agencies to confirm that the appointee understands and completes each required item. These interactions are also an opportunity to provide ethics counseling and establish a relationship with appointees who may be new to government service. Interior instituted a process in June 2018 that requires ethics officials to interview new appointees, review their financial disclosure report, and complete a financial disclosure checklist prior to certification.

²³We did not conduct an independent evaluation of the content of each agency's procedures to determine whether they comply with relevant requirements. OGE evaluates agencies' written procedures for financial disclosure during its program reviews to ensure that the agency procedures are in conformance with all relevant laws, regulations, and executive orders.

²⁴5 U.S.C. App. § 402(d)(1); 5 C.F.R. § 2638.104(c)(8)(i).

In reviewing a nongeneralizable sample of political appointees at each of the three agencies, we found that nearly all political appointees filed financial disclosure reports on time, with four exceptions of non-PAS appointees from our Interior and SBA samples (see table 1).²⁵ In one case, an Interior appointee who was required to file both a new entrant and termination report did not do so. According to Interior ethics officials, the office mistakenly determined that the appointee was excluded from public filing requirements. An individual who does not serve more than 60 days in a calendar year is not required to file a new entrant or a termination financial disclosure report; however, this political appointee served for 63 days.

Table 1: Filing and Review Timeliness of Public Financial Disclosure Reports for a Nongeneralizable Sample of Political Appointees Serving between January 20, 2017 and January 28, 2018

n/a	Department of Health and Human Services		Department of the Interior		Small Business Administration	
	New entrant or nominee	Termination	New entrant or nominee	Termination	New entrant or nominee	Termination
Type of report filed						
Number of political appointees required to file	10 ^a	3	12	1	10	1
Number of reports filed timely	10	3	10 ^b	0 ^b	8	1
Number of reports filed 0-5 days late	0	0	1	0	2	0
Number of reports filed >5 days late	0	0	0	0	0	0
Number of reports reviewed timely by agency ethics official	10	3	10	0	9	1

Source: GAO analysis of timeliness of public financial disclosure report filing (Office of Government Ethics Form 278e). | GAO-19-249

Note: In general, individuals nominated by the President to positions requiring Senate confirmation must file a nominee financial disclosure report within 5 days of transmittal of the President's nomination to the Senate for confirmation. Other appointees must file a new entrant report within 30 days of assuming their position. In general, all appointees must file a termination report within 30 days of leaving office. Reports must be reviewed by agency ethics officials within 60 days of receipt. 26 C.F.R. §§ 2634.201(b), (c), (e); 2634.605(a).

^aTwo of the political appointees in our HHS sample were incumbents from previous administrations. Due to records retention schedule, we were unable to evaluate the nominee financial disclosure reports filed by those two appointees.

^bOne appointee at Interior did not file a new entrant or a termination financial disclosure report. According to Interior ethics officials, the office mistakenly determined that the appointee was excluded from public filing requirements.

Three appointees—two from SBA and one from Interior—filed new entrant reports past their due dates. Late filing heightens the risk of appointees performing agency work while having conflicts of interest;

²⁵For the complete results of our political appointee ethics requirement analysis, see appendix III.

however, none of the three appointees filed more than 30 days after the due date or the last day of an extension, and therefore were not subject to a late filing fee.²⁶ For example, one Interior appointee received a 30-day extension to file a new entrant report, but filed it 4 days late. One SBA appointee received an extension exceeding the maximum time—90 days—that an agency may grant to any filer and consequently filed 2 days late.²⁷ According to SBA ethics officials, the appointee was given a 92-day extension because the due date was miscalculated. A second SBA appointee filed a report 1 day past the due date. We did not find timeliness issues with any reports filed by appointees at HHS or filed by PAS appointees at Interior or SBA.

Agency ethics officials generally reviewed appointees' financial disclosure reports in a timely manner. However, agencies followed up with non-PAS political appointees' to varying degrees when their financial disclosure reports were potentially missing information. For example, SBA followed up with an appointee to confirm that the appointee had not inadvertently omitted information, such as a retirement plan, from the financial disclosure report because the appointee reported having previous long-term employment. HHS asked for and received clarifying information from an appointee who reported compensation for legal work but did not report individual clients. However, Interior ethics officials told us they did not follow up with two appointees in our sample who reported having no previous outside employment. Interior officials acknowledged that the reports were neither reviewed nor certified properly. According to Interior's new Designated Agency Ethics Official (DAEO), the June 2018 update to Interior's review process was implemented in response to deficiencies within its financial disclosure program.

Ethics Training

HHS and Interior had written procedures for initial ethics training as required, but SBA did not until February 2019. Federal regulation requires

²⁶Unless granted a waiver for "extraordinary circumstances," an official who files any public financial disclosure report more than 30 days after the due date, or more than 30 days after the last day of an extension, whichever occurs later, must pay the United States a \$200 late filing fee. 5 U.S.C. App. § 104(d); 5 C.F.R. § 2634.704.

²⁷An agency may grant any filer an extension to file a financial disclosure report for "good cause shown," provided such extensions do not exceed 90 days. 5 U.S.C. App. § 101(g)(1); 5 C.F.R. § 2634.201(f).

agencies to establish written procedures for providing initial ethics training beginning in January 2017 (see sidebar).²⁸

²⁸On November 2, 2016, OGE published a final rule revising the elements and procedures of the executive branch ethics program, including establishing the requirement for agencies to develop written procedures for initial ethics training. These changes had an effective date of January 1, 2017. 5 C.F.R. § 2638.304(f); 81 Fed. Reg. 76,271 (Nov. 2, 2016).

Ethics Training Requirements

Agencies:

- Carry out an ethics education program to teach employees how to identify government ethics issues and obtain assistance in complying with ethics laws and regulations.
- Establish written procedures, which the DAEO must review each year, for providing initial ethics training.

Political Appointees:

- Complete initial ethics training within 3 months of appointment.
- If appointed to a position requiring Senate confirmation, complete an additional live ethics briefing on immediate ethics obligations within 15 days.

Source: GAO analysis of ethics training statutes and regulations. | GAO-19-249

HHS's and Interior's written procedures reflect the requirements of initial ethics training. For example, both agencies' procedures describe time frames for providing initial ethics training to political appointees no later than 3 months after their appointment date, as well as the method for doing so. Prior to February 2019, SBA did not have adequate written procedures in place to address the requirement that became effective in January 2017. SBA's written procedures now reflect the requirements of initial ethics training. Now that SBA officials have formally documented procedures, they can have reasonable assurance that the procedures are implemented as intended and that all required appointees are provided initial ethics training.²⁹

Interior's and HHS's ethics programs track and maintain documentation of dates that political appointees received initial ethics training. During the time of our review, SBA did not adequately document political appointees' training dates.³⁰ For example, ethics officials at Interior manually record training dates in a spreadsheet shared between Interior's ethics office, Office of Human Resources, and the White House Liaison. HHS requires appointees to confirm in writing that they completed initial ethics training. According to SBA ethics officials, the previous Alternate DAEO informally documented the dates that political appointees received training in her personal notes. Standards for internal control state that management should document significant events, and that documentation and records should be properly managed, maintained, and readily available for examination. Allowing one individual to control all key aspects of documenting an event puts the program at risk of errors.³¹ As of February 2019, SBA officials had developed a tracking sheet and a certificate for appointees to sign that indicates they completed initial ethics training. We plan to assess the implementation of the tracking sheet to confirm that SBA is using the tracker to hold appointees accountable by documenting their completion of initial ethics training requirements. By developing and implementing a mechanism, such as a tracking sheet, SBA can have

²⁹Standards for internal control state that management should document its control policies and conduct periodic reviews to ensure controls are effective. See [GAO-14-704G](#).

³⁰Political appointees are also required to complete annual ethics training before the end of a given calendar year. Because the majority of appointees in our sample received initial ethics training in 2017, they were not required to receive annual ethics training until the end of calendar year 2018, which was outside the time frame of our review. Therefore, we did not assess compliance with annual training requirements. For the full results of our political appointee ethics documentation analysis, see appendix III.

³¹[GAO-14-704G](#).

reasonable assurance that political appointees meet the requirement to take initial ethics training.

Our review of agency documentation, including SBA's informal documentation, found that political appointees completed required initial ethics training on time. Also, all three agencies provided the required additional live ethics briefing for PAS appointees together with initial ethics training.

In addition to required training, all three agencies provided examples of other ways they have reminded appointees about their personal ethical responsibilities. For example:

- In advance of the holiday season, Interior provided supplementary training to political appointees on restrictions on accepting gifts.
- SBA used its agency-wide newsletter during the March Madness college basketball tournament to remind employees that they are prohibited from gambling in the workplace.
- HHS updated its ethics website to highlight Hatch Act rules in preparation for upcoming elections.³²

³²The Hatch Act limits certain political activities of federal employees, as well as some state, D.C., and local government employees who work in connection with federally funded programs. 5 U.S.C. §§ 1501–1508, 7321–7326.

Ethics Pledge

Ethics Pledge Restrictions

Political Appointees:

- President Trump issued Executive Order 13770, “Ethics Commitments by Executive Branch Appointees,” which requires political appointees to sign an ethics pledge.
- Under the pledge, appointees are contractually bound to adhere to specified restrictions, including (but not limited to):
 - for all appointees, a 2-year ban on involvement in “particular matters” involving former employers and clients;
 - for former lobbyists, a 2-year ban on involvement on particular matters on which he or she lobbied; and
 - for appointees who leave government service, a 5-year ban on lobbying agencies in which they served.

Source: GAO analysis of Executive Order 13770. | GAO-19-249

Political appointees we reviewed at each agency had signed the required ethics pledge prescribed in Executive Order 13770, “Ethics Commitments by Executive Branch Appointees.” However, nine Interior appointees’ and one HHS appointee’s pledges were not timely signed.³³ For example, the former Secretary of the Interior signed the pledge 19 days after his appointment. According to an Interior ethics official, the political appointees were directed to sign the pledge at the start of their appointments, but did not do so. Interior’s new DAEO told us in October 2018 that Interior now requires all appointees to sign the pledge on their first day as a condition of continuing their employment; however, this procedure has not been formally documented. The non-PAS HHS appointee signed the pledge 9 days after his permanent appointment date. While the restrictions under the pledge are enforceable by civil action, there are no legal consequences, such as fines or penalties, for failing to timely sign the pledge.

The President or his designee may grant a waiver of any of the restrictions contained in the executive order. As of March 2019, 32 executive branch appointees—not including White House appointees—received limited waivers of the pledge.³⁴ Interior’s then acting solicitor and principal deputy solicitor signed a limited waiver of certain restrictions on lobbying activities for one appointee in our sample upon the appointee’s departure from the agency in July 2017.³⁵ However, according to Interior ethics officials, the official from the Solicitor’s Office did not have authority to grant a waiver. Furthermore, Interior’s ethics office was not included in the decision to grant the waiver, although Interior ethics officials ultimately notified the appointee when they became aware that the waiver was

³³OGE guidance states PAS appointees must sign ethics pledges between Senate confirmation and beginning their appointment. Non-PAS appointees are required to sign the pledge when they are appointed. According to OGE officials, ethics pledge signed by non-PAS appointees within a few days of the appointment are generally still considered timely signed. For the purpose of our analyses, we considered any pledge signed after the first 3 days of a non-PAS appointee’s appointment to not be timely signed.

³⁴Copies of any waivers granted to White House appointees pursuant to Executive Order 13770 are available on the White House website: <https://www.whitehouse.gov/disclosures/>.

³⁵Paragraph 3 of the ethics pledge states that political appointees will not engage in any lobbying activities with respect to any covered executive branch official or noncareer Senior Executive Service appointee for the remainder of the administration.

legally invalid. According to the DAEO, Interior is updating and documenting its ethics program processes and procedures, including new processes to sign ethics pledges and grant waivers, but did not provide a time frame for completion. We discuss Interior's efforts to document overall ethics program processes and procedures later in this report.

Reviewed Agencies' Ethics Programs Face Human Capital and Workforce Continuity Challenges

We found that all of the agencies we reviewed are addressing human capital issues and workforce continuity challenges to varying extents to achieve the goals and objectives of the ethics program. Standards for internal control state that management can help ensure operational success by having the right personnel for the job on board and maintaining a continuity of needed skills and abilities. Standards for internal control also state that management has a responsibility to obtain the workforce necessary to achieve organizational goals. HHS and Interior reported challenges to recruiting and retaining ethics staff with the necessary knowledge, skills, and abilities. All of the reviewed agencies reported varying levels of effort to address vacancies, skills gaps, and succession planning.

HHS reported vacancies in its ethics program as well as challenges in recruiting and hiring; however ethics program officials took actions to mitigate negative effects of the vacancies. As of October 1, 2018, HHS's Ethics Division had six vacancies out of 32 full-time positions (a vacancy rate of approximately 19 percent), including the Alternate DAEO position. HHS officials told us that a senior attorney was assigned to assume the duties of the Alternate DAEO position for six months in 2018. HHS ethics officials told us that the 2017 government-wide hiring freeze and workforce reduction plan affected their efforts to fill vacancies.³⁶ However, ethics officials also told us that, as of October 1, 2018, four people had tentatively accepted offers to fill vacancies. HHS ethics officials told us that applicants for ethics attorneys and specialist positions generally do

³⁶On January 23, 2017, the President issued a memorandum imposing a federal hiring freeze to halt the growth of the federal workforce until a "long-term plan to reduce the size of the federal government's workforce" is put in place. The freeze prohibited agencies to hire for vacant or new positions as of January 22, 2017, except in limited circumstances such as military or public safety personnel. On April 12, 2017, OMB issued guidance on implementing the hiring freeze as well as guidance for a government-wide reform plan that included reducing the federal workforce.

not have a background in federal government ethics laws. As a result, Ethics Division officials said that it must invest time and resources to train new hires, who attend and review OGE trainings, participate in monthly interagency ethics meetings, and take HHS-specific ethics training.

HHS ethics officials told us that new ethics program hires are assigned work from across the spectrum of ethics subject matter and trained one-on-one by senior staff. To address staffing shortages and prepare for potential attrition, the HHS ethics officials said they cross-train staff members and assign back-up team members to support HHS's operating and staff divisions. In addition, to track potential staff attrition or retirement, the ethics officials told us that the Ethics Division uses OPM's Federal Employee Viewpoint Survey data collected from HHS employees.³⁷ However, the data only give the Ethics Division a general sense of the number of personnel that are planning to leave or retire. HHS Ethics Division officials said they use survey data because there is a general sensitivity related to asking about retirement and delays in planned retirements that could affect recruiting and hiring replacements.

Interior's ethics office also reported vacancies and challenges in recruiting and hiring that contributed to the issues in the ethics program. As of November 2018, the Interior ethics office reported that out of 14 full-time positions, four were vacant (a 29 percent vacancy rate). All vacancies were ethics attorney positions.³⁸ Interior reported an ongoing transformation of the department's ethics program and officials said that the vacancies resulted from prioritizing the staffing at individual bureaus—such as the National Park Service and Fish and Wildlife Service—instead of the department-level ethics office, which is responsible for overseeing the bureaus' ethics programs and providing ethics services to employees at the Office of the Secretary, the Office of the Solicitor, and to all of Interior's political appointees. Interior's ethics officials said that the high vacancy rate in their ethics office affected its ability to properly collect and review financial disclosure forms—one of the main responsibilities of the

³⁷The Federal Employee Viewpoint Survey measures employees' perceptions of whether, and to what extent, conditions characteristic of successful organizations are present in their agencies. The survey serves as a tool for employees to share their perceptions in many critical areas including their work experiences, their agency, and leadership. The results provide agency leaders insight into areas where improvements have been made, as well as areas where improvements are needed.

³⁸Interior ethics offices submitted and received approval to restructure its ethics program in 2018. Previously, the program did not have a formal organizational chart.

federal ethics program. According to Interior's new DAEO, the office received an influx of financial disclosure reports during the presidential transition, but was unprepared to handle them. Furthermore, during 2017 one official was responsible for reviewing and certifying more than 300 public financial disclosure forms. The official was unable to balance proper and timely review of forms with other responsibilities that also included reviewing and certifying more than 800 confidential disclosure forms. In the Interior Inspector General's 2018 report on Interior's Major Management Challenges, ethics staffing was identified as a limitation, as staffing shortages could lead to delays in reviewing appointees' financial disclosure documentation.³⁹

While the single Interior official was experienced in reviewing financial disclosure forms, Interior officials stated that there was not enough management support, training, or resources provided to properly review financial disclosure forms in 2017. According to the DAEO, a new supervisory ethics official for financial disclosure forms was hired in September 2018 as part of a proposed and ongoing organizational restructuring of Interior's ethics office. In addition, Interior posted a job announcement for a second ethics attorney and now has two ethics specialists for financial disclosures. The DAEO stated that the ethics program also plans to increase the number of ethics officials that review and certify financial disclosures, and has established new program goals, such as improving ethics staff competencies for technical review of financial disclosure reports.

Interior ethics officials also reported that the government-wide hiring freeze affected their ability to hire staff and address ethics program staff continuity. To build capacity within the ethics program and create a strong ethical culture at the agency and bureau levels, the Acting Deputy Secretary recommended in May 2017 that Interior develop a structure and staffing plan to have a full-time ethics official for every 500 employees by fiscal year 2020. On October 26, 2018, Interior officials stated that the ethics program was implementing the Acting Deputy Secretary's staffing plan. However, OGE benchmarking guidance states that there is no "right" ratio for the number of ethics staff per employee, and that agencies should determine their ratio based on certain aspects

³⁹Inspector General's Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior for Fiscal Year 2018. Report No. 2018-ER-041, November 2018.

of individual ethics programs, such as the scope of potential conflicts and the complexity of financial disclosure reports.

Interior officials could not explain how the ratio was determined nor provide a strategy for achieving the goal or evaluating whether the ratio is meeting the needs of the department in the future. We have previously identified leading practices for human capital management; these practices include that agencies should determine the workforce skills and competencies needed to achieve current and future goals and objectives as well as identify and develop strategies to address gaps. In addition, agencies should continually assess and improve human capital planning and investment, and assess the impact on accomplishing the mission. Without having a better understanding of resource needs and documenting how to properly allocate and determine needed resources, Interior may not accurately estimate its needs and may not be best positioned to assess and strengthen its ethics workforce to achieve program goals and objectives.

Moreover, staff turnover at the Interior ethics office also reduced institutional knowledge. For example, Interior's ethics office could not produce the documentation of the policies and procedures that support its ethics program—an internal control requirement—such as documenting and providing written responses to ethics queries and the tools used to ensure short and long-term continuity of operations. However, the ethics office previously provided documented evidence of some of these policies and procedures in its response to OGE's 2016 program review. Interior ethics officials stated that the OGE response was produced prior to the DAEO retiring and drafted by staff who no longer work at Interior.

Standards for Internal Control also require agencies to document key processes and procedures to retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel, as well as a means to communicate that knowledge as needed to external parties, such as external auditors. Both HHS and SBA provided documentation of ethics program policies and procedures while Interior did not provide documentation. Since there was no formal documentation of the ethics program's policies and procedures, Interior ethics officials stated that the ethics office will document them as part of its organizational restructuring plans. As of March 2019, Interior officials had not provided this documentation. For example, the ethics program is to ensure that all ethics related advice, legal analyses, and conclusions are documented. However, without Interior completing the documentation of its policies and procedures and making them accessible to staff,

institutional knowledge may be lost, and there is greater risk of not achieving the goals and objectives of the ethics program.

SBA did not report challenges to recruiting or staff continuity in part because of the small size of the ethics program. SBA's ethics program is administered by three full-time officials and during our review, the DAEO position was vacant for more than 3 months due to the retirement of the previous DAEO. However, the Alternate DAEO assumed the responsibility for managing the ethics program until a new DAEO was hired in August 2018. Ethics officials reported that the program could draw upon a pool of field attorneys previously designated to perform collateral ethics duties to temporarily address disruptions in staffing. To address continuity and succession, SBA ethics officials reported that a headquarters staff attorney was detailed to the ethics program to prepare for the possible retirement of its current Alternate DAEO.

Conclusions

Strong ethics programs are critical to ensuring public trust in government and the integrity of actions taken on the public's behalf. The executive branch ethics program is a shared responsibility across government. Political appointees, in particular agency heads, have a personal responsibility to exercise leadership in ethics. Some data are available on political appointees serving in the Executive Branch but the data have limitations that impede their usefulness. To facilitate independent review and analysis related to political appointees, members of the public need access to information on who is serving in political appointee positions. Otherwise, they are limited in their ability to discern whether appointees are performing their duties free of conflict. Information on the political appointees serving in the executive branch at any point in time would also facilitate congressional oversight. Both OPM and PPO are positioned to report these data, but there are some benefits and drawbacks of each agency's current capacity that will need to be considered. Ultimately, it is a policy decision as to which agency is best positioned to report comprehensive and timely data on political appointees.

Further, a robust internal control system is critical for agency ethics programs to achieve their mission of preventing conflicts of interest on the part of their employees. Without effective internal controls, agency ethics programs cannot reasonably assure that they are mitigating the risk—or the appearance of—public servants making biased decisions when carrying out the governmental responsibilities entrusted to them. During

the course of our review SBA took steps to establish written procedures for initial ethics training, but still needs to complete the implementation of procedures to track and verify that all political appointees meet ethics training requirements.

As Interior continues to reorganize its ethics program, improved strategic workforce planning can help to accurately assess its needs, maintain continuity, and achieve program goals and objectives. Finally, ensuring that Interior's ethics processes and procedures are fully documented and easily accessible to staff can help mitigate the risk of reduced institutional knowledge, and can improve the ability to communicate with external parties.

Matter for Congressional Consideration

Congress should consider legislation requiring comprehensive and timely information on political appointees serving in the executive branch to be collected and made publicly accessible. (Matter for Consideration 1)

Recommendations for Executive Action

We are making a total of three recommendations, including one to SBA, and two to Interior.

The Administrator of the Small Business Administration should implement procedures to track and verify that required employees complete initial ethics training and that completion of this training is documented. (Recommendation 1)

The Secretary of the Interior should direct the Departmental Ethics Office, in conjunction with the Chief Human Capital Officer, to develop, document, and implement a strategic workforce planning process that aligns with its ongoing departmental reorganization and that is tailored to the specific needs of the ethics program. As part of this process, Interior should monitor and assess the critical skills and competencies that its ethics program needs presently and is projected to need in the future. (Recommendation 2)

The Secretary of the Interior should ensure that the department's ethics program policies and procedures are documented and easily accessible to program staff. (Recommendation 3)

Agency Comments and Our Evaluation

We provided a draft of this report for comment to the Department of Justice (DOJ), the White House Counsel's Office at the Executive Office of the President (EOP), the Department of Health and Human Services (HHS), the Department of the Interior (Interior), the Inspector General of the Department of the Interior (OIG), the Office of Government Ethics (OGE), the Office of Personnel Management (OPM), and the Small Business Administration (SBA).

Interior, SBA, and OGE provided written comments, which are reproduced in appendixes IV, V, and VI respectively. Interior officials concurred with our recommendations and described steps they are taking to begin addressing them.

In our draft report, we made two recommendations to SBA. Our first recommendation was that SBA establish written procedures for initial ethics training as required. SBA officials did not agree or disagree with this recommendation, but during their review of the draft report, they provided documentation to show that they had established written procedures in line with our draft recommendation. As such, we revised our final report to include the actions taken by SBA in February 2019 and to delete our recommendation to establish written procedures for initial ethics training.

With regard to our second draft recommendation to SBA, which remains in our final report as our first recommendation, SBA again did not agree or disagree with the recommendation. SBA officials provided documentation to support that they have taken initial steps to address our recommendation to implement procedures to track and verify completion of initial ethics training by political appointees. We plan to assess the implementation of these new procedures to confirm that, in operation, these procedures meet the intent of our recommendation.

In addition to the written comments we received, SBA, HHS, OGE, and OPM provided technical comments, which we incorporated as appropriate.

DOJ and the Interior OIG had no comments on the draft report.

EOP did not respond to our request for comments.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 1 day from the report date. At that time, we will send copies to the appropriate congressional committees, the Acting Attorney General of DOJ, the White House Counsel, the Secretary of HHS, the Acting Secretary of the Interior, the Acting Inspector General at the Interior, the Director of OGE, the Acting Director of OPM, the SBA Administrator, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-6806 or nguyentt@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VII.

A handwritten signature in cursive script that reads "Kris T. Nguyen". The signature is written in black ink and is positioned above the printed name and title.

Tranchau (Kris) T. Nguyen
Acting Director
Strategic Issues

Appendix I: Objectives, Scope, and Methodology

Our objectives were to evaluate the extent to which (1) existing data identify political appointees serving in the executive branch at any point in time, and (2) selected agencies use appropriate internal controls to reasonably ensure that their ethics programs are designed and implemented to meet statutory and regulatory requirements.

To evaluate the extent to which data identifying political appointees serving in the executive branch at any point in time exist, we first synthesized requirements for reporting and developed criteria for comprehensive and timely reporting. We reviewed relevant laws and standards, and the United States Government Policy and Supporting Positions (Plum Book).¹ We used the Office of Management and Budget's Open Government Directive (M-10-06) memorandum to develop criteria for transparency and public availability.

We interviewed officials from the Office of Personnel Management (OPM) to understand the extent to which data they collect on current political appointees are comprehensive, timely, and reportable. OPM provided data on the political appointees serving in the federal government between January 2017 and June 2018. We also requested and obtained information from OPM on the volume of Freedom of Information Act requests for data on political appointees to assess demand for this type of data. To further evaluate public demand for political appointee data, we interviewed two nongovernmental organizations that track political appointees in the executive branch, ProPublica, and the Partnership for Public Service. We gathered information on the public's demand for information regarding political appointees, and the use and limitations of data. Both organizations provided statistics quantifying public demand, including number of unique visitors to their website and media impressions. Media impressions are any viewing of or interaction with a piece of content. We requested information or interviews with the Office of Presidential Personnel (PPO) and several White House Liaisons to

¹The Plum Book is published after each presidential election. It lists federal civil service leadership and support positions in the legislative and executive branches of the federal government that may be subject to noncompetitive appointment.

understand how they track, maintain, and use data on political appointees serving in the executive branch. A senior leader at PPO and one White House Liaison acknowledged our request for an interview but deferred to the White House Counsel's Office. As well, an ethics officer indicated they would be unable to facilitate the exchange of information with the White House Liaison Office in their agency. The White House Counsel's Office did not acknowledge requests for information or interviews. We interviewed former senior PPO officials from the two previous administrations to understand how they tracked, maintained and used data on political appointees.

To identify internal control processes and determine the extent to which selected agencies use appropriate controls to ensure their ethics programs are designed and implemented to meet statutory and regulatory requirements, we first identified four case study agencies. We selected a range of case study agencies based on the number and type of political appointees as well as the strength of their ethics programs, as determined by Office of Government Ethics (OGE) reviews. Using data from the 2016 Plum Book, we identified the total number of political appointee positions within each agency or department across the following four categories: presidential appointees with Senate confirmation (PAS), presidential appointees, noncareer members of the Senior Executive Service, and Schedule C appointees. We selected the Executive Office of the President (EOP) as a case study agency because EOP has the largest number of presidential appointees, and because OGE has not recently conducted a program review of EOP. According to OGE, ethics program reviews are a primary means of conducting systematic oversight of executive branch ethics programs. OGE completed a review of each agency between January 2014 and January 2018.² Since the White House Counsel's Office did not acknowledge receipt of our notification letter we could not review EOP's practices.

To allow for more comparability among case studies, we excluded agencies and departments that did not have at least one PAS, and one presidential appointee or noncareer member of the Senior Executive Service. From the remaining list of departments and agencies, we excluded those with nine or fewer total political appointee positions. We divided the remaining agencies into two groups: large agencies with more than 100 political appointees and small agencies with fewer than 100

²See <https://oge.gov/web/oge/nsf/Program%20Review>.

political appointees. To ensure we observed a range of practices, we selected a large agency with no recommendations in its most recent OGE program review—the Department of Health and Human Services and an agency with multiple unaddressed recommendations from its most recent OGE program review—the Department of the Interior.

To select our final case study, we used human resources data from OPM's FedScope tool to determine the number of employees at each agency as of September 2017. We limited our selection to noncabinet agencies with between 2,000 and 10,000 employees. Out of the four remaining agencies, we randomly selected the Small Business Administration.

To evaluate the extent to which the three reviewed agencies have and use appropriate internal controls to reasonably ensure that the objectives of their ethics programs are achieved, we reviewed selected principles from Standards for Internal Control in the Federal Government based on our review, analysis and professional judgment as to which were relevant to effectively execute an executive branch ethics program. Selected internal control principles included:

- 3.01: Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives;
- 4.01: Management should demonstrate a commitment to recruit, develop, and retain competent individuals;
- 10.01: Management should design control activities to achieve objectives and respond to risks; and
- 14.01: Management should internally communicate the necessary quality information to achieve the entity's objectives.

Reviewed agencies confirmed that these internal control principles were relevant to effectively execute their ethics program. We provided each agency with an identical set of questions based on the selected internal control principles and components. We used agency responses to questions and supporting documentation to evaluate whether agencies' policies and processes to oversee ethics compliance for political appointees were consistent with the internal control principles.

We used a nongeneralizable random sampling method to select political appointees whose documentation we would review for compliance with certain ethics requirements. Agencies provided data detailing the political

appointees within the agency at any point in time beginning January 20, 2017 and as of January 28, 2018. To assess the reliability of the data, we asked each agency's officials about how the data were obtained, where the data came from, and what steps, if any, they each took to assure the accuracy and completeness of the data. Officials at each agency knowledgeable about their data provided responses. Based on those responses, we determined that the data were sufficiently reliable to indicate each agency's political appointees, with start and end dates, for use in selecting a sample of appointees at each agency. Within each agency, we used random sampling to identify up to three PAS appointees and up to nine non-PAS appointees, including up to three appointees that separated from the agency during the time frame above. Each case study agency completed a data collection instrument that identified the applicable ethics requirements for each selected appointee.³ Each agency provided documentation to communicate how those requirements were met for each appointee. We reviewed the documentation to determine whether agency internal controls were sufficient to ensure that certain ethics program requirements were met. In addition, we conducted interviews with agency ethics officials, as needed, to discuss documentation provided. We also conducted several interviews with OGE officials to inform how we developed the data collection instrument and evaluate appointee compliance in alignment with OGE's principles and practices. Our review of political appointees' documentation was limited to testing the sufficiency of the agencies' ethics program processes and procedures. We did not review financial disclosure forms with the intent of identifying conflicts of interest nor did we perform a conflict of interest analysis. Also, because we used a nongeneralizable sample of political appointees, results from the sample cannot be used to make inferences about all the agencies' political appointees.

We conducted this performance audit from October 2017 to February 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

³Applicable ethics requirements included Executive Order 13370 and sections 2634.201-2638.205, 2634.601, 2634.605, 2634.801-2634.805, 2638.304-2638.305, and 2638.308-2638.309 of title 5, Code of Federal Regulations.

Appendix II: Use of Internal Controls in Reviewed Agencies' Ethics Programs

Table 2: Analysis of Internal Control Principles to Reviewed Agencies' Ethics Programs

Selected Internal Control Components and Principles	Ethics Program Evaluative Questions	Reviewed Agency Results		
		HHS	SBA	Interior
n/a	n/a			
<i>Control Environment:</i> Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives.	Has the agency established an organizational structure for its ethics program?	met	met	partially met
<i>Control Environment:</i> Management should demonstrate a commitment to recruit, develop, and retain competent individuals.	Are agency ethics program staff evaluated?	met	met	partially met
<i>Control Environment:</i> Management should demonstrate a commitment to recruit, develop, and retain competent individuals	Are agency ethics program staff's expectations developed and documented?	met	met	partially met
<i>Control Environment:</i> Management should demonstrate a commitment to recruit, develop, and retain competent individuals	Does the agency commit resources to the ethics program?	met	met	partially met
<i>Control Environment:</i> Management should demonstrate a commitment to recruit, develop, and retain competent individuals	Does the agency recruit, develop, and train ethics program staff?	met	met	not met
<i>Control Environment:</i> Management should demonstrate a commitment to recruit, develop, and retain competent individuals	Does the agency prepare alternate or contingency plans for ethics program staff attrition, succession, or other potential disruptions to staff levels?	met	met	not met
<i>Control Environment:</i> Management should design control activities to achieve objectives and respond to risks.	Does the agency have goals and objectives for the ethics program?	met	met	met
<i>Control Environment:</i> Management should design control activities to achieve objectives and respond to risks.	Are these goals and objectives documented?	met	met	met

Appendix II: Use of Internal Controls in Reviewed Agencies' Ethics Programs

Selected Internal Control Components and Principles	Ethics Program Evaluative Questions	Reviewed Agency Results		
		HHS	SBA	Interior
n/a	n/a			
<i>Control Environment:</i> Management should design control activities to achieve objectives and respond to risks.	Does the agency have processes and procedures in place to support the goals and objectives of the ethics program?	met	met	partially met
<i>Control Environment:</i> Management should design control activities to achieve objectives and respond to risks.	Does the agency have processes and procedures in place to ensure political appointees who are not Presidential Appointees with Senate Confirmation do not undertake an activity that represents an actual or apparent conflict of interest?	met	met	partially met
<i>Control Environment:</i> Management should design control activities to achieve objectives and respond to risks.	Does the agency have processes and procedures in place to ensure that political appointees receive required training?	met	partially met	met
<i>Information and Communication:</i> Management should internally communicate the necessary quality information to achieve the entity's objectives.	Does the agency communicate ethics program related information to political appointees?	met	met	met

Legend: ● = Met; ◐ = Partially Met; ○ = Not Met

Source: GAO analysis of ethics program documentation. | GAO-19-249

Appendix III: Ethics Provisions Applicable to Political Appointees and Results of Political Appointee Ethics Documentation Analysis

Table 3: Number of Sampled Political Appointees in Each Agency That Addressed Selected Ethics Requirements

Selected Ethics Requirements	SBA (REQUIRED)	SBA (MET)	HHS (REQUIRED)	HHS (MET)	DOI (REQUIRED)	DOI (MET)
Signed the Executive Order 13770, "Ethics Pledge"	10	10	11	11	12	12
Presidential Appointee with Senate confirmation (PAS) nominee financial disclosure report filed no later than 5 days after nomination by the President	2	2	1 ^a	1	3	3
PAS nominee signed an Ethics Agreement to address identified conflicts of interest	2	2	3	3	3	3
Non-PAS new entrant financial disclosure report filed within 30 days of assuming the duties of the position, or within extension of time for filing	8	6	10	10	9	8 ^d
Completed initial ethics training within 3 months of appointment	10	10	11 ^b	11	12	12
Received live ethics briefing within 15 days of appointment (PAS only)	2	2	1 ^c	1	3	3
Termination financial disclosure report filed within 30 days of leaving government (if appointee departed from the agency)	1	1	3	3	1	0

Source: GAO analysis of ethics documentation for a sample of political appointees. | GAO-19-249

Notes: We reviewed ethics documentation for a randomly selected nongeneralizable sample of 10 political appointees in positions at SBA and 12 political appointees in positions at HHS and Interior in place between January 20, 2017 and January 28, 2018. To ensure we included certain types of political appointees in our review, we grouped the political appointees from each agency into three groups: individuals in presidentially appointed, Senate confirmed (PAS) positions, individuals who left the agency during the time frame of our review, and all remaining individuals. We randomly selected three, three, and six political appointees from each target group, respectively. At SBA, the total PAS

**Appendix III: Ethics Provisions Applicable to
Political Appointees and Results of Political
Appointee Ethics Documentation Analysis**

appointees and total individuals who left the agency during our review time frame was less than the target. As a result, there were fewer appointees in our SBA sample compared to the other agencies. Because we used a nongeneralizable sample of political appointees, results from the sample cannot be used to make inferences about all of the agencies' political appointees.

^aTwo of the three PAS appointees in our HHS sample were incumbents from previous administrations. Due to records retention schedule, we were unable to evaluate the nominee reports filed by those two appointees.

^bAs noted, two PAS appointees in our HHS sample were incumbent appointees. Due to records retention schedule we were unable to review documentation and assess whether one of the incumbent appointees received the training. However, HHS provided email documentation to support that the other incumbent appointee received initial ethics training.

^cThe requirement for PAS appointees to receive an additional ethics briefing was not applicable at the time of appointment for two incumbent appointees from HHS.

^dOne appointee at Interior did not file a new entrant or a termination financial disclosure report. According to ethics officials at Interior, they mistakenly determined that the appointee was not required to file because she did not serve in her position for more than 60 days. Based on our analysis of the appointees' appointment and departure dates, the appointee served for 63 days and should have been required to file.

Appendix IV: Comments from the Department of the Interior

Now recommendation 2.

Now recommendation 3.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 01 2019

Ms. Tranchau (Kris) Nguyen
Acting Director, Strategic Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Nguyen:

Thank you for giving the Department of the Interior (Department) the opportunity to review and comment on the draft Government Accountability Office (GAO) report entitled, *Federal Ethics Program: Government-wide Political Appointee Data and Ethics Oversight Procedures at Interior and SBA Could Be Improved* (GAO-19-249). We appreciate GAO's review of compliance with ethics requirements for political appointees in the executive branch.

GAO issued four recommendations including two to the Department. Below is a summary of actions planned to implement the recommendations:

Recommendation 3: The Secretary of the Interior should direct the Departmental Ethics Office in conjunction with the Chief Human Capital Officer to develop, document, and implement a strategic workforce planning process that aligns with its ongoing departmental reorganization and that is tailored to the specific needs of the ethics program. As part of this process, Interior should monitor and assess critical skills and competencies that its ethics program needs presently and is projected to need in the future.

Response: Concur. The Departmental Ethics Office (DEO) is in the process of reorganizing the Department's ethics program including its reporting structure to improve accountability and provide better ethics-related services to all Department employees in a more efficient manner. Several of the specific issues raised during the GAO review (i.e., ethics pledge executions, timely initial ethics training, and timely submission of financial disclosure reports) have already been addressed. Supervisory attorneys hired to oversee ethics training and financial disclosure have implemented new procedures in this area. The DEO will work closely with the Chief Human Capital Officer to develop and implement strategic workforce planning as the reorganization of the Department and its ethics program continue.

Recommendation 4: The Secretary of the Interior should ensure that the Department's ethics program policies and procedures are documented and easily accessible to program staff.

**Appendix IV: Comments from the Department
of the Interior**

Response: Concur. The Department is currently in the process of developing policies and procedures relevant to the ethics program and once finalized will document and have them easily accessible to the program staff.

If you have any questions or need additional information, please contact Scott de la Vega, Designated Agency Ethics Official at scott.delavega@sol.doi.gov.

Sincerely,



Scott J. Cameron
Principal Deputy Assistant Secretary
for Policy, Management and Budget

Appendix V: Comments from the U.S. Small Business Administration



March 1, 2019

Ms. Tranchau (Kris) T. Nguyen, Acting Director
Strategic Issues
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Ms. Nguyen:

Thank you for providing the U.S. Small Business Administration (SBA) with the opportunity to respond to the U.S. Government Accountability Office (GAO) draft report 19-249, titled *"Federal Ethics Programs: Government-wide Political Appointee Data and Ethics Oversight Procedures at Interior and SBA Could Be Improved."* According to the report, GAO's objective in conducting the audit was to examine the extent to which (1) existing data identify political appointees serving in the executive branch, and (2) the selected agencies use internal controls to reasonably ensure that their ethics programs are designed and implemented to meet statutory and regulatory requirements.

During the exit conference at SBA on October 31, 2018, GAO indicated that it found SBA did not have adequate written procedures applicable to providing, tracking, verifying, and documenting initial ethics training for political appointees. GAO did not indicate any other adverse findings related to SBA's Ethics Program's internal controls or compliance with applicable statutory and regulatory requirements. SBA promptly accepted GAO's preliminary findings and began development of new initial ethics training procedures for political appointees, which incorporated existing program processes with new documentation methods, in November 2018. Progress was necessarily halted by the lapse in appropriations from late December 2018 through late January 2019, but SBA was able to finalize and implement its written procedures for initial ethics training for political appointees in early February 2019, shortly after the shutdown ended. SBA provided GAO a copy of those written procedures, which address both the provision of initial ethics training as well as the procedures for certifying and documenting training provided to new appointees, on February 8, 2019. These procedures are currently in use to document the initial ethics training of political appointees.

In short, SBA has already addressed and implemented the two recommendations in the draft report applicable to it.¹ In light of this fact, and for the other reasons indicated herein, SBA

¹ The recommendations are: (i) *The Administrator of the Small Business Administration should establish written procedures for initial ethics training as required (Recommendation 1), and (ii) The Administrator of the SBA*

believes that the draft report should be revised as set forth below to more accurately reflect both the past and current state of SBA's Ethics Program.

The title of the draft report does not accurately reflect the scope of the findings as they relate to the SBA Ethics Program:

SBA believes the title of the draft report, which states that SBA's "ethics oversight procedures...could be improved," inaccurately suggests SBA's Ethics Program requires widespread and/or substantial improvement, even though the report's narrative clearly states otherwise.

During its audit, GAO reviewed SBA responses to questions based on "selected internal control principles and components" to determine whether SBA's policies and processes for overseeing ethics compliance for political appointees were consistent with those principles. Contrary to the broad scope of the report's title, GAO's findings regarding SBA's Ethics Program policies and processes clearly show SBA is substantially compliant with applicable statutory and regulatory requirements. For example, Appendix II: *Use of Internal Controls in Reviewed Agencies' Ethics Programs*, shows that SBA fully met 11 out of the 12 internal control components and principles used by GAO to determine SBA's compliance. For the one component on which the draft recommendations are based, GAO determined SBA partially met applicable requirements. Moreover, the report states that GAO's review of "SBA's informal documentation...found that political appointees completed required initial ethics training on time." The report also concludes that SBA "generally used appropriate internal controls" to ensure it "met basic ethics program requirements." SBA therefore believes the report title's broad and vague language that "ethics oversight procedures...could be improved" does not properly capture the report's findings and content as they relate to SBA's Ethics Program, particularly since SBA has in fact fully addressed the two areas of concern identified in the draft recommendations.

SBA understands the challenges in developing a succinct title to accurately describe a report covering multiple agencies. However, we believe that attempting to encapsulate different issues for different agencies by using broad or vague language is, in this particular instance, both confusing to the reader and unfair to the affected agencies, and we therefore believe it would be more appropriate to simply refrain from referring to specific agencies in the title at all.

Language in the draft report does not accurately reflect the scope of the findings or the current state of the SBA Ethics Program:

GAO Highlights Page:

- "Until SBA addresses the requirement to establish written procedures for initial ethics training and track and documents training dates, it cannot reliably hold appointees accountable for meeting the training required."

Business Administration should implement procedures to track and verify that required employees complete initial ethics training and that completion of this training is documented (Recommendation 2).

SBA believes this language should not be contained in the final report because the Agency has already established and implemented applicable written procedures. Moreover, the report states that after reviewing "SBA's informal documentation... [GAO] found that political appointees completed required initial ethics training on time."

- "HHS and Interior had procedures for providing initial ethics training as required beginning in January 2017; however, SBA did not. SBA also did not adequately document political appointees' training dates."

SBA believes this language should be amended to reflect that the Agency established and implemented applicable written procedures in February 2019. Moreover, the report states that after reviewing "SBA's informal documentation... [GAO] found that political appointees completed required initial ethics training on time."

Page 17:

- "According to SBA ethics officials, SBA is developing written procedures during Fiscal Year 2019 to address the requirement that became effective in 2017."

SBA believes this language should be amended to reflect that the Agency established and implemented applicable written procedures in February 2019.

Pages 17 and 18:

- "In the absence of formally documenting its procedures, SBA cannot have reasonable assurance that the procedures are implemented as intended and that all required appointees are provided initial ethics training."

SBA believes this language should not be contained in the final report because the Agency has already established and implemented applicable written procedures. Moreover, the report states that after reviewing "SBA's informal documentation... [GAO] found that political appointees completed required initial ethics training on time."

Page 18:

- "SBA does not adequately document political appointee's training dates."

SBA believes this language should be amended to reflect the Agency established and implemented applicable written procedures in February 2019.

- "SBA officials told us that the written procedures they are developing for initial ethics training will include new guidance to track training dates. As of October 2018, SBA had not provided us a draft of the new procedures."

SBA believes this language should be amended to reflect the Agency established and implemented applicable written procedures in February 2019.

- “SBA cannot reliably hold political appointees accountable for meeting the requirement without developing these procedures, including processes to track and document initial ethics training dates.”

SBA believes this language should not be contained in the final report because the Agency has already established and implemented applicable written procedures.

Page 24:

- “In particular, until SBA addresses the requirement to establish written procedures for initial ethics training and tracks and documents training dates SBA may not have reasonable assurance that all political appointees met the ethics training requirement.”

SBA believes this language should not be contained in the final report because the Agency has already established and implemented applicable written procedures.

In conclusion, we respectfully request that GAO strongly consider these comments and concerns to ensure its final report accurately reflects the past and current state of SBA’s Ethics Program and the accomplishments of its personnel.

Thank you again for affording SBA the opportunity to comment on this draft report, and for taking our comments into consideration as you prepare your final report. Please contact us if you have any questions concerning this letter.

Sincerely,



Andrew T. Krog
Designated Agency Ethics Official
Office of General Counsel
U.S. Small Business Administration

Appendix VI: Comments from the United States Office of Government Ethics

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



February 21, 2019

Tranchau (Kris) Nguyen
Acting Director, Strategic Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

RE: Draft Report GAO-19-249, "Federal Ethics Program: Government-Wide Political Appointee Data and Ethics Oversight Procedures at Interior and SBA Could Be Improved."

Dear Ms. Nguyen:

Thank you for the opportunity to comment on the U.S. Government Accountability Office's (GAO) draft report, "Federal Ethics Program: Government-Wide Political Appointee Data and Ethics Oversight Procedures at Interior and SBA Could Be Improved." The U.S. Office of Government Ethics (OGE) appreciates GAO's work in planning and conducting its review and issuing this report.

The draft report contains no recommendations for OGE; however, some of the recommendations touch on issues related to the executive branch ethics rules and the work of our office. In particular, the draft report recommends that the Small Business Administration (SBA) should establish written procedures for initial ethics training and processes to document that training was completed; that the Department of the Interior (Interior) should conduct more strategic planning for its ethics workforce and document ethics program policies and procedures; and that the Secretary of the Interior should ensure that the Department's ethics program policies and procedures are documented and easily accessible to program staff.

With regard to the recommendation for SBA, OGE concurs. OGE has long held that written procedures for all ethics-related policies and practices, in addition to the procedures for financial disclosure required by the Ethics in Government Act, help to ensure the consistent administration of the ethics program and foster more efficient transition of program responsibilities from departing ethics officials to newly appointed officials.

Regarding the recommendations for Interior, OGE notes that its most recent review of Interior's ethics program identified numerous deficiencies. In the June 2016 report on this review, OGE issued 14 recommendations for program improvement. Notably, the report indicated that ethics office officials acknowledged the need for additional staffing and stated that the previous Secretary had agreed to an action plan that included adding 13 new positions to the

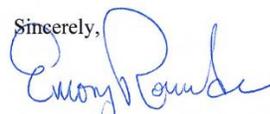
Ms. Tranchau (Kris) Nguyen
Page 2

office. However, OGE's report goes on to note that at the time of OGE's review staffing levels had not increased due to funding constraints.

Since the issuance of the June 2016 report, OGE has conducted two follow-up reviews to assess the implementation of these recommendations and plans to meet with Interior ethics officials later this month to discuss the steps the Designated Agency Ethics Official has taken to improve the program since being appointed to the position.

Again, thank you for the opportunity to comment on this draft report. Technical comments were previously provided. Please feel free to contact Shelley Finlayson, OGE's Chief of Staff and Program Counsel, if you have any questions. We look forward to working with you in the future.

Sincerely,



Emory A. Rounds, III
Director

Appendix VII: GAO Contact and Staff Acknowledgments

GAO Contact

Tranchau (Kris) T. Nguyen, (202) 512-6806 or NguyenTT@gao.gov

Staff Acknowledgments

In addition to the above contact, Melissa Wolf and Carol Henn (Assistant Directors), Erinn L. Sauer (Analyst-in-Charge), Caitlin Cusati, Ann Czapiewski, Robert Gebhart, Travis Hill, James Lager, Brittaini Maul, Steven Putansu, Mary Raneses, Andrew J. Stephens, and Mackenzie D. Verniero made major contributions to this report.

Appendix VIII: Accessible Data

Data Table

Accessible Data for Figure 2: Most Recently Published Data on the Number and Type of Political Appointees Positions, as of June 2016

Appointee type	Appointee number	Appointee percentage
Presidential appointees with Senate confirmation	472	12%
Noncareer Senior Executive Service (SES)	761	19%
Presidential appointees	1,242	31%
Schedule C appointees	1,538	38%

Agency Comment Letters

Accessible Text for Appendix IV Comments from the Department of the Interior

Page 1

MAR 01 2019

Ms. Tranchau (Kris) Nguyen

Acting Director, Strategic Issues

U.S. Government Accountability Office

441 G Street, NW

Washington, DC 20548

Dear Ms. Nguyen:

Thank you for giving the Department of the Interior (Department) the opportunity to review and comment on the draft Government Accountability Office (GAO) report entitled, Federal Ethics Program: Government-wide Political Appointee Data and Ethics Oversight Procedures at Interior and SBA Could Be Improved (GAO-19-249). We appreciate GAO's review of compliance with ethics requirements for political appointees in the executive branch.

GAO issued four recommendations including two to the Department. Below is a summary of actions planned to implement the recommendations:

Recommendation 3: The Secretary of the Interior should direct the Departmental Ethics Office in conjunction with the Chief Human Capital Officer to develop, document, and implement a strategic workforce planning process that aligns with its ongoing departmental reorganization and that is tailored to the specific needs of the ethics program. As part of this process, Interior should monitor and assess critical skills and competencies that its ethics program needs presently and is projected to need in the future.

Response: Concur. The Departmental Ethics Office (DEO) is in the process of reorganizing the Department's ethics program including its reporting structure to improve accountability and provide better ethics-related services to all Department employees in a more efficient manner. Several of the specific issues raised during the GAO review (i.e., ethics pledge executions, timely initial ethics training, and timely submission of financial disclosure reports) have already been addressed. Supervisory attorneys hired to oversee ethics training and financial disclosure have implemented new procedures in this area. The DEO will work closely with the Chief Human Capital Officer to develop and implement strategic workforce planning as the reorganization of the Department and its ethics program continue.

Recommendation 4: The Secretary of the Interior should ensure that the Department's ethics program policies and procedures are documented and easily accessible to program staff.

Page 2

Response: Concur. The Department is currently in the process of developing policies and procedures relevant to the ethics program and

once finalized will document and have them easily accessible to the program staff.

If you have any questions or need additional information, please contact Scott de la Vega, Designated Agency Ethics Official at scott.delavga@sol.doi.gov.

Sincerely,

Scott J. Cameron

Principal Deputy Assistant Secretary

for Policy, Management and Budget

Accessible Text for Appendix V Comments from the U.S. Small Business Administration

Page 1

March 1, 2019

Ms. Tranchau (Kris) T. Nguyen, Acting Director

Strategic Issues

U.S. Government Accountability Office

Washington, D.C. 20548

Dear Ms. Nguyen:

Thank you for providing the U.S. Small Business Administration (SBA) with the opportunity to respond to the U.S. Government Accountability Office (GAO) draft report 19-249, titled "Federal Ethics Programs: Government-wide Political Appointee Data and Ethics Oversight Procedures at Interior and SBA Could Be Improved." According to the report, GAO's objective in conducting the audit was to examine the extent to which (1) existing data identify political appointees serving in the executive branch, and (2) the selected agencies use internal controls to reasonably ensure that their ethics programs are designed and implemented to meet statutory and regulatory requirements.

During the exit conference at SBA on October 31, 2018, GAO indicated that it found SBA did not have adequate written procedures applicable to providing, tracking, verifying, and documenting initial ethics training for political appointees. GAO did not indicate any other adverse findings related to SBA's Ethics Program's internal controls or compliance with applicable statutory and regulatory requirements. SBA promptly accepted GAO's preliminary findings and began development of new initial ethics training procedures for political appointees, which incorporated existing program processes with new documentation methods, in November 2018. Progress was necessarily halted by the lapse in appropriations from late December 2018 through late January 2019, but SBA was able to finalize and implement its written procedures for initial ethics training for political appointees in early February 2019, shortly after the shutdown ended. SBA provided GAO a copy of those written procedures, which address both the provision of initial ethics training as well as the procedures for certifying and documenting training provided to new appointees, on February 8, 2019. These procedures are currently in use to document the initial ethics training of political appointees.

In short, SBA has already addressed and implemented the two recommendations in the draft report applicable to it.¹ In light of this fact, and for the other reasons indicated herein, SBA

¹ The recommendations are: (i) The Administrator of the Small Business Administration should establish written procedures for initial ethics training as required (Recommendation 1), and (ii) The Administrator of the Small

Page 2

believes that the draft report should be revised as set forth below to more accurately reflect both the past and current state of SBA's Ethics Program.

The title of the draft report does not accurately reflect the scope of the findings as they relate to the SBA Ethics Program:

SBA believes the title of the draft report, which states that SBA's "ethics oversight procedures...could be improved," inaccurately suggests SBA's Ethics Program requires widespread and/or substantial improvement, even though the report's narrative clearly states otherwise.

During its audit, GAO reviewed SBA responses to questions based on "selected internal control principles and components" to determine whether SBA's policies and processes for overseeing ethics compliance

for political appointees were consistent with those principles. Contrary to the broad scope of the report's title, GAO's findings regarding SBA's Ethics Program policies and processes clearly show SBA is substantially compliant with applicable statutory and regulatory requirements. For example, Appendix II: Use of Internal Controls in Reviewed Agencies' Ethics Programs, shows that SBA fully met 11 out of the 12 internal control components and principles used by GAO to determine SBA's compliance. For the one component on which the draft recommendations are based, GAO determined SBA partially met applicable requirements. Moreover, the report states that GAO's review of "SBA's informal documentation...found that political appointees completed required initial ethics training on time." The report also concludes that SBA "generally used appropriate internal controls" to ensure it "met basic ethics program requirements." SBA therefore believes the report title's broad and vague language that "ethics oversight procedures...could be improved" does not properly capture the report's findings and content as they relate to SBA's Ethics Program, particularly since SBA has in fact fully addressed the two areas of concern identified in the draft recommendations.

SBA understands the challenges in developing a succinct title to accurately describe a report covering multiple agencies. However, we believe that attempting to encapsulate different issues for different agencies by using broad or vague language is, in this particular instance, both confusing to the reader and unfair to the affected agencies, and we therefore believe it would be more appropriate to simply refrain from referring to specific agencies in the title at all.

Language in the draft report does not accurately reflect the scope of the findings or the current state of the SBA Ethics Program:

GAO Highlights Page:

- "Until SBA addresses the requirement to establish written procedures for initial ethics training and track and documents training dates, it cannot reliably hold appointees accountable for meeting the training required."

Business Administration should implement procedures to track and verify that required employees complete initial ethics training and that completion of this training is documented (Recommendation 2).

Page 3

SBA believes this language should not be contained in the final report because the Agency has already established and implemented applicable written procedures. Moreover, the report states that after reviewing “SBA’s informal documentation...[GAO] found that political appointees completed required initial ethics training on time.”

- “HHS and Interior had procedures for providing initial ethics training as required beginning in January 2017; however, SBA did not. SBA also did not adequately document political appointees’ training dates.”

SBA believes this language should be amended to reflect that the Agency established and implemented applicable written procedures in February 2019. Moreover, the report states that after reviewing “SBA’s informal documentation...[GAO] found that political appointees completed required initial ethics training on time.”

Page 17:

- “According to SBA ethics officials, SBA is developing written procedures during Fiscal Year 2019 to address the requirement that became effective in 2017.”

SBA believes this language should be amended to reflect that the Agency established and implemented applicable written procedures in February 2019.

Pages 17 and 18:

- “In the absence of formally documenting its procedures, SBA cannot have reasonable assurance that the procedures are implemented as intended and that all required appointees are provided initial ethics training.”

SBA believes this language should not be contained in the final report because the Agency has already established and implemented applicable written procedures. Moreover, the report states that after reviewing “SBA’s informal documentation... [GAO] found that political appointees completed required initial ethics training on time.”

Page 18:

- “SBA does not adequately document political appointee’s training dates.”

SBA believes this language should be amended to reflect the Agency established and implemented applicable written procedures in February 2019.

- “SBA officials told us that the written procedures they are developing for initial ethics training will include new guidance to track training dates. As of October 2018, SBA had not provided us a draft of the new procedures.”

SBA believes this language should be amended to reflect the Agency established and implemented applicable written procedures in February 2019.

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- “SBA cannot reliably hold political appointees accountable for meeting the requirement without developing these procedures, including processes to track and document initial ethics training dates.”

SBA believes this language should not be contained in the final report because the Agency has already established and implemented applicable written procedures.

Page 24:

- “In particular, until SBA addresses the requirement to establish written procedures for initial ethics training and tracks and documents training dates SBA may not have reasonable assurance that all political appointees met the ethics training requirement.”

SBA believes this language should not be contained in the final report because the Agency has already established and implemented applicable written procedures.

In conclusion, we respectfully request that GAO strongly consider these comments and concerns to ensure its final report accurately reflects the past and current state of SBA’s Ethics Program and the accomplishments of its personnel.

Thank you again for affording SBA the opportunity to comment on this draft report, and for taking our comments into consideration as you prepare your final report. Please contact us if you have any questions concerning this letter.

Sincerely,

Andrew T. Krog

Designated Agency Ethics Official

Office of General Counsel

U.S. Small Business Administration

Accessible Text for Appendix VI Comments from the
United States Office of Government Ethics

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February 21, 2019

Tranchau (Kris) Nguyen

Acting Director, Strategic Issues

U.S. Government Accountability Office

441 G Street, NW

Washington, DC 20548

RE: Draft Report GAO-19-249, "Federal Ethics Program: Government-Wide Political Appointee Data and Ethics Oversight Procedures at Interior and SBA Could Be Improved."

Dear Ms. Nguyen:

Thank you for the opportunity to comment on the U.S. Government Accountability Office's (GAO) draft report, "Federal Ethics Program: Government-Wide Political Appointee Data and Ethics Oversight Procedures at Interior and SBA Could Be Improved." The U.S. Office of

Government Ethics (OGE) appreciates GAO's work in planning and conducting its review and issuing this report.

The draft report contains no recommendations for OGE; however, some of the recommendations touch on issues related to the executive branch ethics rules and the work of our office. In particular, the draft report recommends that the Small Business Administration (SBA) should establish written procedures for initial ethics training and processes to document that training was completed; that the Department of the Interior (Interior) should conduct more strategic planning for its ethics workforce and document ethics program policies and procedures; and that the Secretary of the Interior should ensure that the Department's ethics program policies and procedures are documented and easily accessible to program staff.

With regard to the recommendation for SBA, OGE concurs. OGE has long held that written procedures for all ethics-related policies and practices, in addition to the procedures for financial disclosure required by the Ethics in Government Act, help to ensure the consistent administration of the ethics program and foster more efficient transition of program responsibilities from departing ethics officials to newly appointed officials.

Regarding the recommendations for Interior, OGE notes that its most recent review) of Interior's ethics program identified numerous deficiencies. In the June 2016 report on this review, OGE issued 14 recommendations for program improvement. Notably, the report indicated that ethics office officials acknowledged the need for additional staffing and stated that the previous Secretary had agreed to an action plan that included adding 13 new positions to the

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office. However, OGE's report goes on to note that at the time of OGE's review staffing levels had not increased due to funding constraints.

Since the issuance of the June 2016 report, OGE has conducted two follow-up reviews to assess the implementation of these recommendations and plans to meet with Interior ethics officials later this month to discuss the steps the Designated Agency Ethics Official has taken to improve the program since being appointed to the position.

Again, thank you for the opportunity to comment on this draft report. Technical comments were previously provided. Please feel free to contact Shelley Finlayson, OGE's Chief of Staff and Program Counsel, if you have any questions. We look forward to working with you in the future.

Sincerely,

Emory A. Rounds, III

Director

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