

2023 USDA EXPLANATORY NOTES – OFFICE OF ETHICS

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*AGENCY-WIDE***PURPOSE STATEMENT**

The Ethics in Government Act, 5 U.S.C. App 4 (the Act), established the ethics compliance requirements and infrastructure applicable throughout the Executive Branch. Under regulations implementing the Act, the head of each Executive Branch Department or Agency must exercise personal leadership in establishing, maintaining, and carrying out the agency's ethics program and make available sufficient resources to ensure the agency's ethics program can be implemented effectively (5 C.F.R. § 2638.107). The Office of Ethics (OE) is the centralized and consolidated office implementing USDA's ethics program throughout the Department. As such, OE provides ethics services to the Secretary of Agriculture and employees at all levels of USDA concerning advice, training, and guidance about compliance with conflict of interest and impartiality rules. This includes complying with the requirements of the Stop Trading on Congressional Knowledge Act, Pub. L. No. 112-105 (2012) (The STOCK Act), Office of Government Ethics regulatory requirements (5 C.F.R. Parts 2634 through 2641) as well as the statute governing political activities (the Hatch Act) and Office of Special Counsel implementing regulations.

OE is currently organized into an Office of the Director and one Mission Areas Ethics Programs Support Branch. The current structure is the result of an organizational realignment that took place in 2016 to provide a more effective and flexible structure for OE to utilize existing resources to successfully address the growing needs of USDA's mission areas for ethics training, advice, and the review of over 14,000 financial disclosure reports.

As of September 30, 2021, there were 21 permanent full-time employees, including 20 in the headquarters office and one in the field.

OE did not have any Office of Inspector General or Government Accountability Office evaluation reports during the past year.

AVAILABLE FUNDS AND FTEs

Table OE-1. Available Funds and FTEs (thousands of dollars, FTEs)

Item	2020		2021		2022		2023	
	Actual	FTE	Actual	FTE	Estimated	FTE	Estimated	FTE
Salaries and Expenses:								
Discretionary Appropriations	\$4,136	18	\$4,184	20	\$4,184	20	\$5,544	26
Transfers Out	-150	0	-165	0	0	0	0	0
Total Adjusted Appropriation	3,986	18	4,019	20	4,184	20	5,544	26
Total Available	3,986	18	4,019	20	4,184	20	5,544	26
Lapsing Balances	-258	-	-98	-	-	-	-	-
Total Obligations, OE	3,470	18	3,823	20	4,184	20	5,544	26
Other USDA:								
OCIO Reimbursement	135	1	149	1	149	1	149	1
OCFO Reimbursement	135	1	149	1	149	1	149	1
Total, Other USDA	270	2	298	2	298	2	298	2
Total Available, OE	4,256	20	4,317	22	4,482	22	5,842	28

PERMANENT POSITIONS BY GRADE AND FTEs

Table OE-2. Permanent Positions by Grade and FTEs

Item	2020 Actual			2021 Actual			2022 Estimated			2023 Estimated		
	D.C.	Field	Total	D.C.	Field	Total	D.C.	Field	Total	D.C.	Field	Total
SES	1	-	1	1	-	1	1	-	1	1	-	1
SL	-	-	-	1	-	1	1	-	1	1	-	1
GS-15	3	-	3	2	-	2	2	-	2	5	-	5
GS-14	6	1	7	6	1	7	6	1	7	9	1	10
GS-13	3	-	3	3	-	3	3	-	3	3	-	3
GS-12	2	-	2	4	-	4	4	-	4	4	-	4
GS-11	1	-	1	1	-	1	2	-	2	2	-	2
GS-9	1	-	1	1	-	1	2	-	2	2	-	2
GS-7	2	-	2	2	-	2	-	-	-	-	-	-
Total Perm. FT EOY	19	1	20	21	1	22	21	1	22	27	1	28
FTE	19	1	20	21	1	22	21	1	22	27	1	28

ACCOUNT 1: SALARIES AND EXPENSES

APPROPRIATIONS LANGUAGE

The appropriations language follows (new language underscored; deleted matter enclosed in brackets):

For the necessary expenses of the Office of Ethics, [~~\$4,184,000~~]\$5,544,000.

LEAD-OFF TABULAR STATEMENT

Table OE-3. Lead-Off Tabular Statement (In dollars)

Item	Amount
Estimate, 2022	\$4,184,000
Change in Appropriation	+ 1,360,000
Budget Estimate, 2023	<u>5,544,000</u>

PROJECT STATEMENTS

Table OE-4. Project Statement (thousands of dollars, FTE)

Item	2020 Actual		2021 Actual		2022 Estimated		2023 Budget		Inc. or Dec.	FTE Inc. or Dec.	Chg Key
	Actual	FTE	Actual	FTE	Estimated	FTE	Budget	FTE			
Discretionary Appropriations:											
Ethics Services.....	\$4,136	18	\$4,184	20	\$4,184	20	\$5,544	26	+\$1,360	+6	(1)
Transfers Out:											
Working Capital Fund.....	-150	-	-165	-	-	-	-	-	-	-	-
Total Available.....	3,986	18	4,019	20	4,184	20	5,544	26	1,360	6	
Lapsing Balances.....											
	-258	-	-98	-	-	-	-	-	-	-	-
Total Obligations.....	<u>3,728</u>	<u>18</u>	<u>3,921</u>	<u>20</u>	<u>4,184</u>	<u>20</u>	<u>5,544</u>	<u>26</u>	<u>+1,360</u>	<u>+6</u>	

Table OE-5. Project Statement (thousands of dollars, FTE)

Item	2020 Actual		2021 Actual		2022 Estimated		2023 Budget		Inc. or Dec.	FTE Inc. or Dec.
	Actual	FTE	Actual	FTE	Estimated	FTE	Budget	FTE		
Discretionary Obligations:										
Ethics Services.....	\$3,728	18	\$3,921	20	\$4,184	20	\$5,544	26	+\$1,360	+6
Lapsing Balances.....	258	-	98	-	-	-	-	-	-	-
Total Available.....	3,986	18	4,019	20	4,184	20	5,544	26	1,360	6
Total Transfers Out.....	150	-	165	-	-	-	-	-	-	-
Total Appropriation.....	<u>4,136</u>	<u>18</u>	<u>4,184</u>	<u>20</u>	<u>4,184</u>	<u>20</u>	<u>5,544</u>	<u>26</u>	<u>1,360</u>	<u>6</u>

USDA Ethics Program

Base funds will allow the Office of Ethics (OE) to continue operating the Department’s Ethics Program and implementing the statutory and regulatory requirements to raise employee awareness and compliance with ethics laws. The Ethics in Government Act, 5 U.S.C. App 4 (the Act), established the mandatory ethics compliance requirements and infrastructure applicable throughout the Executive Branch. Under regulations implementing the Act, the head of each Executive Branch Department or Agency must exercise personal leadership in establishing, maintaining, and carrying out the agency’s ethics program and make available sufficient resources to ensure the agency’s ethics program can be implemented effectively (5 C.F.R. 2638.107). As such, OE is the sole office that provides ethics services to the Secretary of Agriculture and employees at all levels of USDA concerning advice, training, financial disclosure reviews, and guidance about compliance with criminal conflict of interest statutes (18 U.S.C. 201-209) and impartiality rules. This includes complying with the requirements of the Stop Trading on

Congressional Knowledge Act, Pub. L. No. 112-105 (2012) (The STOCK Act), Office of Government Ethics regulatory requirements (5 C.F.R. Parts 2634 through 2641) as well as the statute governing political activities (the Hatch Act) and Office of Special Counsel implementing regulations.

Continuing the base funding is crucial to ensuring the continued success of the program. Stoppages or cutbacks in the program will put at grave risk USDA's ability to meet its Congressionally-mandated requirements under the Ethics in Government Act and conduct timely ethics vetting and processing of prospective Presidential nominees and appointees. Failing to fund OE at the base level will create an unsustainable situation for the Department's Ethics Program and place the Department at risk of significant, but preventable, ethics scandals and Hatch Act violations, which will undermine Congressional confidence and erode public trust in USDA's missions.

The numbers and letters of the following listing relates to values in the Change (Chg) Key column of the Project Statement:

- (1) An increase of \$1,360,000 and 6 FTEs (\$4,184,000 and 22 FTEs available in 2021).

The funding change is requested for the following items:

- A) An increase of \$81,000, which includes \$55,000 for pay inflation and \$26,000 for FERS.

This increase supports the pay increase which went into effect January 1, 2022, of a 2.7 percent Cost of Living pay increases for civilian employees, and a 1.1 percent increase to cover the expenses for the mandated increase of USDA's contribution to FERS.

- B) An increase of \$158,000 for 2023 Pay.

This increase will support the annualization of the 2022 2.7 percent Cost of Living pay increase and the 2023 4.6 percent Cost of Living pay increase. This will ensure adequate resources are available to continue to allow OE to carry out its full range of responsibilities and support program delivery while avoiding creating an unsustainable situation for the Department's Ethics Program and placing the Department at heightened risk of significant, but preventable, ethics violations.

- C) An increase of \$1,121,000 and 6 FTEs to address increasing demand for ethics services and address historic reduction in ethics staffing at USDA.

At current levels, approximately 4,762 USDA employees are serviced by each OE ethics advisor, more than eight times the Executive Branch average of 559. Funding at the requested level will allow OE to address the increasing demand for additional ethics and Hatch Act training, advice and counselling, and historic underfunding of USDA's ethics program by bringing USDA's ethics program staffing more in line with similar programs at other federal agencies. OE Ethics Advisors have been required to do more with less for over a decade and USDA has become the Department with the lowest ratio of Ethics Advisors to employees in any Executive Branch agency. The workload burden has made it difficult to retain talented staff at USDA. Failure to provide these additional resources will continue the pattern of the high employee turnover amongst OE's ethics advisors as a result of an excessive ethics workload when compared to the workload of ethics advisors at other agencies.

OE currently lacks the capacity to conduct the vital work of ensuring that Ethics advice is consistent, up to date in view of ongoing changes in ethics rules and U.S. Office of Government Ethics (OGE) policies, which impairs USDA's ability to avoid conflicts of interest and makes it difficult to restore and maintain public trust in government as mandated by the Administration and the Secretary of Agriculture. While OE staffing has been reduced or left stagnant over the years, there is a growing need and increasing demand for ongoing Hatch Act and ethics training and individual guidance across the Department. Additionally, there is a need for the Office of Ethics to provide timely ethics training and guidance to those special government employees serving in high-visibility positions across USDA's numerous Federal Advisory Committees and the new USDA Equity Commission. Added to that is the increasing workload related to USDA's scientific integrity and national security programs related to the outside activities of USDA scientists and other senior level employees. Due to limited staffing, increasing ethics workload, and competing priorities, OE has not been able to devote the necessary resources to ensure compliance with Federal regulations in these areas.

This request would support the hiring of six employees to continually evaluate ethics program effectiveness, as well as to address the increased demand to support of USDA's scientific integrity, national security, and advisory committee functions. Funding at this level will address the historic underfunding of USDA's ethics program detailed above and bring USDA's ethics program staffing more

in line with similar programs at other federal agencies. Providing these additional resources will address the high employee turnover in OE due to an excessive ethics workload. Failure to provide funding at the requested level will put at grave risk USDA’s ability to meet its Congressionally-mandated requirements under the Ethics in Government Act and conduct timely processing of prospective Presidential nominees and appointees. This will create an unsustainable situation for the Department’s Ethics Program and places the Department at risk of significant, but preventable, ethics and Hatch Act violations.

GEOGRAPHIC BREAKDOWN OF OBLIGATIONS AND FTEs

Table OE-6. Geographic Breakdown of Obligations and FTEs (thousands of dollars, FTEs)

State/Territory/Country	2020		2021		2022		2023	
	Actual	FTE	Enacted	FTE	Estimated	FTE	Budget	FTE
District of Columbia	\$3,553	19	\$4,004	21	\$4,092	21	\$4,199	21
Illinois	175	1	180	1	185	1	190	1
Obligations	3,728	20	4,184	22	4,277	22	4,389	22
Lapsing Balances	258	-	-	-	-	-	-	-
Total, Available	3,986	20	4,184	22	4,277	22	4,389	22

CLASSIFICATION BY OBJECTS

Table OE-7 Classification by Objects (thousands of dollars)

Item No.	Item	2020 Actual	2021 Actual	2022 Estimated	2023 Budget
	Personnel Compensation:				
	Washington D.C.....	\$2,172	\$2,335	\$2,387	\$3,215
	Personnel Compensation, Field.....	135	140	143	150
11	Total personnel compensation	2,307	2,475	2,530	3,365
12	Personal benefits.....	762	871	897	1,195
13.0	Benefits for former personnel.....	2	2	2	2
	Total, personnel comp. and benefits	3,071	3,348	3,429	4,562
	Other Objects:				
21.0	Travel and transportation of persons.....	7	-	11	14
23.1	Rental payments to GSA.....	1	1	1	1
23.3	Communications, utilities, and misc. charges.....	56	50	71	92
24.0	Printing and reproduction.....	31	16	47	61
25.2	Other services from non-Federal sources.....	385	144	190	247
25.3	Other goods and services from Federal sources.....	163	278	350	455
26.0	Supplies and materials.....	14	41	35	46
31.0	Equipment.....	-	43	50	65
	Total, Other Objects	657	573	755	982
99.9	Total, new obligations	3,728	3,921	4,184	5,544
	DHS Building Security Payments (included in 25.3).....	\$25	\$23	\$26	\$27
	Position Data:				
	Average Salary (dollars), ES Position	\$195,185	\$198,113	\$203,066	\$209,158
	Average Salary (dollars), GS Position	\$124,235	\$122,894	\$125,966	\$129,745
	Average Grade, GS Position	13.6	13.6	13.6	13.6

STATUS OF PROGRAMS

The Office of Ethics (OE) implements USDA's Department-wide Ethics Program. All of OE's core functions, such as the Financial Disclosure Program, Ethics and Hatch Act Training Programs, Ethics Policy Development, and the Ethics and Hatch Act Advice and Counseling Programs are mandated by the Ethics in Government Act, U.S. Office of Government Ethics (OGE) regulations, and Office of Special Counsel Hatch Act regulations.

Current Activities

In 2021, OE focused on developing and delivering innovative training resources to employees throughout the Federal Government. These training products were well-received by USDA employees and exemplify OE's continued commitment to innovate in the delivery of ethics training to its audience, despite limitations caused by the COVID-19 pandemic. All of these innovations were produced with an emphasis on minimizing costs and can be either immediately used, or replicated, by other Federal agencies' Ethics Programs across the Executive Branch.

First, USDA and NASA teamed up to create a groundbreaking interactive training simulation game where the employees' knowledge of the Ethics rules help them succeed in the game as they lead a diverse and inclusive team working against the clock to save USDA's automated greenhouse on the Moon. The Ethics Training Game is randomized, so the challenges are different each time an employee plays the game. OE made the Ethics Game accessible to everyone by posting it publicly on USDA's webpage so that anyone can partake in this new innovative and fun way to learn about the Federal Ethics rules and the important work of USDA and NASA.

Secondly, OE wrote and created an ethics training video entitled: "The Biden Administration Ethics Pledge." This video explained the restrictions imposed by President Biden's Executive Order 13989, information which was very much needed for new presidential appointees entering service at USDA. This module was completed quickly and accurately to meet the needs of USDA's new policy officials and is also publicly available on USDA's Ethics Mobile App, USDA's website, and on USDA's official YouTube page.

Third, for the second year, OE continued an innovative series of virtual discussions centered on timely ethics issues called "Ethics LiveCasts." These Ethics LiveCasts are modeled after podcasts or panel discussion shows and feature senior ethics advisors discussing ethics issues of recent note. The initial LiveCast contained a summary of the Hatch Act rules governing political activity by Federal employees. The session used actual violations of the Hatch Act as reported in Office of Special Counsel press releases to raise awareness of the rules concerning political activity and the potential consequences for violation. The three other sessions covered the following topics: Holiday Gifts, the Post-Government Employment Rules and the Office of Government Ethics Annual Prosecution Survey.

In 2021, OE completed another successful year of electronic filing. OE completed review of 994 public financial disclosure statements (OGE-278 Public Financial Disclosure Reports and OGE 278T Periodic Transaction Reports required by the Stop Trading on Congressional Knowledge Act) and 11,861 confidential financial disclosure reports (OGE-450). 99.9 percent of USDA financial disclosure reports were filed as required by the Ethics in Government Act. Additionally, as mandated by the U.S. OGE, OE continued to operate a second electronic financial disclosure report filing system, INTEGRITY.GOV, for USDA's new OGE-278 filers. Existing filers continue to use USDA's legacy e-filing system. Moreover, for the eighth consecutive year, more than 99 percent of all USDA employees who were required to take annual ethics training completed that requirement in a timely fashion.

Further, OE staff provided ethics orientation briefings for all new Administration appointees to ensure that they were apprised of the ethical obligations of Federal service. OE's senior leaders conducted more than 40 hours of personal ethics orientation sessions for incoming political appointees on their first day at USDA. These one-hour briefing sessions covered subjects of immediate importance to incoming appointees, such as conflicts of interest, the gift rules, the Ethics Pledge and the political activity restrictions. Each new appointee was assigned a senior OE employee to assist them in completing their OGE-278 public financial disclosure report. Upon completion, OE senior staff members conducted a thorough ethics review of new political appointees' financial disclosure reports and drafted personalized Ethics Agreements for each appointee, addressing any potential concerns identified in those reports.

Additionally, OE served as the primary point of contact for all USDA nominees for Presidentially-appointed, Senate-confirmed positions. In that capacity, OE worked with the OGE to ensure that the nominees' financial disclosure reports were complete, and all conflict of interest concerns were appropriately resolved prior to nomination.

Selected Examples of Recent Progress

Biden Administration Ethics Welcome Page: Developed a webpage specifically for Biden Administration appointees at USDA, providing helpful links to ethics guidance, information on how to submit their OGE 278 Public Financial Disclosure Report, contact information, training resources, and similar reference materials.

Created a new animated Ethics video providing helpful Ethics advice to incoming political appointees. This video is publicly posted on USDA's YouTube page to assist incoming political appointees at USDA and across the Executive Branch.

Advised USDA leadership on the application of the ethics rules to federal advisory committee members as they stand up the new USDA Equity Commission (EC), a Federal Advisory Committee, to identify and address equity barriers across USDA.

Served on the team developing USDA's Foreign Talent Recruitment Program policy. In this capacity, OE interfaced with colleagues in the Office of the Chief Scientist, ARS, and NIH to establish a policy that protects the scientific integrity of USDA research programs from being compromised by foreign governments.

Distributed more than 130 different one-page "Ethics in Brief" (short synopses of topical ethics rules).

Provided advice and guidance to USDA's senior leadership at weekly Subcabinet meetings.

Provided training and guidance in connection with USDA's charitable programs with Departmental-wide scope, such as the Combined Federal Campaign and the Feds Feed Families Campaign

Responded to several thousand ethics questions, including inquiries regarding conflicts of interest, gifts, political activity, and the post government employment restrictions to ensure officials knew and understood their ethics obligations. The most common questions are used as the basis for OE's training materials.

Met regularly with staff members of USDA's Office of Inspector General (OIG) to discuss the application of Federal ethics statutes and regulations to OIG inquiries; provided copies of employees' financial disclosure reports when requested.

Advised the Office of Human Resource Management regarding potential ethics issues presented in employee relations matters.

Responded to document requests from the public and the USDA Freedom of Information Act (FOIA) office in compliance with the FOIA and the Open Government Act.

Continued to utilize six strategic action teams (Training, Outreach, Internal Training Professional Development, Financial Disclosure, Advice & Counsel, and Policy & Processes) to engage all OE employees in collaborative projects to develop comprehensive strategies for how OE will deliver services to fulfill its mission. These teams, which involve OE employees across all GS-levels and office locations in the strategic planning of OE's future, enhance the delivery of ethics services to USDA employees by encouraging diverse thought and employee input into how OE will move forward as an organization.