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Description of document: **Office of Government Ethics (OGE) Ethics Program Reviews from 19 Executive Branch entities, 2005 – 2009**

Requested date: 21-August-2010

Released date: 08-September-2010

Posted date: 20-September-2010

Date/date range of documents: 01-July-2005 – September 2009

Source of document: OGE FOIA Officer  
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Note: See release letter for list of reports

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United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

September 8, 2010

Tracking No.: OGE FOIA FY10/76

The Office of Government Ethics (OGE) is granting in part and denying in part your Freedom of Information Act (FOIA) request, which we received on August 21, 2010. (There is no charge for processing your request.) In this request, you sought access to records of 19 Ethics Program Reviews from various Executive Branch entities covering the years between 2005 and 2009. In response, we are enclosing the following 19 Ethics Program Reviews from the years 2005 through 2009: FBI, Office of National Drug Control Policy, Commission of Fine Arts, Centers for Medicare and Medicaid Services (HHS), Federal Energy Regulatory Commission, Federal Retirement Thrift Investment Board, Marine Mammal Commission, Department of Veterans Affairs, Securities Exchange Commission, National Labor Relations Board, Federal Trade Commission, Centers for Disease Control, Economic Research Service (USDA), National Archives and Record Administration, Commission on Civil Rights, Central Intelligence Agency, National Endowment for the Arts, Peace Corps, and the United States Postal Service.

Of the records we located, we are withholding three documents in part. The records that are being withheld in part are the following: Marine Mammal Commission (at page 3), National Archives and Records Administration (at page 14), and the United States Postal Service (at page 6). These records are being withheld in part under FOIA Exemption (b)(6), 5 U.S.C. § 552(b)(6) and are marked as such. The redactions and withholding have been made in accordance with Justice Department policy guidance pursuant to FOIA Exemption (b)(6), 5 U.S.C. § 552(b)(6) as information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The OGE official responsible for this FOIA determination is the undersigned. In accordance with the FOIA, as codified at 5 U.S.C. § 552(a)(6)(A), and OGE's FOIA regulations, at 5 C.F.R. § 2604.304, you may administratively appeal this denial of your request. The name and address of the OGE official to whom such an appeal would have to be submitted are: Don W. Fox, General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917. Any such appeal must be in writing and must be sent within 30 days of the date you receive this response letter. If you do appeal, you should include copies of your request and this response, together with a statement of why you believe

this initial determination is in error. Also, if you appeal, you should clearly indicate on the envelope and in the letter that it is a "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink, appearing to read "Kerri Cox". The signature is fluid and cursive, with the first name "Kerri" and the last name "Cox" clearly distinguishable.

Kerri A. Cox  
OGE Alternate FOIA Officer

Enclosure



United States Office  
Of Government Ethics

Report Number 08 - 012

## **Highlights**

### **Model Practices**

- The FBI provides verbal training to all employees.
- The FBI utilizes its own written procedures to administer its ethics program.
- The FBI's Ethics Office holds quarterly meetings with the FBI's two internal investigative organizations to facilitate discussion on items of mutual interest.
- The FBI conducts internal reviews to assist in improving efficiency, accountability, and program effectiveness. Ethics is addressed as part of the internal reviews.

If you have comments or would like to discuss the report, please contact Dale Christopher, Associate Director for Program Reviews, at 202-482-9224 or [dachrist@oge.gov](mailto:dachrist@oge.gov).

## **Ethics Program Review**

# **Federal Bureau of Investigation**

October 2008 Report

## **Executive Summary**

The Office of Government Ethics (OGE) has completed its review of the ethics program at the Federal Bureau of Investigation (FBI). The purpose of a review is to identify and report on the strengths and weaknesses of a program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

OGE's review identified several model practices implemented by the FBI. These model practices include exceeding OGE's minimum training requirements found at subpart G of 5 CFR part 2638, utilizing individualized written procedures to administer aspects of the ethics program, working closely with the agency's two internal investigative organizations to facilitate discussion on items of mutual interest, and conducting internal ethics reviews to help ensure that ethics is an important part of the FBI's overall management improvement efforts.

In addition, in connection with this review, OGE's leadership met with FBI's leadership to share some of the modifications in OGE's review process and to discuss the importance of agency leadership in implementing an effective ethics program, in accordance with 5 CFR § 2638.202(a). OGE was pleased to learn of the direct involvement the FBI leadership has in support of the FBI ethics program.

This report has been sent to the Department of Justice's Designated Agency Ethics Official, to the FBI's Director, and to the FBI's two internal investigative organizations: the Inspection Division and the Office of Professional Responsibility.





United States Office  
Of Government Ethics

Report Number 08-012

## Ethics Program Review

# Federal Bureau of Investigation

October 2008 Report

## Introduction

### OGE MISSION

The U.S. Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance initiatives.

### PURPOSE OF A REVIEW

The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures in place for administering the program.

### REVIEW AUTHORITY AND SCOPE

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the Federal Bureau of Investigation (FBI) focused on the elements listed below:

- Leadership involvement in the ethics program
- Program structure
- Department of Justice supplemental regulation and outside employment
- Financial disclosure systems
- FBI Advisory Committee
- Ethics education and training
- Ethics counseling
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

## **Ethics Program Review: FBI**

In view of the FBI's decentralized ethics program structure, OGE limited its review scope to only the key program elements associated with the FBI Headquarters' (FBIHQ) ethics program. OGE conducted its fieldwork intermittently between May and December 2006 and focused on calendar year 2005 and 2006 activities.

### **Program Elements**

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

#### **LEADERSHIP**

Commitment and action by agency leadership is the keystone for ensuring the integrity of an agency's ethical culture and for fostering public confidence in the decision-making processes of Government. In connection with this review, OGE leadership met with the FBI's leadership to share some of the modifications in OGE's review process and to discuss the importance of agency leadership in implementing an effective ethics program, in accordance with 5 CFR § 2638.202(a). OGE considers leadership involvement in the ethics program to be a model practice.

#### **ETHICS PROGRAM STRUCTURE**

Within the Department of Justice (Justice), the Assistant Attorney General for Administration (in the Justice Management Division (JMD)), serves as the agency's Designated Agency Ethics Official (DAEO) and has oversight responsibility for the Justice-wide ethics program. At the component level, general responsibility for all ethics matters rests with JMD's Departmental Ethics Office. The Deputy Designated Agency Ethics Officials (Deputy DAEOs) assist the DAEO in administering the ethics program at their respective components.

Within the FBI, the ethics function resides organizationally within the General Law and Legal Training Branch (GLLTB) of the Office of the General Counsel (OGC) and is currently managed by the GLLTB Deputy General Counsel. The day-to-day operation of the ethics program is carried out by GLLTB's Administrative Law Unit, hereafter referred to as the Ethics Office. The Ethics Office is comprised of a Unit Chief and nine attorneys, four of whom have ethics-related duties and serve the FBI's ethics program in varying capacities. The Ethics Office is responsible for carrying out the majority of the ethics functions, including providing and coordinating counseling and advice services agency-wide, implementing the requirements for both initial and annual ethics training, and administering and monitoring the FBI's public and confidential financial disclosure systems. However, other offices within the FBI are also utilized to handle other aspects of the program, such as the Employee Benefits Unit, the Reinvestigation Adjudication Unit, the Access Integrity Unit, the Training and Development Division, the Security Reinvestigation Unit, the Finance Division, the Inspection Division, and the Office of Professional Responsibility.

## **Ethics Program Review: FBI**

In addition to the Ethics Office staff, the FBI also utilizes its Chief Division Counsels (CDC) within each of the 56 FBI field offices and the Assistant Directors in Charge, or more specifically, their designees within each of the FBIHQ offices and divisions, to serve as ethics contacts for their respective units. This report will refer to these individuals as ethics officials. The ethics officials serve the ethics program on a collateral-duty basis and have the responsibility for administering the confidential financial disclosure system, coordinating ethics training, and dispensing ethics advice on an as-needed basis. The Ethics Office provides overall direction to these ethics officials throughout the reporting and training cycles.

### **General Observation**

At the time of fieldwork, the Ethics Office experienced some staff turnover. One attorney, who served as OGE's primary ethics contact for this review, retired from Federal service, while another attorney started a one-year detail with a different agency. In response to these changes, the Deputy DAEO hired two new attorneys to help carry out the FBI's day-to-day ethics functions. OGE was pleased to see the Deputy DAEO respond quickly in addressing this matter as it reflects positively on the FBI's commitment toward administering its ethics program in a positive and effective manner.

### **FBI'S MANUAL OF ADMINISTRATION OPERATIONS AND PROCEDURES**

The Ethics Office has established written procedures that are tailored to the FBI's own individual needs in terms of administering its ethics program. The written procedures are set forth within the FBI's Manual of Administration Operations and Procedures (MAOP), which contains guidelines for every sector of FBI work. Written procedures pertaining to ethics within the MAOP include administering the public and confidential financial disclosures systems, rendering ethics advice and training, accepting travel payments from non-Federal sources, and engaging in outside employment and/or activities. In light of the fact that the Justice DAEO is responsible for developing Justice-wide written procedures that provide the overall framework for administering both the public and confidential financial disclosure systems, and seeing as the requirement in Section 402(d)(1) of the Ethics Act for developing written procedures is not clearly applicable to a subunit of an agency, OGE considers the FBI's individualized procedures to be a model practice and a valuable resource to both employees and ethics officials.

### **JUSTICE'S SUPPLEMENTAL STANDARDS OF CONDUCT REGULATION**

Justice has supplemented the executive branch-wide standards of conduct regulation. Employees of Justice are prohibited from engaging in outside employment that involves: (1) the practice of law, unless it is uncompensated and in the nature of community service, or unless it is on the behalf of the employee, his parents, spouse, or children, (2) any criminal or habeas corpus

## **Ethics Program Review: FBI**

matter, or (3) litigation, investigations, grants or other matters in which Justice is or represents a party, witness, litigant, investigator or grant maker. Employees who wish to engage in outside employment not otherwise prohibited must obtain prior approval for outside activities that involve the practice of law or a subject matter, policy, or program that is in the employee's area of responsibility.

Within the FBI, requests for approval must be submitted using the FBI's FD-331 form, Request to Engage in Outside Employment. Approval is granted based on a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation.<sup>1</sup>

## **OUTSIDE ACTIVITY SYSTEM**

OGE last reviewed the FBI's ethics program in June 2000. As part of that review, OGE compared the FBI's policies and procedures for prior review and approval of activities contained in the MAOP against the language found in Justice's supplemental regulation. OGE found that the FBI imposed much broader prior approval restrictions for its employees than those required by the supplemental regulation. For example, the Justice supplemental regulation prohibits certain outside employment and requires prior approval for certain other outside activities that are related to the work of an employee's component or that involve the practice of law. The FBI, on the other hand, required all of its employees to obtain prior approval before engaging in *any* outside employment activities. Further restrictions also applied to FBI Special Agents; they were prohibited from engaging in *any* compensated outside employment activities wherein services were rendered or were actively or materially involved in managing, creating, developing or transforming something to produce economic gain or to generate income pursuant to an informal or formal contract.

During the previous review, OGE discussed these discrepancies with the Ethics Office (and separately with Justice's Departmental Ethics Office) and was advised that the FBI's need for the broader requirement was based on personnel management considerations, such as employee availability and security requirements, rather than on ethics. To illustrate this need, the FBI indicated that FBI employees must possess a Top Secret clearance as a condition of employment, for which the FBI must continually monitor eligibility. Even where classified issues are not present, employees may not be privy to sensitive FBI cases and so are not always able to determine for themselves whether or how a particular organization is involved in ongoing FBI matters. Moreover, there is the need for the reputations of law enforcement personnel to be unimpeachable when they are called to provide testimony in criminal proceedings. As a result, it is critical that FBI management be apprised in advance of any proposed associations in order to properly assess any potential security/operational issues. Another non-ethics-based reason for the

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<sup>1</sup>When employees terminate from an approved outside position or when they do not accept employment which has already been approved, the FBI's FD-331a form is used.

### **Ethics Program Review: FBI**

broadier requirements is the FBI's need to ensure that investigative personnel are readily available to be called to duty when they are needed.

To resolve OGE's concerns, the FBI and Justice both agreed to establish a "Memorandum of Understanding" to document the aforementioned reasons for the FBI's broader prior approval requirements. This document was created on December 7, 2000.

### **OGE's Current Review**

At the time of OGE's current review, the FBI was revising its outside employment prior approval policies and procedures. As a result, OGE was unable to fully evaluate the FBI's ability to integrate Justice's supplemental standards' requirements into its internal procedures or fully assess whether the application of the FBI's policy for prior approval was effectively operating as designed. OGE did, however, examine a number of outside employment/activities approved in 2005 and 2006, and they appeared to have been appropriately approved.

The proposed revisions will continue to substantially retain the FBI's current policy on outside employment. However, according to the Ethics Office, the revisions will ensure that important definitions are consistent with Justices' supplemental regulation, incorporate all relevant requirements into a single policy, and aid employee understanding of the policies and procedures for requesting approval of outside employment.

### **FINANCIAL DISCLOSURE SYSTEMS**

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (SF 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions, to facilitate internal agency conflict of interest review (OGE Form 450).

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs in providing counseling to employees. *See* 5 CFR § 2634.104(b).

### **Public Financial Disclosure System (SF 278)**

The public financial disclosure system at the FBI is centrally administered by the Ethics Office. Based on the FBI's master list of public filers, 369 employees met the filing criteria found at subpart B of 5 CFR part 2634 for public financial disclosure filing in 2005.

## **Ethics Program Review: FBI**

To evaluate the filing, review, and certification of public reports at the FBI, OGE selected 78 of the 369 reports for examination. These 78 reports consisted of:

### Type of Report

- 46 incumbent reports
- 20 new entrant reports
- 12 termination reports

78 total

### Filing Timeliness

- All 78 reports were filed timely.

### Review/Certification Timeliness

- All 78 reports were reviewed and certified in a timely manner.

### Quality of Review

OGE examined a sample of the cautionary letters that were attached to many of the reports and determined that the letters were useful in keeping filers apprised of potential conflicts.

In addition to the aforementioned reports, OGE examined the one annual Presidential-appointed and Senate-confirmed employee (PAS) report filed by the FBI Director in 2006 and confirmed its timeliness of filing, review, and forwarding to OGE. OGE also examined the Director's screening arrangement, which described the steps that he intended to take to avoid any actual or apparent conflicts, and determined that it had been properly updated.<sup>2</sup>

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<sup>2</sup>Shortly after assuming office, the Director was provided a limited waiver from the Federal conflict-of-interest statute, 18 U.S.C. § 208, so that he could participate in matters affecting some entities in which he holds a financial interest. The waiver did not, however, extend to entities in which the Director's financial interest exceeded a certain dollar amount. For this reason, the Ethics Office maintains and annually updates a screening arrangement list to ensure that the Director does not become unwittingly involved in particular matters affecting those interests not covered by the waiver.



## **Ethics Program Review: FBI**

### Confidential Financial Disclosure System (OGE Form 450)

The FBI's confidential financial disclosure system is decentralized. The Ethics Office is responsible for reviewing, certifying, and retaining all confidential reports filed within the OGC. Ethics officials throughout the FBI are responsible for reviewing, certifying, and retaining all reports filed within their respective divisions/offices. To help administer the confidential system, the FBI utilizes two different confidential financial disclosure reports to meet the needs of the different categories of FBI employees. For example, while the OGE Form 450 is filed by most covered employees, an OGE-approved Conflict of Interest Certification (CIC) form is filed by Contracting Officer Technical Representatives (COTR) on active contracts prior to each assigned case or contract in lieu of the OGE Form 450.<sup>3</sup>

Based on OGE's examination of the FBI's master list of confidential filers, 2,484 employees met the filing criteria found at subpart B of 5 C.F.R. part 2634 for confidential filing in 2005. Of those, 2,311 were required to file the OGE Form 450 and 173 were required to file the CIC form.

To evaluate the confidential system, OGE examined the confidential reports that were filed, reviewed, and certified by the Ethics Office and by ethics officials within one FBIHQ division, the Administrative Services Division (ASD). In total, OGE examined 54 new entrant and annual reports. The breakdown of these reports consisted of:

#### Type of Report

- 47 incumbent reports
- 7 new entrant reports

54 total

#### Filing Timeliness

- All 54 reports were filed timely.

#### Review/Certification Timeliness

- All 54 reports were reviewed and certified in a timely manner.

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<sup>3</sup>The CIC is a one-page form designed to determine whether an employee has actual or apparent conflicts of interest.

## **Ethics Program Review: FBI**

### Quality of Review

In view of such a highly decentralized system, OGE noted that Ethics Office conducted "ethics assistance reviews" within FBIHQs to assess each division's/office's ethics program operation and to offer assistance to ethics officials on program issues.<sup>4</sup> OGE also noted that part of the review included checking OGE Form 450s and the CICs for completeness and accuracy, and ensuring that the reports are securely maintained, properly organized, and reviewed in compliance with both the FBI and OGE requirements. According to records provided to OGE at the time of fieldwork, 19 assistance reviews had been conducted by the Ethics Office since 2004.

OGE considers these ethics assistance reviews to be yet another model practice. Consistent monitoring of a financial disclosure system's operation and, when necessary, making adjustments to address any weaknesses, is essential in administering an effective decentralized confidential system.

### **FBI ADVISORY COMMITTEE**

At the time of OGE's fieldwork, the Ethics Office was working to provide the basic ethics program services, including the collection of confidential reports and the provision of annual ethics training, to SGE members serving on a newly established advisory committee, the Chief Information Officer Information Technology Advisory Council (CIOIT).<sup>5</sup> Though the Ethics Office was late in learning of the establishment of this committee, the Deputy DAEO took prompt action by meeting with each member to discuss their obligations as an SGE as defined at 18 U.S.C. § 202(a).

Because of its recent establishment, OGE was not able to fully access the strengths and weaknesses of the FBI's ethics program for SGE members of the CIOIT. However, based on discussions with the Ethics Office, OGE is confident that procedures for SGE members of this committee will be established to ensure that the ethical requirements and restrictions that apply to SGE members will be effective.

To assist the FBI in its efforts to develop procedures for SGEs, OGE would like to

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<sup>4</sup>As it relates to the confidential financial disclosure system outside of FBIHQs, the Ethics Office relies on the INSD assessments to assure proper management focus and attention at each of the FBI division/field offices.

<sup>5</sup>The CIOIT Advisory Council, a sub-panel of the FBI's Director's Advisory Board, was established to advise the FBI Chief Information Officer and Director on matters relating to science, technology, research, engineering, information management, and other information technology concerns of special interest to the FBI. The Council is comprised of individuals chosen for their highly recognized accomplishments, varied talents, diverse backgrounds, and proven expertise in the fields of industry, government, and academia.

### **Ethics Program Review: FBI**

reiterate the fundamental requirements that will ensure that the procedures are effective. Fundamental requirements include:

- Collecting new entrant confidential reports initially from all SGE advisory committee members and, if term appointees, annually thereafter, in accordance with 5 CFR § 2634.903(b);
- Developing and maintaining a tracking system to ensure that all SGE advisory committee members timely submit their new entrant confidential reports;
- Ensuring that all advisory committee members who are SGEs receive initial ethics orientation in accordance with 5 CFR § 2638.703, including orientation on the most significant conflict-of-interest laws that apply to them, and, if term appointees, written annual ethics training thereafter, in accordance with 5 CFR § 2638.705(d)(2); and
- Ensuring that committee management officials (Designated Federal Officials) are educated on the ethics rules applicable to SGEs as part of the education and training program conducted in accordance with 5 CFR § 2638.203(b)(6) and subpart G of 5 CFR part 2638.

### **EDUCATION AND TRAINING**

An ethics education and training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees.

The FBI's education and training program is one of the strongest elements of the FBI's ethics program. OGE found the FBI's education and training program to exceed the minimum training requirements found at subpart G of 5 CFR 2638, as evidenced by the FBI's commitment to provide verbal initial ethics orientation briefings to new employees and annual ethics training to all employees. The Ethics Office also keeps employees aware of ethics laws and regulations through the use of discretionary training, which is provided throughout the year to both filers and non-filers. OGE considers the use of discretionary training to be a good way to reinforce the importance of ethical conduct and to ensure that employees understand what standards of ethical behavior are required within the FBI. The FBI's training efforts clearly indicate that ethics within the FBI is a significant and continuous part of the FBI management culture.

## **Ethics Program Review: FBI**

### Initial Ethics Orientation (IEO)

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with initial ethics orientation. An initial ethics orientation must include:

- the Standards of Ethical Conduct for Executive Branch Employees (Standards) and any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. See 5 CFR § 2638.703.

### IEO for New Special Agents

For new Special Agents, ethics is woven into the curriculum of the FBI's New Agents' Training which is conducted at the FBI Academy located in Quantico, Virginia. Lasting 17 weeks and consisting of over 600 hours of instruction, this intense program is designed to prepare new agent trainees for duty at one of the 56 field offices located throughout the country. A course on ethical leadership is provided during regularly scheduled classes throughout the duration of the program.<sup>6</sup>

During the review, OGE visited the FBI Academy and observed a live training session that was conducted by the FBI's Training and Development Division (TDD), which is responsible for training new agents and providing them with written material and information that satisfy the IEO requirements found at 5 CFR § 2638.703. The session OGE attended, which added a value-based approach to the existing compliance-based requirements of IEO, was informative and well-gearred to the variety of ethics issues that new agents may face while on the job. The instructor's use of interactive elements within his presentation, such as the use of visual materials (e.g., portions of current movies) and a question-and-answer format was also found to be a useful and effective technique to engage trainees.

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<sup>6</sup> This course is provided every two weeks and is divided into seven classes, with the last class consisting of an in-class examination and a visit to the Holocaust Center in Washington, DC. The course is designed to vividly demonstrate the importance of ethics in law enforcement. Outside of the core ethics training requirements, course topics include, among other things, discussions on FBI Core Values & Core Competencies, On Duty and Off-Duty FBI conduct requirements, Steven Covey's book on the "Seven Habits of Highly Effective People," and the DISC (Drive, Influence, Steadiness, and Compliance) personality system.

## **Ethics Program Review: FBI**

### IEO for All Other Employees

To meet the IEO requirement for all other new employees, written materials are provided at the location at which they begin work (either at FBIHQ or at one of the 56 field offices). New employees are provided with:

- the Standards and Justice's supplemental regulation;
- the names, titles, office addresses, and phone numbers of the Justice DAEO, the FBI's Deputy DAEO, and other ethics officials; and
- Justice's Ethics Handbook pamphlet, which includes a synopsis of the conflict of interest statutes found at 18 U.S.C. §§ 202-209, Executive Order 12674 on Principles of Ethical Conduct, as amended by Executive Order 12731, the Standards, and additional Justice regulations found at 28 CFR part 45.

In addition to the written material, new employees are shown OGE's Earning the Public Trust videotape.

OGE's IEO requirement is exceeded in that all new employees also receive in-person training either by the Ethics Office (at FBIHQ) or by the CDCs (in the field offices) when they attend a mandatory one-hour ethics training session as part of a three-day orientation for new FBI employees. During its review, OGE also attended one of the FBIHQ initial ethics orientation sessions conducted by the Ethics Office and found it to be informative and well-g geared to the variety of new employees in attendance. In total, 25 initial orientation training sessions were conducted in 2006.

### Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training each year. *See* 5 CFR § 2638.704(a). Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See* 5 CFR § 2638.704(c)(2). Other covered employees (e.g., confidential filers) are required to receive verbal annual ethics training at least once every three years and may receive written annual training in the intervening years. *See* 5 CFR § 2638.705(c). The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct,
- the Standards,
- any agency supplemental standards,
- the Federal conflict of interest statutes, and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See* 5 CFR § 2638.704(b).

## **Ethics Program Review: FBI**

To meet the annual training requirement, the FBI uses a number of different training methods from year to year to ensure that OGE's annual training requirement for covered employees is met, in accordance with 5 CFR §§ 2635.704 and 2635.705. These training methods include:

- the viewing of videotaped or live ethics video presentations,
- the interactive playing of computer/web-based training modules,
- attending classroom lectures and training sessions, and
- receiving written material.

While the Ethics Office is responsible for satisfying the verbal training requirement for all FBI public filers and for ensuring the completion of training FBI-wide, ethics officials throughout the FBI have the responsibility for ensuring that all OGE Form 450 and CIC filers within their respective units are trained using any of the aforementioned methods. The completion of training for covered employees is tracked using the FBI's Certification of Annual Ethics Training form which certifies not only the receipt of training but also the training method used to accomplish it.

In 2005, to meet the verbal annual training requirement for public filers, two one-hour training sessions were conducted by the Ethics Office. The sessions consisted of a discussion on the employees' basic responsibilities under the 14 Principles of Ethical Conduct, the Standards, the conflict of interest statutes, the restrictions regarding post-Government employment, and the requirements of the Justice supplemental regulation. Both sessions were made available for viewing via live simulcast on the FBI's Intranet to all employees. OGE Form 450 and CIC filers could view one of the two sessions to help satisfy their own annual training requirement.<sup>7</sup> Numerous one-hour ethics training sessions were also conducted by the Ethics Office during the annual divisional training sessions held by all FBIHQ divisions to help satisfy the annual training requirement. By the end of 2005, with the exception of five confidential filers, all covered employees FBI-wide had completed the requisite training. With regard to the five who did not complete the training in 2005, due mainly to either operational or medical reasons, all were trained in the early part of 2006.

To meet the annual training requirement for 2006, all OGE Form 450 and CIC filers were required to receive verbal training in accordance with the requirements of 5 CFR § 2638.705(c)(1). While the training consisted of discussions of some of the same basic topics that were addressed in 2005, it also focused upon actual disciplinary cases as well as the ethics-related trends identified by the Office of Professional Responsibility.

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<sup>7</sup>OGE Form 450 and CIC filers who were not able to satisfy their annual ethics training requirement by viewing one of these sessions were required to satisfy their training requirement using one or more of the aforementioned training methods under the direction of a qualified ethics official.



## **Ethics Program Review: FBI**

### **Initial Ethics Orientation and Annual Ethics Training for SGEs**

As mentioned in the FBI ADVISORY COMMITTEE section above, OGE noted that the FBI's Deputy DAEO took prompt action in meeting with each CIOIT Advisory Council member to discuss their SGE obligations, which included providing them with an in-person initial ethics orientation briefing in accordance with 5 CFR § 2638.703. As a general reminder, all new SGE advisory committee members serving on the CIOIT Advisory Council must receive an initial ethics orientation on the conflict-of-interest laws and ethics regulations that apply to them when they first come on board, and annually thereafter, via written training material, in accordance with 5 CFR § 2638.705(d).

## **ETHICS COUNSELING**

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. *See* 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 CFR § 2638.204.

OGE's assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of advice to assess whether processes and written procedures are effective.

OGE examined approximately 35 pieces of email advice dispensed on varying ethics-related issues, ranging from gift questions to seeking and post-employment matters, rendered by the Ethics Office. OGE found all advice to comply with the requirements of 5 CFR § 2638.203(b)(7) and (8). The advice and counseling services provided by the Ethics Office were also found to be timely which is important in preventing conflicts of interest and other ethics violations from occurring. Moreover, OGE found the advice to fully document the specific issue(s) at question and the basis for the advice being rendered, thus enhancing the transparency of the counseling program.

## **ENFORCEMENT**

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General are utilized when appropriate, including

### **Ethics Program Review: FBI**

the referral of matters to and acceptance of matters from that Office. See 5 CFR § 2638.203(b)(11) and (12).

The Ethics Office utilizes the services of, when appropriate, both the FBI's Inspections Division (INSD) and the Office of Professional Responsibility (OPR). INSD is responsible for evaluating investigative, financial, and administrative programs and for conducting internal audits that assist in improving efficiency, accountability, and program effectiveness within the FBI. OPR is responsible for adjudicating employee misconduct cases based on INSD's investigations (and those conducted by Justice's Office of the Inspector General). OPR is also responsible for establishing policy and procedures pertaining to the adjudication process and for monitoring disciplinary trends.

It was clear during OGE's review that a close working relationship exists between the Ethics Office, INSD, and OPR to effectively exchange ethics-related information and to resolve ethics issues. OGE noted that all parties meet quarterly to facilitate discussions on items of mutual interest. The meetings provide all parties with an opportunity to compare professional notes and to identify trends of misconduct that may be occurring within the FBI. The information shared during the meetings is used to improve the training for FBI employees. Feedback from INSD internal reviews are also used to enhance future training. (see the Internal Program Review section below). In view of the fact that education and training is one of the most important elements in maintaining an ethical culture within any agency, OGE finds these quarterly meetings to be a model practice that can be shared with other agencies. As more agencies look for better ways to coordinate with their internal investigative organizations, OGE will recommend this approach as a way to communicate and develop relevant ethics training in an effort to help strengthen and promote an agency's ethical culture.

During the period covered by OGE's review, there were no recent violations of the criminal conflict-of-interest laws referred for prosecution to a U.S. Attorney's Office or to the Public Integrity Section within Justice's Criminal Division. According to records provided to OGE, approximately 250 administrative actions for alleged ethics-related offenses were taken or considered for violations of the Standards or statutes governing conduct from the period of January 1, 2005 to May 1, 2006. Of the 250 allegations considered, 138 of the allegations were substantiated. Actions were taken for the substantiated allegations which ranged from misusing Government vehicles and credit cards to failing to honor just debts.

### **Internal Assessments within the FBI**

As mentioned, INSD is responsible for conducting internal assessments that assist in improving efficiency, accountability, and program effectiveness within the FBI. As a part of these assessments, INSD conducts reviews of the ethics programs administered by ethics officials within each of the FBI division/field offices to ensure their compliance with all basic requirements of the FBI ethics program. The areas generally examined are similar to those

## **Ethics Program Review: FBI**

examined during an OGE program review, with particular emphasis placed on the review and certification of confidential disclosure reports and the provision of ethics training. OGE noted the FBI's willingness to address ethics as an important part of its overall management improvement efforts. OGE finds the depth of the INSD assessments to exceed general regulatory requirements.

### **ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES**

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports of travel payments from non-Federal sources in excess of \$250 to OGE. *See* 31 U.S.C. § 1353.

In accordance with the FBI's policy and procedures found within the MAOP, only under limited circumstances are FBI employees authorized to accept travel payments from non-Federal sources under the authority of the General Services Administration (GSA) regulation at 41 CFR chapter 304, implementing 31 U.S.C. § 1353. In most cases, FBI employees are reimbursed for official travel and related expenses using FBI appropriated funds. Additionally, although the GSA regulation permits the FBI to accept travel reimbursement for an employee's accompanying spouse when the spouse's presence at the event is determined to be in the best interest of the agency, Justice-wide policy prohibits such reimbursement from being accepted.

Officials within the FBI's Finance Division are responsible for ensuring that the acceptance of travel payments from non-Federal sources under 31 U.S.C. § 1353 are approved in advance and that payment is made either in cash to the agency or in kind. The Finance Division is also responsible for drafting the required semiannual report and forwarding it through Justice to OGE. OGE's examination of the acceptances reported on the FBI's last two semiannual travel reports submitted to OGE covering the period from April 1, 2005 through March 31, 2006 identified 69 payments that were accepted during this timeframe. OGE examined several of these payments and found them all to have been properly authorized, in accordance with 31 U.S.C. § 1353 and 41 CFR chapter 304.

### **Summary**

OGE's review identified several model practices that have been implemented at the FBI. These model practices include:

- providing verbal training to all employees,
- utilizing its own written procedures to administer its ethics program,
- conducting quarterly meetings with the agency's two internal investigative organizations to facilitate discussion on items of mutual interest, and
- conducting internal reviews to assist in improving efficiency, accountability, and program effectiveness within the FBI.

**Ethics Program Review: FBI**

OGE also noted the direct involvement the FBI leadership has in support of the FBI ethics program.

If you have comments or would like to discuss the report, please contact Dale Christopher, Associate Director for Program Reviews, at 202-482-9224.



United States Office  
Of Government Ethics

Report Number 08-002

## Highlights

### Model Practices

- VA exhibits leadership involvement and support for the ethics program.
- VA conducts internal ethics program reviews of VA regional offices.
- VA provides tailored training to targeted audiences, including training for employees who are not required to be trained.
- VA has developed comprehensive written procedures for managing the education and training program.
- VA issues memoranda through the agency's leadership reminding employees about training requirements.
- VA makes counseling available to components, and provides weekly reports with examples to ensure consistency and transparency.
- VA procedures require coordination with the DAEO when disciplinary actions, which often involve ethics issues, are taken against senior personnel.

### OGE Suggests

- VA enlist the help of individual component leadership in ensuring the submission of semiannual reports of travel payments accepted from non-Federal sources to OGE.

If you have comments or would like to discuss the report, please contact Dale Christopher, Associate Director for Program Reviews, at 202-482-9224 or [dachrist@oge.gov](mailto:dachrist@oge.gov).

# Ethics Program Review Department of Veterans Affairs

April 2008 Report

## Executive Summary

The Office of Government Ethics (OGE) has completed its review of the ethics program at the Department of Veterans Affairs (VA). The purpose of a review is to identify and report on the strengths and weaknesses of a program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program. OGE determined that there is reasonable assurance that the performance and management of VA's ethics program is effective.

OGE's review also identified several model practices that VA has implemented. The model practices include:

- exhibiting leadership involvement in and support for the ethics program, as demonstrated by the VA Secretary's meeting with OGE's Director;
- conducting internal ethics program reviews of VA regional offices;
- providing tailored training to targeted audiences, including training for employees who are not required to be trained;
- developing comprehensive written procedures for managing the education and training program;
- issuing memoranda through the agency's leadership reminding employees about training requirements;
- making counseling available to components, and providing weekly reports with examples to ensure consistency and transparency; and
- requiring coordination with the DAEO when disciplinary actions, which often involve ethics issues, are taken against senior personnel.

This report has been forwarded to VA's Designated Agency Ethics Official and VA's Inspector General.



**United States Office  
Of Government Ethics**

Report Number 08-002

**Ethics Program Review  
Department of Veterans Affairs**

April 2008 Report

**Introduction**

**OGE MISSION**

The Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance initiatives.

**PURPOSE OF A REVIEW**

The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures in place for administering the program.

**REVIEW AUTHORITY AND SCOPE**

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. *See* Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the Department of Veterans Affairs (VA) focused on the below program elements.

- Leadership involvement in the ethics program
- Program structure
- Financial disclosure systems
- Ethics education and training
- Ethics counseling
- Outside employment
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources



## **Ethics Program Review: VA**

OGE's review focused primarily on the program at VA headquarters.

### **Program Elements**

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

#### **LEADERSHIP**

Commitment and action by agency leadership is the keystone for ensuring the integrity of an agency's ethical culture and for fostering public confidence in the decision-making processes of Government. Leadership involvement in the ethics program at VA is substantial. The VA Secretary has underscored the importance of ethics at VA by providing an introduction to an ethics video. The VA Secretary suggested his own participation in the ethics video. Additionally, the VA Secretary met with OGE's Director to discuss the importance of agency leadership involvement in and support for the ethics program. The Assistant Secretary for Management, the Director of the Veterans Benefits Administration, and the Deputy Under Secretary for Health routinely emphasize the importance of the VA ethics program by issuing memoranda regarding ethics training, integrity, and conflicts of interest.

#### **PROGRAM STRUCTURE**

VA's ethics program is administered by the Office of the General Counsel (OGC). The Assistant General Counsel serves as the Designated Agency Ethics Official (DAEO) and is closely involved in the administration of the ethics program. The Deputy Assistant General Counsel serves as the Alternate DAEO. Nine Staff Attorneys and 22 Regional Counsels serve as Deputy DAEOs.

The roles and responsibilities of VA ethics officials are outlined in VA's General Counsel Handbook. The General Counsel Handbook outlines all requirements and procedures for administering, among other things, the ethics program at VA. To ensure compliance with the General Counsel Handbook and ethics laws and regulations, ethics officials from OGC conduct internal ethics program reviews of VA's regional offices. Conducting internal ethics program reviews is recognized by OGE as a model practice.

#### **FINANCIAL DISCLOSURE SYSTEMS**

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (SF 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest review (OGE Form 450).

## **Ethics Program Review: VA**

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs and providing counseling to employees. See 5 CFR § 2634.104(b).

OGE's review found that the public and confidential financial disclosure systems at VA are managed effectively. VA ethics officials have developed comprehensive written procedures for managing the financial disclosure systems. The written procedures contain detailed instructions to aid in the review of public and confidential financial disclosure reports. The instructions ensure that all information provided is analyzed to identify real or potential conflicts of interest. Contact information, Web sites, and referenced documents are embedded in the written procedures as electronic links.

Additionally, VA ethics officials developed guidelines for both public and confidential financial disclosure report filers to complete their reports.

### **Public Financial Disclosure System (SF 278)**

All public financial disclosure reports filed within VA are required to be submitted to OGC. The Alternate DAEO assigns submitted public financial disclosure reports to Deputy DAEOs to review and certify. The assignments are recorded in the GCLaws database.<sup>1</sup> Public financial disclosure reports submitted by Presidentially-appointed, Senate-confirmed (PAS) filers must be certified by the DAEO, or in the DAEO's absence, the Alternate DAEO. The VA Secretary must certify the public financial disclosure report submitted by the DAEO.

To evaluate the filing, review, and certification of public reports at VA, OGE examined 50 of the approximately 385 public reports required to be filed in 2005. These 50 reports consisted of:

#### **Type of Report**

- 45 incumbent reports
- 5 new entrant reports

50

#### **Filing Timeliness**

- All 50 reports were filed in a timely manner.

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<sup>1</sup> The GCLaws database allows the Deputy DAEOs to record communications with the filer, document findings, and track progress.

## **Ethics Program Review: VA**

### Review Timeliness

- All 50 reports were reviewed in a timely manner.

### Certification Timeliness

- All 50 reports were certified in a timely manner.

### Quality of Review

Written comments on the reports and documentation in the files indicated that the reports underwent a thorough review by VA officials.

### Confidential Financial Disclosure System (OGE Form 450/A)

Confidential financial disclosure reports filed by VA headquarters employees are submitted to OGC. The Alternate DAEO assigns submitted reports to Deputy DAEOs to review and certify. The assignments are recorded in the GCLaws database.

To evaluate the confidential financial disclosure system at VA, OGE examined 68 of the 452 confidential reports required to be filed by VA headquarters' employees in 2005. These 68 reports consisted of:

### Type of Report

- 58 annual reports
- 10 new entrant reports

68

### Filing Timeliness

- 59 reports were filed in a timely manner.
- 9 reports were filed more than 30 days late.

68

### Review Timeliness

- All 68 reports were reviewed in a timely manner.

### Certification Timeliness

- All 68 reports were certified in a timely manner.

## **Ethics Program Review: VA**

### Quality of Review

The files reflected that the confidential reports had been systematically reviewed. The review team noted that the majority of the reports included annotations by reviewing officials, and when appropriate, recusal memoranda were attached to the reports.

## **ETHICS EDUCATION AND TRAINING**

An ethics education and training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees.

VA's education and training program is tailored to provide relevant training to targeted audiences. Some of the training offered targets employees who enter into, administer, or terminate contracts. VA also targets internal departments like the Veterans Health Administration and the Veterans Benefits Administration for training customized to fit the needs of those components' respective employees. Additionally, VA ethics officials issue memoranda through the agency's leadership, most notably, the Assistant Secretary for Management, reminding employees about the training requirement. VA's ethics officials have also developed comprehensive written procedures for managing the education and training program. Focused ethics education and training, leadership involvement in ethics education and training, and comprehensive written procedures, are all model practices.

### Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with initial ethics orientation. Initial ethics orientation must include:

- the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. See 5 CFR § 2638.703.

To meet the initial ethics orientation requirement, within 90 days from the time an employee begins work at VA, the employee is provided with:

- the Standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above.

## Ethics Program Review: VA

At VA headquarters, new employees also must attend a presentation titled *Ethical Conduct for VA Employees*. New employees at the regional offices are shown an interactive ethics video called *Ethics' Most Wanted* in addition to receiving the written orientation materials. These presentations are designed to explain and raise awareness of ethics-related rules.

According to VA ethics officials, initial ethics orientation was provided to 22,835 out of 23,071 new employees who entered on duty throughout all of VA during the period covered by OGE's review. The employees who had not received initial orientation at the time of OGE's review were scheduled to receive it during subsequent training sessions.<sup>2</sup>

### Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training each year. See 5 CFR § 2638.704(a). Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. See 5 CFR § 2638.704(c)(2). Other covered employees (e.g., confidential filers) are required to receive verbal annual ethics training at least once every three years and may receive written annual training in the intervening years. See 5 CFR § 2638.705(c). The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct;
- the Standards;
- any agency supplemental standards;
- the Federal conflict of interest statutes; and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. See 5 CFR § 2638.704(b).

OGE reviewed the following VA annual ethics training materials:

- *Ethics' Most Wanted*;
- slides of the instructor-led course titled *Ethical Conduct for VA Employees*; and
- slides of the instructor-led course titled *Selected Ethics Issues*.

OGE's review of these courses found them to meet the annual ethics training content requirements.

In 2005 all 10 of VA's PAS employees received annual ethics training and 338 of the required 346 non-PAS public financial disclosure filers were trained. VA ethics officials stated that 4,394 of 4,637 confidential financial disclosure filers were trained. VA ethics officials explained the discrepancies as due to employees being on extended sick leave, military

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<sup>2</sup> Initial ethics orientation is provided on a monthly basis or as necessary at VA headquarters but only every 90 days at the regional offices.

## **Ethics Program Review: VA**

deployment or maternity leave. Additionally, some covered employees left VA prior to scheduled annual training. VA also provided annual training to 3,423 non-covered employees.

### **ETHICS COUNSELING**

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. *See* 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 CFR § 2638.204.

OGE's assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of advice to assess whether processes and written procedures are effective.

To meet the counseling program requirements at VA, ethics-related counseling is provided to employees primarily by the Deputy DAEOs. VA procedures require that some counseling be documented in formal memoranda, but the majority is stored in the GCLaws database. Counseling rendered to PAS employees is maintained in physical files. A searchable database containing counseling rendered is available on VA's intranet Web site for attorneys to review. Ethics officials at headquarters distribute weekly reports to the regional offices offering recent examples of guidance rendered. Making counseling available by ethics officials and providing weekly reports with examples are model practices which help ensure consistency and transparency.

To evaluate the counseling provided by VA ethics officials, OGE analyzed samples of memorialized ethics counseling. These samples were reviewed by OGE's VA Desk Officer. Generally, the counseling was in the areas of conflicts of interest, fundraising, gifts, misuse of Government property, outside activities, post-Government employment, travel payments from non-Federal sources, and widely attended gatherings. The counseling that OGE examined was timely and consistent with applicable ethics laws and regulations.

### **ENFORCEMENT**

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).



## **Ethics Program Review: VA**

Ethics officials at VA are meeting the requirements of 5 CFR § 2638.203(b)(11) and (12) by coordinating with the Office of the Inspector General (OIG) on ethics-related matters. VA ethics officials have an effective working relationship with OIG and coordinate as necessary with OIG on standards of conduct and conflict of interest matters.

VA referred 10 conflict of interest violations to the Department of Justice during 2005. During the same period, there were 84 substantiated violations of the Standards at VA.

When dealing with senior personnel disciplinary actions, VA requires DAEO participation and concurrence. The inclusion of an ethics representative when deliberating disciplinary actions is a model practice.

## **TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES**

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports of travel payments from non-Federal sources in excess of \$250 to OGE. *See* 31 U.S.C. § 1353.

OGE reviewed three semiannual reports sent to OGE covering the period from October 1, 2004 through March 31, 2006. All of the semiannual reports were submitted using the appropriate SF 326. Only one of the three semiannual reports was submitted to OGE in a timely manner. VA ethics officials explained that semiannual reports were sometimes submitted to OGE after the due date because VA components provide their input late. OGE suggests that VA ethics officials enlist the help of senior component management in order to resolve this issue.

## **Summary**

OGE's review determined that there is reasonable assurance that the performance and management of VA's program is effective.

OGE's review also identified several model practices that VA has implemented. The model practices include:

- exhibiting leadership involvement in and support for the ethics program, as demonstrated by the VA Secretary's meeting with OGE's Director;
- conducting internal ethics program reviews of VA regional offices;
- providing tailored training to targeted audiences, including training for employees who are not required to be trained;
- developing comprehensive written procedures for managing the education and training program;
- issuing memoranda through the agency's leadership reminding employees about training requirements;
- making counseling available to components, and providing weekly reports with examples to ensure consistency and transparency; and

### **Ethics Program Review: VA**

- requiring coordination with the DAEO when disciplinary actions, which often involve ethics issues, are taken against senior personnel.

If you have comments or would like to discuss the report, please contact Dale Christopher, Associate Director for Program Reviews, at 202-482-9224.



United States Office  
Of Government Ethics

Report Number 08-011

## **Highlights**

### **Model Practice**

- SEC provides annual ethics training to non-covered employees.

### **OGE Suggests**

- SEC headquarters' ethics officials instruct regional offices to review OGE's report.

If you have comments or would like to discuss this report, please contact Dale Christopher, Associate Director for Program Reviews, at 202-482-9224 or [dachrist@oge.gov](mailto:dachrist@oge.gov)

## **Ethics Program Review**

# **Securities and Exchange Commission**

July 2008 Report

## **Executive Summary**

The Office of Government Ethics (OGE) has completed its review of the ethics program at the Securities and Exchange Commission (SEC). The purpose of a review is to identify and report on the strengths and weaknesses of a program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

OGE's review identified a model practice that SEC has implemented: providing annual ethics training to non-covered employees.

OGE's review identified two areas of deficiency relating to SEC's new entrant confidential financial disclosure system and its procedures for concurrently notifying OGE of referrals to the Department of Justice and providing OGE with subsequent disposition reports. However, during and since OGE's on-site fieldwork, SEC took several actions to rectify these deficiencies. Therefore, OGE makes no formal recommendations for improvement in SEC's confidential financial disclosure system or referral procedures.

This report has been sent to SEC's Designated Agency Ethics Official and SEC's Inspector General.



**United States Office  
Of Government Ethics**

Report Number 08-011

**Ethics Program Review**  
**Securities and Exchange Commission**

July 2008 Report

**Introduction**

**OGE MISSION**

The U.S. Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance initiatives.

**PURPOSE OF A REVIEW**

The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures in place for administering the program.

**REVIEW AUTHORITY AND SCOPE**

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. *See* Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the Securities and Exchange Commission (SEC) focused on the elements listed below.

- Program structure
- OGE administered employee survey
- Supplemental Standards of Ethical Conduct
- Financial disclosure systems
- Ethics education and training
- Ethics agreements
- Ethics counseling
- Enforcement of ethics laws and regulations
- Federal advisory committees
- Travel payments from non-Federal Sources

## **Ethics Program Review: SEC**

OGE's review focused on the ethics program at SEC headquarters and was conducted in April 2006. OGE suggests that SEC headquarters' ethics officials instruct regional offices to review this report.

### **Program Elements**

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

#### **PROGRAM STRUCTURE**

SEC's ethics program is administered by the Ethics Office within the Office of the General Counsel. The Ethics Counsel serves as the Designated Agency Ethics Official (DAEO). The General Counsel serves as the Alternate DAEO. Additionally, a Paralegal, a Management Analyst for Financial Disclosure, an Ethics Research Assistant, and four Assistant Ethics Counsels serve specific functions within the Ethics Office.

In addition to the ethics staff in the Ethics Office, approximately 60 managerial employees serve as ethics contacts on a part-time basis. These employees act as Ethics Liaison Officers or Deputy Ethics Liaison Officers serving within headquarters, regional, and district offices. They primarily respond to ethics-related questions from their respective offices' employees or direct questions to SEC's Ethics Office for response, as necessary.

#### **OGE-ADMINISTERED EMPLOYEE SURVEY**

OGE conducted a survey of the employees at SEC in June 2005. The purpose of the survey was to assess SEC's ethics program and ethical culture from the employees' perspective. The population for the survey was all Government employees who work for the SEC<sup>1</sup>. Overall, employees who responded to the survey were favorable in their assessment of SEC's ethics program and ethical culture. Most of the respondents indicated that they were familiar with the rules of ethical conduct for executive branch employees and were aware that there are ethics officials in their agency with responsibility for addressing ethical concerns. Additionally, most respondents indicated that the ethics advice, education, and training they received were useful in making them more aware of ethics issues and guiding their decisions and conduct in relation to their work.

#### **SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT**

SEC has indicated that it will seek to issue a supplemental regulation under the authority of 5 CFR § 2635.105 granting executive branch agencies the ability to publish agency-specific supplemental regulations that are necessary to implement an agency's ethics program. The supplemental regulation would include provisions regarding prohibited financial interests and

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<sup>1</sup> OGE sent e-mail invitations to participate in the survey to 3,640 employees. OGE received 1,342 responses, for a response rate of 37%.

## **Ethics Program Review: SEC**

securities, plus a requirement that SEC employees obtain prior approval before engaging in outside employment or activities and before engaging in financial transactions. SEC plans to provide OGE, for its concurrence and joint issuance, a copy of the proposed supplemental regulation in the summer of 2008, with a goal of publishing the supplemental regulation early in fiscal year 2009.

## **FINANCIAL DISCLOSURE SYSTEMS**

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (SF 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest review (OGE Form 450).

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs in providing counseling to employees. See 5 CFR § 2634.104(b).

SEC has comprehensive written procedures for the administration of the public and confidential financial disclosure systems. Effective written procedures allow for accurate and consistent administration of financial disclosure systems and are a necessary element of succession planning. However, OGE determined that a significant percentage of new entrant confidential financial disclosure reports were not filed in a timely manner. During the onsite fieldwork portion of the review, SEC advised the OGE review team that it has implemented specific actions to address the timely filing of confidential financial disclosure reports. The actions are summarized in the below Confidential Financial Disclosure System section of this report.

### **Public Financial Disclosure System**

The administration of the public financial disclosure system is primarily the responsibility of the Management Analyst for Financial Disclosure, SEC's DAEO, and the Assistant Ethics Counsels. The Management Analyst for Financial Disclosure conducts a technical and substantive review of the reports. After the review is completed, the report is forwarded to an Assistant Ethics Counsel, who then conducts a second-level substantive review. If the Assistant Ethics Counsel has no questions and has signed the report, the report is forwarded to the DAEO for review and certification. During each step of the review process, the Ethics Research Assistant updates an assignment log to record the date on which each reviewer received the report.

## **Ethics Program Review: SEC**

To evaluate the filing, review, and certification of public reports at SEC, OGE examined 36 out of the 139 public reports required to be filed in 2005 at SEC headquarters. These 36 reports consisted of:

### Type of Report

- 11 annual reports
- 20 new entrant reports
- 4 termination reports
- 1 incumbent/termination report

36 total

### Filing Timeliness

- All 36 reports were filed timely.

### Review Timeliness

- All 36 reports were reviewed timely.

### Certification Timeliness

- All 36 reports were certified timely.

### Quality of Review

SEC's public financial disclosure report files reflected that the reports had been systematically reviewed. OGE noted that the majority of the reports included annotations by reviewing officials. When appropriate, recusal memoranda were attached to the reports.

### Public Reports filed by Presidentially-appointed, Senate-confirmed Employees

Ten of the 139 public reports required to be filed at SEC in 2005 were filed by Presidentially-appointed, Senate-confirmed (PAS) employees. In addition to reviewing a sample of 36 public reports filed by non-PAS filers, OGE confirmed that all 10 PAS reports were reviewed and submitted timely to OGE.

### Confidential Financial Disclosure System

SEC's confidential financial disclosure system is decentralized. The review and certification of confidential reports is the responsibility of Division Directors, Office Heads, Regional Directors, and District Administrators. However, authority to review the confidential reports can be delegated to a lower level, when appropriate. To protect an employee's privacy, SEC discourages delegating review authority to the employee's immediate supervisor. In cases

## **Ethics Program Review: SEC**

in which a reviewing official believes that the sensitive nature of an employee's work assignments might be more likely to create a potential conflict, the reviewing official may request an intermediate review by the employee's immediate supervisor or other individual who is familiar with the employee's work assignments. When the reviewing official is satisfied that the report is complete and in compliance with applicable statutes, regulations, and executive orders, the reviewing official signs the report as the final reviewer.

To evaluate the confidential financial disclosure system at SEC, OGE examined 87 out of the approximately 2,341 confidential reports required to be filed by SEC headquarters' employees in 2005. These 87 reports consisted of:

### Type of Report

- 26 annual reports
- 61 new entrant reports

87 total

### Filing Timeliness

- 69 reports were filed timely.
- 18 reports were filed late.

87 total

Late filing of financial disclosure reports diminishes an agency's ability to provide timely and specific advice regarding conflicts of interest, which is a fundamental purpose of any ethics program. Accordingly, during the review, SEC advised OGE that it had implemented specific steps to address the issue of filing timeliness. First, the Ethics Office hired a program manager to manage more closely the agency-wide confidential financial disclosure system. Second, Ethics Office staff initiated a cycle of one-on-one training sessions with staff in each of the agency offices with administrative responsibilities for the confidential system. Third, the in-person ethics orientation sessions at SEC headquarters were modified to include specific instruction to employees reminding them of their responsibility to file financial disclosure reports on time. Fourth, Ethics Office financial disclosure staff is worked (and continues to work) to improve both the periodic report data it receives from, and the routine notices it sends to, the staff responsible for administering the confidential system in the various SEC offices. Finally, SEC advised OGE that for new agency employees, the delay in the receipt of confidential reports is mitigated by an SEC conflicts review process that analyzes new employee holdings for potential conflicts with agency work. SEC stated that the conflict review process should be better integrated with the confidential financial disclosure report and that work is underway to enhance this integration.

In light of the actions SEC has taken to improve the filing timeliness of confidential reports, OGE makes no formal recommendation for improvement in this area.



## Ethics Program Review: SEC

### Review Timeliness

- All 87 reports were reviewed timely.

### Certification Timeliness

- All 87 reports were certified timely.

### Quality of Review

SEC's confidential financial disclosure report files reflected that the reports had been systematically reviewed. OGE noted that the majority of the reports included annotations by reviewing officials. When appropriate, recusal memoranda were attached to the reports.

## ETHICS EDUCATION AND TRAINING

An ethics education and training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees.

Each year SEC drafts an annual training plan that documents and describes the topics to be covered in the upcoming year. SEC uses model practices such as targeted ethics training for non-covered employees. For example, OGE reviewed ethics training that targeted examiners, particular offices, and even entire divisions within SEC.

### Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with initial ethics orientation. Initial ethics orientation must include:

- the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. See 5 CFR § 2638.703.

All SEC employees are given an initial ethics orientation in the form of written materials and an in-person ethics briefing. The written materials and the briefing are provided typically on the first day of new employees' entrance on duty. The written materials consist of the Standards and SEC's internal policies.

## Ethics Program Review: SEC

The OGE review team attended an initial ethics orientation session on June 5, 2006 and noted that SEC's ethics official covered the key ethics rules and regulations. The ethics official not only imparted general ethics-related information such as the 14 Principles of Ethical Conduct, but also discussed matters of particular interest to SEC, particularly security transaction reporting rules and non-divulgence of public information. Additionally, the ethics official outlined the structure of the Ethics Office and provided names and contact information for all the ethics officials and ethics liaisons within SEC.

OGE also reviewed a DVD that is shown at initial ethics orientation in SEC's regional offices. In addition to viewing the DVD, new regional office employees are provided with a copy of the Standards to review for an additional hour.

Initial ethics orientation is usually conducted every two weeks. The Office of Human Resources provides the Ethics Office with a list of new employees. The ethics official who conducts the orientation collects a certification<sup>2</sup> from each employee who attends. Certifications are then presented to the Ethics Research Assistant who compares them with the new employee lists. The Ethics Research Assistant is responsible for tracking orientation certifications and following up on any that are missing.

OGE's review determined that 542 employees were required to receive initial ethics orientation during the period covered by OGE's review. OGE located 487 certifications signed by new employees upon the completion of initial ethics orientation. OGE was unable to locate the remaining 55 certifications at the time of its fieldwork; however, SEC subsequently provided the remaining 55 certifications.

### Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training each year. *See* 5 CFR § 2638.704(a). Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See* 5 CFR § 2638.704(c)(2). Other covered employees (e.g., confidential filers) are required to receive verbal annual ethics training at least once every three years and may receive written annual training in the intervening years. *See* 5 CFR § 2638.705(c). The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct;
- the Standards;
- any agency supplemental standards;
- the Federal conflict of interest statutes; and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See* 5 CFR § 2638.704(b).

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<sup>2</sup> Certifications are provided to all new employees in their orientation package.

## **Ethics Program Review: SEC**

All 10 PAS employees required to receive annual ethics training received it. In 2005, 129 non-PAS public filers appeared to have been required to receive annual ethics training; however, only 89 non-PAS public filers actually received training. SEC explained the discrepancy as reflecting non-PAS public filers who terminated their employment with SEC prior to the scheduled training sessions. All OGE Form 450 filers received annual ethics training.

SEC broadcasts live training sessions held at headquarters to the regional offices. Attendees at the regional offices have the ability to communicate with the ethics officials providing the training. The live broadcast is recorded in order to maintain a record and to use at make-up sessions. OGE reviewed a video of one of these sessions. OGE noted the active participation in discussions by senior-level SEC officials.

In addition to providing annual ethics training for covered employees, SEC provides ethics training to certain non-covered employees. For example, SEC provided tailored training to the Office of Compliance Inspections and Examinations and the Enforcement Division. OGE recognizes this training for non-covered employees as a model practice.

In addition to its formal ethics training, SEC provides bi-weekly NewsGrams regarding various ethics-related issues that are posted prominently on the SEC Intranet home page and e-mailed directly to all employees. The NewsGrams are also maintained in the archives to the Intranet home page and on the Intranet ethics page.

## **ETHICS AGREEMENTS**

If potential or actual conflicts of interest exist, public and confidential financial disclosure filers may be required to enter into ethics agreements. Generally, employees entering into ethics agreements are required to comply with those agreements within three months of the agreement or of Senate confirmation, if applicable. *See* subpart H of 5 CFR part 2634.

There were nine written ethics agreements entered into by PAS employees in 2005. The agreements, which required the employees to execute recusals or divestitures, were carried out in accordance with applicable regulations and the terms of the agreements. OGE received evidence of compliance from SEC for those employees who entered into ethics agreements in 2005.

SEC advised OGE that it has implemented a comprehensive system to integrate the PAS employee conflicts considerations throughout the agency's work. Ethics Office staff reads every official document, such as proposals for an investigation, enforcement action, or rulemaking, before the documents are presented to members of the Commission for action, in order to evaluate them for potential conflicts with members of the Commission and certain senior members of the staff. In order to perform this review, Ethics Office staff use a record of recusal data maintained and updated monthly by the Office of the Secretary, other information provided to the staff by members of the Commission and senior staff, and knowledge of agency business. Ethics Office staff often contact individuals responsible for particular projects in order to clarify potential links among other ongoing matters, the identity of counsel or auditing firms whom certain members of the Commission or senior staff may have a conflict, as well as the identity of putative harmed investors. These contacts sensitize agency staff to the ongoing vigilance to

## **Ethics Program Review: SEC**

protect the integrity of the agency's work and to the need to monitor their own potential conflicts.

Records of recusals by members of the Commission are maintained by the Office of the Secretary. Moreover, the Ethics Office maintains a searchable record of recusals by both members of the Commission and certain senior staff, noting the reasons for the recusals, which facilitates future review of the same and other matters.

## **ETHICS COUNSELING**

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. *See* 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 CFR § 2638.204.

OGE's assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of advice to assess whether processes and written procedures are effective.

To meet the counseling requirements at SEC, ethics-related counseling is provided to SEC employees by SEC's ethics officials. SEC employees can seek ethics counseling as needed by sending questions to [ethics@sec.gov](mailto:ethics@sec.gov). This e-mail address collects all ethics inquiries which any SEC ethics official can view and respond to. SEC ethics officials discuss opinions prior to providing guidance to SEC employees. In addition, to ensure counseling is rendered accurately, SEC ethics officials review written opinions randomly, conduct periodic discussions among themselves, and consult with the DAEO on all statutory conflict of interest concerns and other more significant issues.

To evaluate the counseling provided, OGE examined a sample of approximately 60 written determinations rendered during the period covered by the review. The majority of the advice was in the areas of gifts, seeking employment, impartiality, and post-employment. OGE's review of the written determinations found the counseling rendered therein to be accurate and consistent and to be rendered in a timely manner.

## **ENFORCEMENT**

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).

## **Ethics Program Review: SEC**

According to SEC's Office of Inspector General (OIG), two alleged conflict of interest violations were referred to the Department of Justice (DOJ) in calendar year 2005. In one instance, an employee was counseled and divested of the prohibited holdings that gave rise to the allegation. In the other instance, the outcome was pending at the time of OGE's review.

Both the Inspector General and the Ethics Office officials are aware of the requirement to concurrently notify OGE of referrals to DOJ of alleged violations of the criminal conflict of interest laws as well as subsequent disposition reports. *See* 5 CFR § 2638.603(b). However, OGE was not notified of the referral of the two cases noted above nor of DOJ's final decision to not prosecute either of the two cases.

According to SEC, the supervisory staff in OIG has sent a message to its staff reminding them of the requirement to notify OGE concurrently with DOJ of any conflict of interest referral and must notify OGE of any subsequent DOJ decision on prosecution, as well as any disciplinary action planned or taken by the agency.

In calendar year 2005, SEC had seven alleged violations of the Standards. Of the seven instances of alleged violations of the Standards; five employees resigned, one employee was counseled, and one agreed to retire.

SEC's Ethics Office officials and SEC's Inspector General indicated that there is an effective working relationship between their two offices. The relationship ensures that information developed by OIG regarding alleged ethics violations is shared with ethics officials. OIG would make any required referrals to DOJ.

## **FEDERAL ADVISORY COMMITTEE**

SEC has one Federal advisory committee, the Advisory Committee on Smaller Public Companies. SEC established the advisory committee to assess the current regulatory system for smaller companies under the securities laws, including the impact of the Sarbanes-Oxley Act of 2002. The Ethics Office deemed that all members of the Advisory Committee on Smaller Public Companies serve as representatives, rather than special Government employees, and thus are not subject to Federal ethics laws and regulations.

## **ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES**

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports of travel payments from non-Federal sources in excess of \$250 to OGE. *See* 31 U.S.C. § 1353.

SEC accepts travel payments from non-Federal sources for travel, subsistence, and related expenses incurred by agency employees on official travel for attendance at a meeting or similar function under the authority of 31 U.S.C. § 1353. The procedures for requesting authorization for acceptance of travel payments from a non-Federal source are detailed in the SEC Administrative Regulations section of SEC's Intranet Web page. The Office of Financial

## **Ethics Program Review: SEC**

Management (OFM) is responsible for maintaining the agency's official payment records and collection-related documentation for travel payments from a non-Federal source. OFM is also responsible for submitting semiannual reports to OGE.

OGE examined all 91 of the payments that were accepted under the authority of 31 U.S.C. § 1353 during the period of April 1, 2005 through September 30, 2005. The semiannual report covering this period was sent to OGE in a timely manner. Of the 91 payments examined, OGE found that 87 had been reviewed and authorized prior to the occurrence of travel. However, OGE identified four instances where travel occurred prior to written authorization. Nonetheless, a conflict of interest analysis had been conducted in each of the four instances *prior* to travel occurrence and no conflicts of interest were identified. Ethics officials stated that conflict of interest analyses are a routine part of the approval process.

### **Summary**

OGE's review identified a model practice that the SEC has implemented: providing annual ethics training to non-covered employees.

OGE's review identified two areas of deficiency relating to SEC's new entrant confidential financial disclosure system and its procedures for concurrently notifying OGE of referrals to the Department of Justice and subsequent disposition reports. However, during and since OGE's on-site fieldwork, SEC took several actions to rectify these deficiencies. Therefore, OGE makes no formal recommendations for improvement in SEC's confidential financial disclosure or referral procedures.

If you have any comments or would like to discuss this report, please contact Dale Christopher, Associate Director for Program Reviews, at 202-482-9224.



United States Office  
Of Government Ethics

Report Number 09-004

## Highlights

### Model Practices

- Ethics duties are included in the Designated Agency Ethics Official's (DAEO) and Alternate DAEO's position descriptions and performance evaluations.
- A self-assessment instrument was used to evaluate the ethics advice provided by ONDCP ethics officials.

### OGE Suggests

- ONDCP take more timely, aggressive steps to obtain necessary information from financial disclosure report filers to ensure timely certification of the reports.

If you have comments or would like to discuss this report, please contact

Dale Christopher, Associate Director, Program Review Division, at 202-482-9224

# Ethics Program Review Office of National Drug Control Policy Executive Office of the President

January 2009 Report

## Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Office of National Drug Control Policy (ONDCP), Executive Office of the President. The purpose of a review is to identify and report on the strengths and weaknesses of a program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies, and (2) ethics-related systems, processes, and procedures in place for administering the program.

OGE's review identified two model practices that ONDCP has implemented. First, the ethics duties of ONDCP's Designated Agency Ethics Official (DAEO) and Alternate DAEO (ADAEO) are included in their position descriptions and performance evaluations. Second, ONDCP used a self-assessment instrument to evaluate agency employees' level of satisfaction with the ethics advice provided by the ethics officials. The results of the self-assessment revealed ONDCP employees have a high level of satisfaction concerning the timeliness and accuracy of the advice and the courtesy of the ethics officials who provided the advice to them.

Although there was no written annual training plan in place for 2007, the ADAEO created one for calendar year 2008. Written annual training plans are required to be developed each year in accordance with 5 CFR § 2638.706.

In addition, there were no written procedures for the financial disclosure systems in place at the time of the OGE's review. The ADAEO subsequently created written procedures pursuant to Section 402 (d)(1) of the Ethics in Government Act of 1978, as amended.

OGE suggests that ONDCP take more timely, aggressive steps to obtain necessary information from financial disclosure report filers to ensure timely certification of the reports.

This report has been sent to ONDCP's DAEO.



**United States Office  
Of Government Ethics**

Report Number 09-004

**Ethics Program Review**

**Office of National Drug Control Policy  
Executive Office of the President**

January 2009 Report

**Introduction**

**OGE MISSION**

The United States Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance initiatives.

**PURPOSE OF A REVIEW**

The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures in place for administering the program.

**REVIEW AUTHORITY AND SCOPE**

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the Office of National Drug Control Policy (ONDCP), Executive Office of the President focused on the elements listed below.

- Leadership involvement in the ethics program
- Program structure
- Financial disclosure systems
- Ethics training
- Ethics counseling
- Special Government employees
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources



## **Ethics Program Review: ONDCP**

OGE's review focused on the ethics program at ONDCP headquarters and the on-site fieldwork was conducted in June 2008.

### **Program Elements**

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

#### **LEADERSHIP**

Commitment and action by agency leadership is the keystone for ensuring the integrity of an agency's ethical culture and for fostering public confidence in the decision-making processes of Government. Notably, during the on-site fieldwork portion of OGE's review, ONDCP's Director met with the review team. During the meeting, the Director underscored his commitment to high ethical standards and welcomed any suggestions to enhance ONDCP's ethics program.

#### **PROGRAM STRUCTURE**

ONDCP's ethics program is administered within the ONDCP Office of Legal Counsel. The General Counsel serves as the Designated Agency Ethics Official (DAEO). The Assistant General Counsel serves as the Alternate DAEO (ADAEO) and is responsible for the day to day administration of the ethics program. The Deputy General Counsel is the Designated Deputy DAEO and is primarily responsible for the administration of the process for accepting gifts. OGE found that ethics duties were included in the DAEO and ADAEO's position descriptions. The DAEO's annual performance appraisal also includes an evaluation of the execution of his ethics duties.

#### **FINANCIAL DISCLOSURE SYSTEMS**

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (SF 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest review (OGE Form 450).

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs in providing counseling to employees.

*See 5 CFR § 2634.104(b).*

## **Ethics Program Review: ONDCP**

### General Comments

ONDCP ethics officials conduct a thorough review of the public and confidential financial disclosure reports for conflicts of interest. However, OGE's review team found that some reports were not timely certified or were not certified at all because filers did not provide follow-up information to the reviewers in a timely manner. Timely certification of the reports allows ethics officials to more readily identify and resolve real or potential conflicts of interest, protecting both employees and the Government. OGE suggests more timely, aggressive steps be taken to obtain necessary information from filers to ensure timely certification of the reports.

At the time of the review ONDCP did not have written procedures for the administration of its public and confidential financial disclosure systems as required by Section 402 (d)(1) of the Ethics in Government Act. Written procedures ensure consistency in the collection, review, and certification of financial disclosure reports. Additionally, written procedures assist reviewers in ensuring that information provided on the reports is appropriately analyzed and are essential for a good succession plan.

The review team advised the ADAEO of the requirement to have written procedures for financial disclosure. The ADAEO created comprehensive written procedures for the administration of its public and confidential financial disclosure systems.

### Public Financial Disclosure System (SF 278)

The administration of ONDCP's public financial disclosure system is primarily the responsibility of the ADAEO. The ADAEO reviews and certifies all reports, excluding her own. Her report is reviewed and certified by the DAEO. The ADAEO uses the filers' position descriptions to conduct a substantive review of the reports for conflicts of interest. Additionally she is routinely informed by the DAEO of current agency initiatives that may affect filers' financial holdings.

To evaluate the filing, review, and certification of public reports at ONDCP, OGE examined 25 of the 33 public reports required to be filed by ONDCP employees in 2007. The following is a summary of OGE's examination of the 25 reports.

#### Type of Report

- 21 annual reports
- 4 new entrant reports

25 total

#### Filing Timeliness

- 23 reports were filed timely
- 2 reports were filed late

25 total

## Ethics Program Review: ONDCP

### Review/Certification Timeliness

- 23 reports were reviewed and certified timely.
- 2 reports were certified late because the filers did not provide follow-up information to the reviewers in a timely manner.

25 total

### Quality of Review

Written comments on reports, documentation in files, and conversations with ethics officials indicated that the financial disclosure reports underwent a thorough review by ONDCP officials. OGE identified only minor technical errors in some of the reports such as over-reporting of assets and personal information.

### Confidential Financial Disclosure System (OGE Form 450)

The administration of the confidential financial disclosure system is primarily the responsibility of the ADAEO. The ADAEO uses the filers' position descriptions to conduct a substantive review of the reports for conflicts of interest. Additionally, she is informed by the DAEO of current agency initiatives that may affect filers' financial holdings.

To evaluate the confidential financial disclosure system at ONDCP, OGE examined 19 of the 22 confidential reports required to be filed by ONDCP's employees in 2007. The following is a summary of OGE's examination of the 19 reports.

### Type of Report

- 17 annual reports
- 2 new entrants

19 total

### Filing Timeliness

- 18 reports were filed timely.
- 1 report was filed late.

19 total

### Review/Certification Timeliness

- 15 reports were reviewed and certified timely.
- 1 report was certified late.
- 3 reports were not certified.

19 total

## Ethics Program Review: ONDCP

### Quality of Review

OGE found annotations on the reports that reflected that a thorough review had been performed for conflict of interest. However, OGE's review team found that some reports were not timely certified or were not certified at all because the filers did not provide follow-up information to the reviewers in a timely manner.

### ETHICS TRAINING

An ethics education and training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include, at least, an initial ethics orientation for all employees and annual ethics training for covered employees.

At the time of OGE's review ONDCP did not have an annual training plan that documents and describes the topics to be covered in the upcoming year. The OGE review team provided the ethics officials with a sample of an annual ethics training plan. Subsequently, the ADAEO created an annual training plan for calendar year 2008. Annual training plans are required to be developed each year in accordance with 5 CFR § 2638.706.

### Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with initial ethics orientation. Initial ethics orientation must include:

- the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. See 5 CFR § 2638.703.

The initial ethics orientation at ONDCP is provided by the ADAEO. The ADAEO provides employees with a PowerPoint presentation covering the Standards. Additionally, the ADAEO provides written materials to employees and is available to answer questions after the initial ethics orientation session. The written materials consist of a copy of the Standards along with the names, titles, and office addresses and telephone numbers of the ethics officials.

Initial ethics orientation is usually conducted quarterly. The completion of the initial ethics orientation is tracked by attendance rosters. According to the ADAEO, all new employees received the initial ethics orientation in 2007.

## Ethics Program Review: ONDCP

### Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training each year. *See* 5 CFR § 2638.704(a). Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See* 5 CFR § 2638.704(c)(2). Other covered employees (e.g., confidential filers) are required to receive verbal annual ethics training at least once every three years and may receive written annual training in the intervening years. *See* 5 CFR § 2638.705(c). The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct (Principles);
- the Standards;
- any agency supplemental standards;
- the Federal conflict of interest statutes; and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See* 5 CFR § 2638.704(b).

Annual training at ONDCP is provided by the ADAEO. In 2007, the ADAEO provided employees with a PowerPoint presentation covering the Principles, the Standards, gifts, and the Hatch Act. The ADAEO also utilized hypothetical case studies and games to engage the participants during training.

Public and confidential filers receive annual ethics training simultaneously. The completion of the annual ethics training is tracked by attendance rosters.

In 2007, all 3 PAS employees and all of the required non-PAS public and confidential filers received annual training. The Director received one-on-one individual training from the DAEO. ONDCP also makes annual ethics training available to non-covered employees and contractors.

### ETHICS COUNSELING

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. *See* 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 CFR § 2638.204.

OGE's assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of counseling to assess whether processes and written procedures are effective.

## **Ethics Program Review: ONDCP**

OGE reviewed a sample of 58 pieces of memorialized counseling, rendered by ONDCP ethics officials. The counseling involved widely attended gatherings, speaking engagements, gifts, conflicts, impartiality, seeking employment, misuse of position, outside activities, and post-employment. OGE found the counseling it reviewed to be accurate and consistent with applicable statutes and regulations.

The ADAEO provides post-employment advice to all departing employees. Additionally, in 2007 ONDCP used a self-assessment instrument to evaluate employees' level of satisfaction with the ethics advice provided by the ethics officials. The results revealed that ONDCP employees have high levels of satisfaction concerning the timeliness and accuracy of the advice and the courtesy the ethics officials who provided the advice.

### **ENFORCEMENT**

The DAEO is to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).

According to ethics officials, there were no potential violations of the criminal conflict of interest statutes referred to the Department of Justice from January 2007 through June 2008. There were also no identified violations of the Standards during that time. If an ethics violation were to be alleged, the Chief of Staff would appoint a fact-finder to investigate the matter. If necessary, the DAEO would make any required referrals to the Department of Justice. The ADAEO would notify OGE of the referral.

### **SPECIAL GOVERNMENT EMPLOYEES**

ONDCP had an advisory committee, the Advisory Commission on Drug-Free Communities (the Commission) which ceased to exist at the end of fiscal year 2007. The members of the Commission were considered special Government employees. The Commission members met once in 2007. ONDCP ethics officials provided ethics training to the members at the beginning of the meeting.

### **ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES**

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports to OGE of travel payments from non-Federal sources in excess of \$250. *See* 31 U.S.C. § 1353.

ONDCP has a policy of not accepting payments under 31 U.S.C. § 1353 and as such did not accept any travel payments from non-Federal sources in 2007.

## **Ethics Program Review: ONDCP**

### **Summary**

OGE's review identified two model practices that ONDCP has implemented. First, the ethics duties of ONDCP's DAEO and ADAEO are included in their position descriptions and performance evaluations. Second, ONDCP used a self-assessment instrument to evaluate agency employees' level of satisfaction with the ethics advice provided by the ethics officials.

### **Suggestion**

OGE suggests that ONDCP take more timely, aggressive steps to obtain necessary information from financial disclosure report filers to ensure timely certification of the reports.

OGE stands ready to assist ONDCP in implementing the suggestion, as well as other program initiatives that ONDCP may choose to undertake.

If you have comments or would like to discuss the report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224. You may also contact Joseph E. Gangloff, OGE's Deputy Director, at 202-482-9220.



United States Office  
Of Government Ethics

Report Number 09-005

## **Highlights**

### **OGE Recommends**

- The Commission draft annual ethics training plans in accordance with 5 CFR § 2638.706.

# **Ethics Program Review Commission of Fine Arts**

January 2009 Report

## **Executive Summary**

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Commission of Fine Arts (Commission). The purpose of a review is to identify and report on the strengths and weaknesses of a program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

At the time of OGE's on-site fieldwork, the Commission had no written procedures to administer its financial disclosure systems. OGE recommended that the Commission draft written procedures to administer its financial disclosure systems in accordance with 5 U.S.C. § 402 d(1). During the course of the review, OGE provided the Commission's ethics officials with sample written procedures. The Commission has since developed written procedures to administer its financial disclosure systems.

The Commission has not developed annual ethics training plans. OGE recommends that the Commission draft annual ethics training plans in accordance with 5 CFR § 2638.706.

This report has been sent to the Commission's Designated Agency Ethics Official (DAEO). OGE will follow up on the recommendation with the Commission's DAEO within six months from the date of this report's issuance.





United States Office  
Of Government Ethics

Report Number 09-005

## Ethics Program Review

# Commission of Fine Arts

January 2009 Report

### Introduction

#### OGE MISSION

The United States Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance initiatives.

#### PURPOSE OF A REVIEW

The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures in place for administering the program.

#### REVIEW AUTHORITY AND SCOPE

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the Commission of Fine Arts (Commission) focused on the elements listed below.

- Program structure
- Financial disclosure systems
- Ethics training
- Ethics counseling
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

The on-site fieldwork portion of the review was conducted at the Commission in June 2008.

## **Ethics Program Review: Commission**

### **Program Elements**

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

#### **PROGRAM STRUCTURE**

The Commission's ethics program serves 10 full-time employees and 7 Commission members. The Commission members are designated as special Government employees (SGEs). The Secretary serves as the Designated Agency Ethics Official (DAEO). The Assistant Secretary serves as the Alternate DAEO (ADAEO) and is closely involved in the administration of the ethics program. An administrative officer provides administrative support to the ethics program.

Executive Order 6166 of June 10, 1933, "Organization of Executive Agencies," creates a relationship between the Commission and the Department of the Interior (DOI). According to the ADAEO, as needs arise, the Commission calls upon DOI for services that would be inefficient for the Commission to administer. One of the services provided by DOI for the Commission is conducting briefings for new employees, which include providing initial ethics orientations.

#### **FINANCIAL DISCLOSURE SYSTEMS**

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (SF 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest review (OGE Form 450).

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs and providing counseling to employees. *See* 5 CFR § 2634.104(b).

##### **Public Financial Disclosure System (SF 278)**

The Commission has written procedures for administering its public financial disclosure system. *See* 5 U.S.C. § 402 d(1). The written procedures cover the collection, review, retention, and public availability of financial disclosure reports. Successful written procedures allow for consistent and uninterrupted administration of the public financial disclosure system.

To evaluate the Commission's public financial disclosure system, OGE examined the only public financial disclosure report required to be filed at the Commission in 2007 (that of the

## **Ethics Program Review: Commission**

DAEO). This incumbent report was filed in a timely manner.<sup>1</sup> The report was reviewed in a timely manner by the ADAEO and was subsequently certified at OGE. The ADAEO explained that he is directly familiar with projects before the Commission and is confident that his review of the DAEO's report was thorough.

### Confidential Financial Disclosure System (OGE Form 450/A)

As with the public system, the Commission has written procedures for administering its confidential financial disclosure system. *See* 5 U.S.C. § 402 d(1).

To evaluate the confidential financial disclosure system at the Commission, OGE examined the only confidential financial disclosure report required to be filed at the Commission by a non-SGE in 2007 (that of the ADAEO). This annual report was filed in a timely manner, and was reviewed and certified in a timely manner by the DAEO. The DAEO explained that he is directly familiar with projects before the Commission and is confident that his review of the ADAEO's report was thorough.

### Special Government Employees

OGE examined all six of the confidential reports required to be filed by the seven SGE members of the Commission in 2007. The ADAEO explained that one Commissioner had not been taking part in the Commission's meetings in 2007 and had subsequently not been reappointed, thus the ADAEO did not require that Commissioner to file a report in 2007.

The following is a summary of OGE's examination of the six confidential financial disclosure reports filed by the Commissioners:

#### Filing Timeliness

- All 6 reports were filed in a timely manner.

#### Review Timeliness

- All 6 reports were reviewed in a timely manner.

#### Certification Timeliness

- All 6 reports were certified in a timely manner.

#### Quality of Review

Before each Commission meeting, ethics officials review the meeting agenda in order to identify potential conflicts of interest. The ethics officials explained that they are thoroughly

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<sup>1</sup> The Commission's ADAEO granted the DAEO a 45-day filing extension.

## **Ethics Program Review: Commission**

familiar with the holdings of the Commissioners and feel confident that they are able to identify potential conflicts of interest and to suggest recusals as necessary.

The OGE review team noted minor technical errors on the reports such as filers not checking the SGE box, over-reporting of a personal residence, and signing in the wrong box.

## **ETHICS TRAINING**

An ethics education and training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees.

The Commission's ethics officials have not created annual ethics training plans. OGE recommends that the Commission draft annual ethics training plans each year in accordance with 5 CFR § 2638.706.

### Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with initial ethics orientation. Initial ethics orientation must include:

- the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. See 5 CFR § 2638.703.

To meet the initial ethics orientation requirement, within 90 days from the time an employee begins work at the Commission, the employee is provided with:

- the Standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials;
- OGE's *Compilation of Federal Ethics Laws*;
- a Department of the Interior (DOI) booklet titled, *Ethics Guide for Department of the Interior Employees*; and
- at least one hour of official duty time to review the items described above.

New Commission employees receive new employee briefings from DOI, which include an initial ethics orientation. The ADAEO referred OGE to an Ethics Specialist at DOI in order to allow the review team to better understand the initial ethics orientation process. According to the Ethics Specialist, new employees sign an acknowledgement document that certifies that they

## **Ethics Program Review: Commission**

understand that they have one hour of official duty time to read the initial ethics orientation materials provided. The acknowledgement documents are included in the employees' personnel files and are used to track completion of initial ethics orientation. According to the Commission's ethics officials, initial ethics orientation was provided to the two new employees who began work at the Commission during 2007.

When Commissioners are appointed by the President, the ADAEO prepares a binder with useful information about the Commission. The binder, which is updated each year, includes the Standards, a memorandum titled *Ethics Policy Summary*, and contact information for the Commission's ethics officials. This information constitutes initial ethics orientation for new Commissioners and is provided before the new Commissioner takes part in any Commission meetings.

### Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training each year. *See* 5 CFR § 2638.704(a). Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See* 5 CFR § 2638.704(c)(2). Other covered employees (e.g., confidential filers) are required to receive verbal annual ethics training at least once every three years and may receive written annual training in the intervening years. *See* 5 CFR § 2638.705(c). The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct;
- the Standards;
- any agency supplemental standards;
- the Federal conflict of interest statutes; and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See* 5 CFR § 2638.704(b).

To meet the annual ethics training requirement, covered employees are provided:

- the Standards;
- OGE's *Compilation of Ethics Laws*; and
- the Department of the Interior's *Ethics: An Employee Guide*.

In 2007, the DAEO and ADAEO received the required annual ethics training. Additionally, the Commissioners receive an updated binder that contains the Standards, a memorandum titled *Ethics Policy Summary*, and contact information for the Commission's ethics officials. This information constitutes annual ethics training for the Commissioners.

## **Ethics Program Review: Commission**

### **ETHICS COUNSELING**

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. *See* 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 CFR § 2638.204.

OGE's assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of advice to assess whether processes and written procedures are effective.

To meet the counseling requirements at the Commission, ethics-related counseling is provided to employees primarily by the DAEO and ADAEO. To evaluate the counseling provided, OGE examined a sample of written determinations rendered during the period covered by the review. The counseling was primarily in the areas of gifts and outside activities. OGE found that the counseling rendered accurately addressed applicable statutes and regulations and was timely and consistent.

### **ENFORCEMENT**

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).

The Commission has no Office of the Inspector General (OIG). The ADAEO explained that if the ethics office became aware of a potential violation of the criminal conflict of interest laws or of the Standards, they would contact their OGE desk officer. After considering the desk officer's advice, the ethics office may then refer the case to DOI's OIG for further investigation and possible referral to the Department of Justice (DOJ).

There were no criminal conflict of interest violations referred to the DOJ during 2007. During the same period, there were no substantiated violations of the Standards.

### **ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES**

An employee may accept payment of travel expenses from a non-Federal source on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports of travel payments from non-Federal sources in excess of \$250 to OGE. *See* 31 U.S.C. § 1353.

## **Ethics Program Review: Commission**

The Commission does not accept travel payments from non-Federal sources under the authority of 31 U.S.C. § 1353. However, reports of no payments are required to be submitted to OGE.

Three semiannual reports of no payments were submitted to OGE covering the period from October 1, 2006 through March 31, 2008. All of the semiannual reports were submitted using the appropriate SF 326 and were submitted to OGE in a timely manner.

### **Summary**

OGE found that the Commission was in need of written procedures to administer its public and confidential financial disclosure systems. During the course of the review, OGE provided the Commission's ethics officials with sample written procedures. The Commission has since developed written procedures to administer its financial disclosure systems. OGE also found that the Commission did not have annual ethics training plans for the period covered by this review.

### **Recommendation**

To enhance the Commission's ethics program, OGE recommends that the Commission:

- Develop annual ethics training plans each year in accordance with 5 CFR § 2638.706.

The Commission's DAEO is to advise OGE within 60 days of the specific actions the Commission has taken or plans to take on OGE's recommendation. OGE stands ready to assist the Commission in implementing this recommendation as well as other initiatives that the Commission may choose to undertake. OGE will follow up with the Commission in six months.

If you have comments or would like to discuss this report, please contact Dale A. Christopher, Jr., Associate Director, Program Review Division, at 202-482-9224. You may also contact Joseph E. Gangloff, OGE's Deputy Director, at 202-482-9220.



United States Office  
Of Government Ethics

Report Number 09-011

## Highlights

### Model Practices

- CMS leadership demonstrates a high level of support for the ethics program.
- CMS exceeds the minimum annual ethics training requirements.
- CMS informs departing employees of post-employment restrictions.

### OGE Suggests

- CMS remain vigilant in ensuring that the confidential financial disclosure system is administered in an effective and efficient manner.

If you have comments or would like to discuss this report, please contact Dale Christopher, Associate Director for Program Reviews, at 202-482-9224 or dachrist@oge.gov

## Ethics Program Review

### The Department of Health and Human Services Centers for Medicare and Medicaid Services

April 2009 Report

## Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics programs at the following components within the Department of Health and Human Services (HHS): the Office of the Secretary (OS), the Health Resources and Services Administration (HRSA), and the Centers for Medicare and Medicaid Services (CMS). OGE's review also focused on the administration of the ethics program HHS-wide by the Office of the General Counsel's Ethics Division (OGC-Ethics Division). This report details OGE's review of CMS's ethics program. (Reports detailing OGE's review of OS and the OGC-Ethics Division and HRSA will be issued separately.)

The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures in place for administering the program.

OGE identified several model practices that have been implemented by CMS. These practices relate to leadership support for the ethics program and ethics training initiatives that exceed requirements.

OGE's review of CMS identified one area that requires improvement: CMS had a large backlog of uncertified confidential reports. Since the completion of OGE's onsite fieldwork, CMS eliminated all backlogged reports. OGE suggests that CMS continue to monitor the confidential financial disclosure system to ensure compliance with the requirements of subpart I of 5 CFR part 2634.

This report has been sent to HHS' Designated Agency Ethics Official and Inspector General.





United States Office  
Of Government Ethics

Report Number 09-011

## Ethics Program Review

# Department of Health and Human Services Centers for Medicare and Medicaid Services

April 2009 Report

## Introduction

### OGE MISSION

The United States Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance.

### PURPOSE OF A REVIEW

The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures in place for administering the program.

### REVIEW AUTHORITY AND SCOPE

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services (HHS), focused on the elements listed below.

- Leadership involvement in the ethics program
- Program structure
- Financial disclosure systems
- Outside employment and activities
- Ethics training
- Ethics counseling services
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

## **Ethics Program Review: HHS-CMS**

OGE also conducted reviews of HHS' Office of the Secretary (OS) and the Health Resources and Services Administration (HRSA). In addition, OGE's review focused also on the administration of the ethics program HHS-wide by the Office of the General Counsel's Ethics Division (OGC-Ethics Division). This report details OGE's review of CMS. (Reports detailing OGE's review of OS and the OGC-Ethics Division and HRSA will be issued separately.)

Fieldwork for this review focused on calendar years 2005 and 2006. OGE gathered additional, updated information from CMS ethics officials via email in October 2008.

### **Program Elements**

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

#### **LEADERSHIP**

Commitment and action by agency leadership is the keystone for ensuring the integrity of an agency's ethical culture and for fostering public confidence in the decision-making processes of Government.

OGE's review found that CMS leadership provided for increased ethics staff and higher visibility within the agency's organizational structure. The CMS ethics program has benefited from the actions of CMS leadership. OGE encourages CMS leadership to continue to provide the support necessary to ensure that the agency's ethics program is strong and effective.

#### **PROGRAM STRUCTURE**

The Associate General Counsel for Ethics (in the OGC-Ethics Division), serves as the HHS Designated Agency Ethics Official (DAEO) and has oversight responsibility for the HHS-wide ethics program. The DAEO relies in significant part on the cooperative efforts of a network of Deputy Ethics Counselors (DEC) to help administer the semi-autonomous ethics program within each HHS staff and operating division. Assisting each DEC in carrying out their ethics-related duties are management and/or personnel specialists who serve as primary ethics contacts or coordinators for the program and have the responsibility for carrying out the day-to-day administration of the program.

At CMS, the ethics function resides organizationally within the Office of Operations Management (OOM) and is administered by the Director of OOM, who serves as the CMS DEC. The day-to-day operation of the ethics program is carried out by the Management Operations Staff, hereafter referred to as the Ethics Office. An Ethics Program Administrator, who serves as the agency's primary ethics contact, along with two Ethics Program Specialists make up the Ethics Office staff. Their duties include, but are not limited to, managing CMS' financial disclosure systems, implementing the requirements for the ethics training programs, and providing ethics counseling to employees CMS-wide.

## Ethics Program Review: HHS-CMS

### FINANCIAL DISCLOSURE SYSTEMS

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (SF 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions, to facilitate internal agency conflict of interest review (OGE Form 450).

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs in providing counseling to employees. See 5 CFR § 2634.104(b).

#### Public Financial Disclosure System (SF 278)

To evaluate the effectiveness of the public system, OGE examined 55 public reports that were required to be filed in 2006. These 55 reports consisted of:

##### Type of Report

- 44 annual reports
- 4 new entrants reports
- 3 termination reports
- 4 combined annual/termination reports

55 Total

##### Filing Timeliness

- All 55 reports were filed timely.

##### Review/Certification Timeliness

- All 55 reports were reviewed and certified timely.

In addition to the reports noted above, OGE also examined 14 reports filed by high-level non-Presidential appointees, for which the OGC-Ethics Division has the responsibility of providing the final review and certification. OGE found the reports to be filed, reviewed, and forwarded to OGE timely.

## Ethics Program Review: HHS-CMS

### Confidential Financial Disclosure System (OGE Form 450)

OGE identified one deficiency relating to the administration of the confidential financial disclosure system. Specifically, CMS had a large backlog of uncertified reports at the time of OGE's onsite fieldwork. The backlogged reports reflect a time when the Ethics Office had not yet reached the staffing levels that the OGE review team found during the time of its onsite fieldwork. OGE recognizes that this was also a time of transition for certain elements of the CMS confidential financial disclosure system. The transition was from a decentralized review and certification process, whereby confidential reports filed in the region were forwarded to the filers' supervisors for review and certification, to a centralized process, whereby all confidential reports CMS-wide are reviewed and certified by the Ethics Office.

At the time of OGE's onsite fieldwork, the Ethics Office was still trying to review and certify a substantial number of backlogged confidential reports. Of the 2,489 reports that were required to be filed in 2005, 640 reports were still awaiting certification by the Ethics Office. According to the Ethics Office, much of the delay in certification resulted from the fact that the Ethics Office, at that time, was operating under limited staffing. Prior to the conclusion of OGE's review, the Ethics Office confirmed with OGE that all 640 reports that were awaiting review and certification had been reviewed and certified.

In October 2008, CMS ethics officials stated that the 2007 filing season was completed timely and there were only 19 uncertified OGE Forms 450 from the 2008 filing season. The success of the 2007 and 2008 filing seasons show a considerable improvement in the administration of the confidential financial disclosure system. OGE suggests that CMS continue to monitor the confidential financial disclosure system to ensure compliance with the requirements of subpart I of 5 CFR part 2634.

To evaluate the filing, review, and certification of confidential reports at CMS, OGE selected 123 2005 reports for examination. Initially, of the 123 reports selected, 24 reports were found missing. However, all were eventually recovered except for 6 reports. According to ethics officials, these 6 reports were filed by filers who had either resigned or retired during the annual filing cycle. As a result, OGE selected 6 additional reports for examination. These 123 reports consisted of:

#### Type of Report

- 18 new entrants reports
- 69 annual reports
- 36 OGE Optional Form 450-A reports (OGE Form 450-As)

123 Total

#### Filing Timeliness

- 102 reports were filed timely
- 21 reports were filed late.

123 Total

## **Ethics Program Review: HHS-CMS**

### Review/Certification Timeliness

- All 123 reports were reviewed certified by CMS timely.

## **OUTSIDE EMPLOYMENT AND ACTIVITIES**

OGE examined 25 outside employment positions or activities that required prior approval under the HHS supplemental standards of conduct regulation. OGE found the appropriate approval form (HHS-520) and/or annual reporting form (HHS-521) on file for each outside employment position or activity and found evidence that employees were receiving prior approval, when appropriate, before engaging in outside employment or activities.

## **ETHICS TRAINING**

An ethics education and training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees.

OGE found established processes in place at CMS to ensure that new employee ethics orientations and annual briefing requirements are met in accordance with the education-related provisions of subpart G of 5 CFR part 2638. OGE also found the Ethics Office doing a good job in keeping employees knowledgeable of the relevant post-employment restrictions which they may be subject to upon leaving CMS.

### Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with an initial ethics orientation. An initial ethics orientation must include:

- the Standards of Ethical Conduct for Executive Branch Employees (Standards) and any agency supplemental standards,
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials, and
- at least one hour of official duty time to review the items described above. See 5 CFR § 2638.703.

For new CMS employees, the initial ethics orientation requirement is satisfied through the provision of written ethics materials as part of the new employee orientation. New employees are provided with:

- the Standards,
- HHS's supplemental standards of conduct regulation,
- the Hatch Act, and

## Ethics Program Review: HHS-CMS

- the names, titles, office addresses, and phone numbers of the HHS DAEO, CMS DEC, and other CMS ethics officials.

The Ethics Office also provides in-person training at various times throughout the year to help satisfy the initial ethics orientation requirement. During the in-person training, OGE's Integrity in Public Service: Earning the Public Trust videotape is shown.

Based on a review of the Ethics Office's initial ethics orientation records, at the time of OGE's onsite fieldwork, 460 new CMS employees received timely initial ethics orientation.

### Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training each year. *See* 5 CFR § 2638.704(a). Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See* 5 CFR § 2638.704(c)(2). Other covered employees (e.g., confidential filers) are required to receive verbal annual ethics training at least once every three years and may receive written annual training in the intervening years. *See* 5 CFR § 2638.705(c). The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct,
- the Standards,
- any agency supplemental standards,
- the Federal conflict of interest statutes, and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See* 5 CFR § 2638.704(b).

During the time period covered by OGE's review, all CMS employees were required to receive annual ethics training via the OGC-Ethics Division's computer-based training module, which focused on outside employment and activities. According to annual training records examined by OGE at the time of its review, it appeared that all covered employees were provided with the required training.

### Additional Training Initiatives

In addition to the formal training programs highlighted above, OGE also acknowledges the extra efforts that the Ethics Office makes to keep CMS employees aware of the relevant seeking and post-Government service employment restrictions. The Ethics Office offers face-to-face presentations to interested employees who are contemplating retiring or departing from Federal service. OGE attended a presentation conducted by the Ethics Office and found it to be informative and well-gearred to the variety of employees in attendance. The presentation included a viewing of OGE's The Revolving Door video and provided an overview of the relevant post-employment restrictions.

## **Ethics Program Review: HHS-CMS**

### **ETHICS COUNSELING**

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. *See* 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 CFR § 2638.204.

OGE's assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of advice to assess whether processes and written procedures are effective.

To meet the counseling requirements at CMS, the Ethics Office provides both verbal and written counseling to CMS employees on varying ethics-related issues. OGE examined a sample of ethics-related counseling ranging from use of the travel payment acceptance authority at 31 U.S.C. § 1353 to seeking and post-employment matters. OGE found the counseling to be consistent with applicable ethics laws and regulations.

### **ENFORCEMENT**

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).

OGE found the Ethics Office aware of the requirements of 5 CFR § 2638.203(b)(11) and (12) to review information developed by, and to coordinate with, HHS's Office of the Inspector General, when appropriate, on ethics-related matters.

### **ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES**

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports of travel payments from non-Federal sources in excess of \$250 to OGE. *See* 31 U.S.C. § 1353.

OGE found CMS to be appropriately authorizing the acceptance of payments of travel expenses, in accordance with 31 U.S.C § 1353. OGE examined the 35 travel payments in excess of \$250 accepted on behalf of CMS for the period covered by OGE's review. OGE found the payments to have been forwarded timely for inclusion into HHS' semiannual report to OGE.

## **Ethics Program Review: HHS-CMS**

### **Summary**

OGE identified several model practices that have been implemented by CMS. These practices relate to leadership support for the ethics program and ethics training initiatives that exceed requirements.

OGE's review of CMS identified one area that requires improvement: CMS had a large backlog of uncertified confidential reports. Since the completion of OGE's onsite fieldwork, CMS eliminated all backlogged reports. OGE suggests that CMS continue to monitor the confidential financial disclosure system to ensure compliance with the requirements of subpart I of 5 CFR § 2634.

If you have comments or would like to discuss this report, please contact Dale Christopher, Associate Director for Program Reviews, at 202-482-9224.





United States Office  
Of Government Ethics

Report Number 09-019

## Highlights

### Model Practices

- Including ethics duties in the position descriptions of the DAEO, ADAEO, Support Specialist, paralegals, and attorneys.
- Developing standard operating procedures for the administration of the ethics program to ensure the continuity of the program in the event of turnover in the ethics staff.
- Administering and ethics program self-assessment.
- Using standard review sheets to ensure consistency in the review of financial disclosure reports and appropriate communication among reviewers.
- Using tracking systems in the management of the financial disclosure systems.
- Using a tracking system for recusals executed by employees.
- Providing in-person training to new employees.
- Providing ethics training to contractors.
- Maintaining a database to track initial ethics orientation information for new employees.
- Providing annual ethics training to all Commission employees.
- Using a system to record and track the ethics counseling provided to employees.

If you have any comments or would like to discuss this report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224 or [dachrist@oge.gov](mailto:dachrist@oge.gov)

# Ethics Program Review Federal Energy Regulatory Commission

September 2009 Report

## Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Federal Energy Regulatory Commission (the Commission). The purpose of a review is to identify and report on the strengths and weaknesses of a program by evaluating: (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies, and (2) ethics-related systems, processes, and procedures for administering the program.

OGE identified several model practices that the Commission has implemented related to program administration, financial disclosure, and ethics training and counseling.

This report has been sent to the Commission's DAEO and the Department of Energy Inspector General.



**United States Office  
Of Government Ethics**

Report Number 09-019

**Ethics Program Review**  
**Federal Energy Regulatory Commission**

September 2009 Report

**Introduction**

**OGE MISSION**

The United States Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance.

**PURPOSE OF A REVIEW**

The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating: (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

**REVIEW AUTHORITY AND SCOPE**

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the Federal Energy Regulatory Commission (the Commission) focused on the elements listed below.

- Program structure
- Financial disclosure systems
- Ethics training
- Ethics counseling
- Supplemental regulation
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

OGE's review focused on the ethics program at the Commission's headquarters. The on-site fieldwork was conducted in March 2009.

## Program Elements

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

### PROGRAM STRUCTURE

The Commission's ethics program is administered within the Office of General Counsel, General and Administrative Law (GAL). The Associate General Counsel serves as the Designated Agency Ethics Official (DAEO) and the Deputy Associate General Counsel serves as the Alternate DAEO (ADAEO). A Supervisory Legal Support Specialist (Support Specialist) is involved in the day-to-day administration of the ethics program. Additionally, 2 paralegals and 10 attorneys work part-time in ethics. During OGE's review, the Commission's DAEO retired. The Commission is making arrangements to fill the position.

OGE found that ethics duties are included in position descriptions of the DAEO, ADAEO, Support Specialist, paralegals, and attorneys. OGE considers the inclusion of ethics duties in the position descriptions of ethics officials to be a model practice.

### Succession Plan

Succession planning serves to maintain the consistent administration of an ethics program in the event of turnover in ethics staff. One aspect of succession planning is the development of standard operating procedures for program administration.

GAL created comprehensive procedures for administering the Commission's ethics program. The procedures should help ensure the continuity of the ethics program in the event of turnover in the ethics staff.

### Self-Assessment

OGE encourages agencies to use self-assessment as a tool to evaluate their ethics programs. Self-assessments help ethics officials improve the efficiency of their programs by identifying areas of concern. GAL conducted a self-assessment of its internal controls for providing ethics advice, accepting travel reimbursement, and administering its financial disclosure system. The self-assessment revealed that GAL had a high degree of coordination with other offices within the Commission. The self-assessment also found that GAL instituted various systems to track the timeliness and completion of tasks such as financial disclosure filing and review and that GAL maintains sufficient review mechanisms to ensure the accuracy and effectiveness of its advice to its employees.

OGE considers the development of standard operating procedures and the administration of an ethics program self-assessment to be model practices.

## Ethics Program Review: The Federal Energy Regulatory Commission

### FINANCIAL DISCLOSURE SYSTEMS

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (SF 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest review (OGE Form 450).

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs and providing counseling to employees. *See* 5 CFR § 2634.104(b).

#### General Comments

OGE's review found that the Commission's ethics officials conducted a thorough review of the public and confidential financial disclosure reports for conflicts of interest. The Commission ethics officials used standard review sheets to ensure consistency in the documentation and conflict of interest analysis of each financial disclosure report reviewed. They also utilized systems to track the dates of submission, review, and certification of the reports. OGE considers the use of standard review sheets and tracking systems in the management of the financial disclosure system to be model practices.

OGE's review also found that one termination report and a few new entrant reports were filed late. Timely submission of financial disclosure reports allows ethics officials to more readily identify and resolve real or potential conflicts of interest, protecting both employees and the Government.

At the time of OGE's review, the Commission's ethics officials recently established a new process in which the Human Resources office (HR) would notify GAL weekly of any employees who entered into or departed from a covered position, allowing for the timely identification of new entrant and termination financial disclosure report filers.

#### Written Procedures

Written procedures ensure consistency and accountability in the collection, review, and certification of financial disclosure reports. The Commission has comprehensive written procedures for the administration of its public and confidential financial disclosure systems as required by section 402 (d)(1) of the Ethics in Government Act.

#### Public Financial Disclosure System (SF 278)

A Commission database called *Paralegal Reports* is used to track the status and assignment of reports. The *Paralegal Reports* database also tracks the submission date of reports

## Ethics Program Review: The Federal Energy Regulatory Commission

by filers, filing extensions granted to filers, and the receipt of the reports for certification by the DAEO.

GAL attorneys review all reports and the DAEO certifies them. The reviewers use a prohibited sources list to conduct a substantive review of the reports for conflicts of interest. A review sheet called *Financial Disclosure Report: Conflict of Interest Required Follow-Up* is attached to the reports for use by reviewers to ensure consistency and appropriate communication. The review sheet contains the filer's name, the reviewer's name, the date the report was received, the date the review was started, the dates the filer was contacted for additional information, and any required actions to resolve potential conflicts of interest.

To evaluate the filing, review, and certification of public reports at the Commission, OGE examined 44 of 95 public reports required to be filed by Commission employees in 2008. The following is a summary of OGE's examination.

### Type of Report

- 35 annual reports
- 8 new entrant reports
- 1 termination report

44 total

### Filing Timeliness

- 41 reports were filed timely.
- 2 new entrant reports were filed late.
- 1 termination report was filed late.

44 total

### Review/Certification Timeliness

- All 44 reports were reviewed and certified timely.

### Quality of Review

Written comments on reports and review sheets, documentation in files, and conversations with ethics officials indicated that the public financial disclosure reports underwent a thorough review. OGE identified minor technical errors on some of the reports such as missing dates of appointment and termination.

### Confidential Financial Disclosure System (OGE Form 450)

The Support Specialist tracks the status and assignment of reports to reviewers from the *Paralegal Reports* database. The *Paralegal Reports* database also tracks the submission date of

## Ethics Program Review: The Federal Energy Regulatory Commission

reports by filers, filing extensions granted to filers, and the receipt of reports for certification by the DAEO.

GAL attorneys review all reports. The reviewers use a prohibited sources list to conduct a substantive review of the reports for conflicts of interest. As described under the Public Financial Disclosure System section of this report, all reviewers use the review sheet *Financial Disclosure Report: Conflict of Interest Required Follow-Up* to ensure consistency in the review of the reports and appropriate communication among reviewers.

To evaluate the confidential financial disclosure system at the Commission, OGE examined 58 of 546 confidential reports required to be filed by Commission employees in 2008. The following is a summary of OGE's examination.

### Type of Report

- 46 annual reports
- 12 new entrants

58 total

### Filing Timeliness

- 54 reports were filed timely.
- 4 new entrant reports were filed late.
- 1 annual report was filed late.

58 total

### Review/Certification Timeliness

- All 58 reports were reviewed and certified timely.

### Quality of Review

Written comments on reports and review sheets, documentation in files, and conversations with ethics officials indicated that the confidential financial disclosure reports underwent a thorough review. OGE identified minor technical errors in some of the reports such as unchecked boxes for type of report.

## SUPPLEMENTAL STANDARDS

The Commission's supplemental standards of ethical conduct set forth at 5 CFR part 3401 prohibit an employee and the spouse or minor child of an employee from acquiring or holding any securities of: a natural gas company, an interstate oil pipeline, a hydroelectric licensee or exemptee, a public utility, any electric utility engaged in the wholesale sale or transmission of electricity or having obtained an interconnection or wheeling order under Part II of the Federal Power Act, or the parent company of any of these entities.

## **Ethics Program Review: The Federal Energy Regulatory Commission**

Additionally, the Commission's supplemental standards require employees, other than special Government employees, to obtain written approval from the DAEO through normal supervisory channels before engaging in outside employment with any person who is a "prohibited source" as defined at 5 CFR § 2635.203(d).

### **Matters from the Previous Review**

OGE conducted an ethics program review at the Commission in 2005. In the report on the review dated May 26, 2005, OGE recommended the Commission evaluate if the prohibition and waiver elements of the supplemental regulation were necessary to ensure the integrity of the Commission's ethics program and, if so, begin consistently enforcing the prohibition on holding certain securities and, as appropriate, granting written waivers. Otherwise, the Commission was advised to remove these elements from the supplemental regulation and/or, with the approval of OGE, amend the regulation accordingly to conform to the current practice of not granting waivers and allowing employees to keep prohibited financial interests if they agreed to execute a recusal to comply with the supplemental standards.

The Commission decided to maintain their supplemental standards and start a prospective program of granting written waivers where appropriate. The employees would also be required to sign a written recusal in accordance with 5 CFR § 3401.102(a).

### **Recusal and Waiver System**

During its on-site fieldwork, the OGE review team examined all recusals accompanying public and confidential financial disclosure reports in the reviewed sample. OGE found that all filers who reported financial interests that were listed on the prohibited securities list executed recusals and were granted written waivers from the DAEO that permitted them to keep their prohibited holdings.

Employees who execute recusals are required to give a copy of the recusals to their supervisors. Additionally, a paralegal tracks all waivers and recusals granted to employees in an MS-Access database called *Recusals- Stock Waivers*. OGE considers the use of a tracking system for recusals and waivers to be a model practice.

### **Outside Employment**

The OGE review team identified nine instances of outside employment reported on the sample of public and confidential financial disclosure reports examined. The OGE review team compared the outside employment reported against the Commission's prohibited sources list which they call "prohibited securities list" and found that none of the outside employment reported involved a prohibited source and therefore did not require prior written approval from the DAEO. Nonetheless, one public filer requested a recusal from all proceedings with the Commission while seeking employment opportunities outside of the agency.

## Ethics Program Review: The Federal Energy Regulatory Commission

### ETHICS AGREEMENTS

If potential or actual conflicts of interest exist, public and confidential financial disclosure filers may be required to enter into ethics agreements. Generally, employees entering into ethics agreements are required to comply with those agreements within three months of the agreement or of Senate confirmation, if applicable. See subpart H of 5 CFR part 2634.

Four Presidentially-appointed, Senate-confirmed (PAS) employees from the Commission entered into written ethics agreements in 2006 and 2007. In one instance, a PAS employee failed to fully comply with his ethics agreement in a timely manner. The matter was addressed in consultation with OGE. After this incident, the Commission's ethics officials established a practice of including in all PAS employee ethics agreements the 90-day (three-month) compliance requirement when a divestiture is needed to resolve conflicts of interest. Also, upon confirmation of the PAS employee, the DAEO or ADAEO, and the attorney who reviewed the SF-278 for the PAS employee and drafted the ethics agreement, will meet with the PAS employee to ensure awareness about the ethics agreement. Additionally, the Commission's ethics officials will make multiple reminders to the PAS employee, in writing, to ensure compliance with all ethics agreements.

### ETHICS TRAINING

An ethics training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include, at least, an initial ethics orientation for all employees and annual ethics training for covered employees.

#### Training Plans

The Commission provided documentation, recorded in August 2008, detailing plans for 2008 annual ethics training. The Commission developed an annual ethics training plan for 2009 prior to OGE's on-site fieldwork in March 2009. OGE reminds the Commission to continue the development of annual ethics training plans by the beginning of each calendar year, in accordance with 5 CFR § 2638.706.

#### Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with an initial ethics orientation (IEO). An initial ethics orientation must include:

- the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. See 5 CFR § 2638.703.



## Ethics Program Review: The Federal Energy Regulatory Commission

The Commission exceeds the minimum IEO requirement by providing an in-person IEO to all new employees. Although not required, contractors are provided the opportunity to attend IEO. OGE considers the in-person training of new employees and contractors to be a model practice and encourages the Commission to continue this practice.

The IEO for non-PAS employees, provided weekly by attorneys from GAL, consists of a PowerPoint presentation and material that cover ethical principles, conflict of interest, the Commission's supplemental standards, and the Standards. In addition, attendees are provided with a bound Employees Ethics Manual, which includes:

- the Standards;
- the Commission's supplemental standards;
- information on financial disclosure filing requirements;
- information on bribery, graft, and conflict of interest;
- the Hatch Act; and
- the names, titles, office addresses, and telephone numbers of the ethics officials.

Attendees are also provided a laminated ethics office contact card with the names and phone numbers of ethics officials. Attendees are required to sign acknowledgements of receipt of IEO that are filed in GAL. GAL maintains a database that tracks IEO of new employees and contractors including, entrance on duty date, IEO date, position level, and employee filing status. OGE considers the use of a system to track IEO a model practice.

PAS employees receive one-on-one IEO from the DAEO or ADAEO. According to the Commission's ethics officials, IEO was provided to all new employees who began work at the Commission in 2008.

### Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training. *See* 5 CFR § 2638.704(a). Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See* 5 CFR § 2638.704(c)(2). Other covered employees (e.g., confidential filers) are required to receive verbal ethics training at least once every three years and receive written training in the intervening years. *See* 5 CFR § 2638.705(c). The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct (Principles),
- the Standards,
- any agency supplemental standards,
- the Federal conflict of interest statutes, and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See* 5 CFR § 2638.704(b).

Annual training is mandatory for all Commission employees, not just public and

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confidential filers, as directed by the Commission's Chairman. According to the Commission's ethics officials, all employees received annual ethics training in 2008. OGE considers the training of all employees to be a model practice and encourages the Commission to continue this effort.

In 2008, the Commission provided employees with interactive computer-based training. During the training season, GAL ensured that there was an ethics official assigned and available to respond to questions regarding annual training.

The Commission's 2008 annual ethics training included a review of the following topics:

- the Principles,
- the Standards,
- the Commission's supplemental standards,
- the Federal conflict of interest statutes, and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See* 5 CFR § 2638.704(b).

Completion of training is tracked electronically. GAL coordinates with the Commission's information technology office and HR to ensure that all employees complete annual ethics training.

### ETHICS COUNSELING

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. *See* 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 CFR § 2638.204.

OGE's assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of advice to assess whether processes and written procedures are effective.

OGE reviewed a sample of 25 pieces of memorialized counseling rendered by the Commission's ethics officials. The counseling involved gifts, post-employment, impartiality, outside employment, misuse of position, non-Federal sources of travel, and the Hatch Act. OGE found the counseling to be complete, accurate, and consistent with applicable statutes and regulations.

### Tracking System

All ethics counseling dispensed by GAL attorneys (including via telephone, email, and memorandum) is memorialized in writing, documented in the *GAL Assignments Database*, and

## Ethics Program Review: The Federal Energy Regulatory Commission

given an assignment number. The database tracks and is searchable by the assignment number, name of the employee who received counseling, and the subject of the counseling.

The *GAL Assignments Database* has a feature under the "notes" tab that has limited capacity to store the actual written counseling provided. Most copies of written counseling are stored in a file room. If an attorney wishes to see a copy of prior written counseling provided to an employee on a particular subject, the attorney would obtain the assignment number from the *GAL Assignments Database* and request a paralegal to pull the piece of written counseling from the file room using the assignment number. OGE considers the use of a system to record and track the ethics counseling provided to employees to be a model practice.

### ENFORCEMENT

The DAEO is to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General (OIG), or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. See 5 CFR § 2638.203(b)(11) and (12).

The Commission currently uses the services of the Department of Energy's OIG. According to data reported to OGE on the Commission's 2008 Agency Ethics Program Questionnaire, there were no potential violations of the criminal conflict of interest statutes referred to the Department of Justice (DOJ) in 2008. There was one disciplinary action taken based on a violation of the Standards during that time.

The ADAEO stated that the he, the DAEO, the General Counsel, and the Commission's Executive Director have the authority to make referrals to DOJ and concurrently notify OGE of such referrals. OIG representatives stated that their office is responsible for conducting investigations of alleged ethics violations and, if an alleged violation is covered by the criminal conflict of interest statutes, would notify OGE of any referrals to DOJ.

GAL does not communicate with the OIG frequently. OIG representatives were not familiar with GAL. The review team provided the ADAEO with a sample of a memorandum of understanding between an agency and the OIG to facilitate communication between each office in the event an ethics violation occurs.

### ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports to OGE of travel payments from non-Federal sources in excess of \$250. See 31 U.S.C. § 1353.

The Commission has comprehensive written procedures to implement 31 U.S.C. § 1353. To evaluate the Commission's compliance with the requirements of 31 U.S.C. § 1353 and its

## **Ethics Program Review: The Federal Energy Regulatory Commission**

written procedures, the review team examined five travel payments in excess of \$250 accepted by employees on behalf of the Commission for the period covered by OGE's review. The review team found that comprehensive conflict of interest analyses were performed prior to the acceptances of each payment.

All of the semiannual reports submitted to OGE covering the period from October 1, 2007 through September 30, 2008 were submitted in a timely manner.

### **Summary**

OGE's review identified several model practices that the Commission has implemented. The model practices include:

- including the ethics duties of the Commission's DAEO, ADAEO, Support Specialist, paralegals, and attorneys in their position descriptions;
- developing standard operating procedures for the administration of the ethics program to ensure the continuity of the program in the event of turnover in the ethics staff;
- administering an ethics program self-assessment;
- using standard review sheets to ensure consistency in the review of financial disclosure reports and appropriate communication among reviewers;
- using tracking systems in the management of the financial disclosure systems;
- using a tracking system for recusals executed by employees;
- providing in-person training to new employees;
- providing ethics training to contractors;
- maintaining a database to track IEO information for new employees and contractors, including entrance on duty date, IEO date, position level, and employee filing status;
- providing annual ethics training to all Commission employees; and
- using a system to record and track the ethics counseling provided to employees.

If you have any comments or would like to discuss the report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224.



United States Office  
Of Government Ethics

Report Number 09-021

## **Highlights**

### **Model Practices**

- Ethics duties are included in the Designated Agency Ethics Official's (DAEO) position description.
- Ethics officials created a comprehensive succession plan to ensure the continuity of the ethics program in the event of turnover in the ethics staff.
- Ethics officials provide annual ethics training to all MMC employees.

### **OGE Recommends**

- MMC collect follow-on new entrant OGE Forms 450 from special Government employees 30 days prior to MMC's Committee of Scientific Advisors on Marine Mammals annual meeting each year.
- MMC collect delinquent OGE Forms 450 from special Government employees.
- MMC collect OGE Forms 450 required to be filed in 2007 from regular employees.

If you have any comments or would like to discuss this report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224

## **Ethics Program Review Marine Mammal Commission**

September 2009 Report

## **Executive Summary**

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Marine Mammal Commission (MMC). The purpose of a review is to identify and report on the strengths and weaknesses of a program by evaluating: (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies, and (2) ethics-related systems, processes, and procedures for administering the program.

During its ethics program reviews, OGE identifies model practices that agencies have implemented to enhance their ethics program. OGE's review of MMC identified several model practices relating to program structure and ethics training.

To enhance MMC's ethics program, OGE makes three recommendations related to the confidential financial disclosure system.

This report has been sent to MMC's Designated Agency Ethics Official and the Department of Commerce Inspector General. OGE will follow-up with MMC within six months from the date of this report's issuance.



**United States Office  
Of Government Ethics**

Report Number 09-021

**Ethics Program Review**  
**Marine Mammal Commission**

September 2009 Report

**Introduction**

**OGE MISSION**

The United States Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance initiatives.

**PURPOSE OF A REVIEW**

The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating: (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

**REVIEW AUTHORITY AND SCOPE**

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the Marine Mammal Commission (MMC) focused on the elements listed below.

- Program structure
- Financial disclosure systems
- Ethics training
- Ethics counseling
- Enforcement of ethics laws and regulations
- Special Government employees
- Travel payments from non-Federal sources

On-site fieldwork for OGE's review of MMC was conducted in October 2008.

## **Ethics Program Review: MMC**

### **Program Elements**

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

#### **PROGRAM STRUCTURE**

MMC's ethics program is administered within the MMC Office of General Counsel. The General Counsel serves as the Designated Agency Ethics Official (DAEO). The Executive Director serves as the Alternate DAEO (ADAEO). OGE found that government ethics expertise is included in the position description of the General Counsel in MMC's Succession Management Framework. OGE considers including government ethics duties in the position description section and the succession plan to be model practices. These practices enhance accountability and ensure continuity in the Ethics Office.

#### **FINANCIAL DISCLOSURE SYSTEMS**

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (SF 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest review (OGE Form 450).

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs and providing counseling to employees.  
*See 5 CFR § 2634.104(b).*

At the time of OGE's on-site fieldwork, MMC did not have written procedures for the administration of its public and confidential financial disclosure systems as required by section 402(d)(1) of the Ethics in Government Act. Written procedures ensure consistency in the collection, review, and certification of financial disclosure reports. Moreover, written procedures are essential for an effective succession plan. The review team advised the DAEO of the requirement to have written procedures for financial disclosure. The DAEO subsequently created comprehensive written procedures for the administration of the public and confidential financial disclosure systems.

#### **Public Financial Disclosure System (SF 278)**

With the exception of the DAEO's financial disclosure report, all of MMC's public financial disclosure reports are reviewed and certified by the DAEO. (The DAEO's report is reviewed and certified by the ADAEO.) The DAEO has attended OGE reviewer training and contacts MMC's OGE desk officer for assistance when needed.

## **Ethics Program Review: MMC**

To evaluate the public financial disclosure system at MMC, OGE examined all 6 public reports that were required to be filed by MMC's Chairman and employees in 2007 and 2008. The following is a summary of OGE's examination of the 6 reports:

### Type of Report

- 6 annual reports

### Filing Timeliness

- 5 reports were filed timely.
- 1 report was filed late.

6 total

### Review/Certification Timeliness

- 3 reports were reviewed and certified timely.
- 3 reports were reviewed and certified late.

6 total

### Quality of Review

The DAEO's 2007 public report was certified more than 130 days late. According to the DAEO, the delay occurred because of his <sup>5 USC 552 (b)(5)</sup> and the appointment of a new ADAEO. OGE notes the written comments on the DAEO's 2008 public report indicate a thorough review of the report by the ADAEO for conflicts of interest.

The Chairman's 2007 report was also certified after an extended period. According to the DAEO, the delay occurred because he was working to obtain all the required information from the chairman and MMC's OGE desk officer.

### Confidential Financial Disclosure System (OGE Form 450)

The DAEO reviews and certifies all of MMC's confidential financial disclosure reports. The DAEO is aware of the staff responsibilities and thus the potential for conflicts of interests. The DAEO has attended OGE reviewer training and contacts MMC's OGE desk officer for assistance when needed.

To evaluate the confidential financial disclosure system at MMC, OGE examined 4 of the 6 confidential reports required to be filed by MMC's employees in 2008. Two employees did not file confidential financial disclosure reports in 2008 as required. The following is a summary of OGE's examination of the 4 reports:



## Ethics Program Review: MMC

### Type of Report

- 3 annual reports
- 1 new entrant report

4 total

### Filing Timeliness

- 3 reports were filed timely.
- 1 report was filed late.

4 total

### Review/Certification Timeliness

- 3 reports were reviewed and certified timely.
- 1 report was not certified.

4 total

### Quality of Review

At the time of OGE's fieldwork, one report had not yet been certified. According to the DAEO, the report has since been reviewed and certified in a timely manner. The DAEO appeared to have conducted a thorough review for conflicts of interest on all of the reports. However, OGE identified missing dates of receipt on three of the reports.

## ETHICS TRAINING

An ethics training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include, at least, an initial ethics orientation for all employees and annual ethics training for covered employees.

### Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with initial ethics orientation. Initial ethics orientation must include:

- the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. See 5 CFR § 2638.703.

## **Ethics Program Review: MMC**

The DAEO provides new MMC employees with an initial ethics orientation at the agency's headquarters. The orientation includes the provision of ethics officials' contact information and the Standards. The DAEO feels that he can easily track new employees requiring an orientation because of the small number of employees at MMC and low staff turnover.

The DAEO provides an in-person orientation to the Committee of Scientific Advisors at its annual conference.

### **Annual Ethics Training**

Public financial disclosure filers are required to receive verbal annual ethics training. *See* 5 CFR § 2638.704(a). Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See* 5 CFR § 2638.704(c)(2). Other covered employees (e.g., confidential filers) are required to receive verbal ethics training at least once every three years and may receive written training in the intervening years. *See* 5 CFR § 2638.705(c). The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct,
- the Standards,
- any agency supplemental standards,
- the Federal conflict of interest statutes, and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See* 5 CFR § 2638.704(b).

Annual training at MMC is provided by the DAEO. The annual ethics training materials include the ethics officials' contact information and the Standards. The annual training also consists of videos, sanitized information from real-life case studies, and verbal presentations. The DAEO also uses games and computer-based programs to engage the participants during training.

Public and confidential filers receive their annual ethics training simultaneously at the annual session attended by all MMC employees and special Government employees (SGE). Providing annual training to all agency employees is a model practice.

### **ETHICS COUNSELING**

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. *See* 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 CFR § 2638.204.

OGE's assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether

## **Ethics Program Review: MMC**

an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of advice to assess whether processes and written procedures are effective.

The DAEO makes employees aware of his availability to provide ethics counseling by providing his contact information each year at the annual meeting of the Marine Mammal Commission's Committee of Scientific Advisors on Marine Mammals. He assured OGE that due to the small size of MMC, all employees know how to contact him.

Counseling is dispensed orally, via e-mail, or by formal memorandum. The most frequent topic is outside employment activities. The DAEO makes an effort to provide post-employment counseling and written materials to departing employees.

To evaluate the ethics counseling provided by MMC, OGE reviewed a sample of six pieces of memorialized counseling rendered by the MMC DAEO. The counseling involved policy positions, conflicts of interest, impartiality, seeking employment, misuse of position, outside activities, and writing character reference letters. OGE found the counseling to be accurate and consistent with applicable statutes and regulations.

## **ENFORCEMENT**

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General (IG) are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).

If necessary, MMC would utilize the services of the Inspector General of the Department of Commerce. The DAEO is responsible for making referrals to the Department of Justice of alleged violations of the criminal conflict of interest statutes and for concurrently notifying OGE of the referrals. According to the DAEO, there were no alleged violations of the criminal conflict of interest statutes referred to DOJ in 2008. There were also no identified violations of the Standards.

## **SPECIAL GOVERNMENT EMPLOYEES**

In OGE's 2000 review of MMC's ethics program, OGE recommended that MMC "collect follow-on SGE reports annually on May 15 for the convenience of collecting SGE reports and public reports at the same time and the opportunity to review information prior to the annual meeting of the Commission and the Committee of Scientific Advisors on Marine Mammals." It was then agreed upon in 2002 and in subsequent OGE follow-up reviews in 2004 that a September 30 filing deadline would ensure the timely collection and review of SGE reports before the annual meetings that, at the time, took place in October. However, since 2006, MMC has changed the month of their annual meeting from October to mid-September (2006), late August (2007), and early December (2008).

## **Ethics Program Review: MMC**

The OGE review team examined the available SGE reports required to be filed by members of the MMC and the Committee of Scientific Advisors in 2007. Only 8 of the required 11 reports were filed with MMC. Of the eight filed, seven were filed before the annual meeting and one was filed after the annual meeting. Three reports were reviewed and certified before the meeting while five reports were reviewed and certified after the annual meeting. OGE also reviewed the new entrant SGE reports required to be filed in 2008. We found that only 8 of the 10 required reports were filed with MMC. All eight were filed, reviewed, and certified before the meeting.

If MMC intends to continue to move the date of its annual meeting, it appears that the previously established filing deadline of September 30 may not always be appropriate. OGE recommends that MMC establish an annual filing deadline of 30 days prior to each scheduled annual meeting. Establishing such a moving deadline will help to ensure that all required SGE reports are filed, reviewed, and certified in a timely manner, irrespective of when the annual meeting takes place.

### **ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES**

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports to OGE of travel payments from non-Federal sources in excess of \$250. *See* 31 U.S.C. § 1353.

MMC rarely accepts payments under 31 U.S.C § 1353. MMC accepted only two offers for travel payments from non-Federal sources in 2007. Nonetheless, OGE received the semiannual reports listing the payments late.

### **Summary**

OGE's review team identified three model practices at MMC: including Government ethics expertise in the position description of the General Counsel, developing MMC's Succession Management Framework, and providing annual ethics training to all employees.

### **Recommendations**

The Marine Mammal Commission continues to have difficulty collecting, reviewing, and certifying follow-on new entrant OGE Forms 450 from SGE members of MMC's Committee of Scientific Advisors on Marine Mammals prior to their annual meeting. OGE recommends that MMC take the following actions:

1. Collect follow-on new entrant OGE Forms 450 from special Government employees 30 days prior to MMC's Committee of Scientific Advisors on Marine Mammals annual meeting each year.
2. Collect delinquent OGE Forms 450 from special Government employees.
3. Collect OGE Forms 450 required to be filed in 2007 from regular employees.

## **Ethics Program Review: MMC**

MMC's DAEO is to advise OGE within 60 days of the specific actions MMC has taken or plans to take on OGE's recommendations. OGE stands ready to assist MMC in implementing the recommendations, as well as other program initiatives that MMC may choose to undertake. OGE will follow-up with MMC in six months.

If you have comments or would like to discuss the report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224.



**United States Office  
Of Government Ethics**

Report Number 06-013

**Ethics Program Review**

**National Labor Relations Board**

September 2006 Report

**Introduction**

**OGE MISSION**

The Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance initiatives.

**PURPOSE OF A REVIEW**

The purpose of a review is to identify and report on the strengths and weaknesses of the program by: (1) measuring agency compliance with ethics requirements found in the relevant laws, regulations, and policies; and (2) evaluating ethics-related systems, processes, and procedures in place for administering the program. 5 C.F.R. § 2600.103(e)(1)(iii). A review does not investigate any particular case of employee misconduct.

**REVIEW AUTHORITY AND SCOPE**

OGE has the authority to evaluate the effectiveness of executive branch agency ethics programs. Our review at the NLRB focused on the financial disclosure systems, ethics education and training, ethics agreements, advice and counseling, outside employment, the enforcement of ethics laws and regulations, and travel payments from non-Federal sources. Title IV of the Ethics in Government Act of 1978, as amended, and 5 C.F.R. part 2638.

While the National Labor Relations Board (NLRB) has several offices in the field with ethics officials, our review focused on the program at the headquarters. The ethics officials at the headquarters are responsible for overseeing the ethics program at the NLRB, including the financial disclosure systems. Ethics officials in the field offices—32 Regional Offices, 3 Subregional Offices, and 16 Resident Offices—generally consult with the headquarters ethics staff in regard to ethics matters. The on-site portion of this review was conducted in April 2006.

## **Ethics Program Review: NLRB**

# **Findings**

## **PROGRAM STRUCTURE**

At the NLRB, no one person serves as the head of the agency. Both the five-member National Labor Relations Board (Board) and the General Counsel are the equal heads of the agency. Some offices and divisions are under either the Board or the General Counsel, while others are under both. The ethics program is located in the Division of Administration, which is under the General Counsel.

The Director of the Division of Administration serves as the Designated Agency Ethics Official (DAEO). The Deputy Director serves as the Alternate DAEO. While the DAEO is responsible for the administration of the ethics program, much of the day-to-day duties are carried out by a program analyst who serves as the Ethics Program Officer (EPO). In addition, each Regional Office is headed by a Regional Director (RD) who is designated as a part-time ethics official.

## **OGE's LAST REVIEW OF THE NLRB**

OGE last conducted a review of the NLRB's ethics program in October and November 1999. The report on this review indicated that the ethics program was well managed and in compliance with applicable laws and regulations.

## **FINANCIAL DISCLOSURE SYSTEMS**

Ethics officials at the NLRB do not review financial disclosure reports for conflicts of interest. They do, however, perform a thorough review of the reports for completeness and compliance with the technical filing requirements. While the technical review is important, the conflict of interest analysis is a vital means of accomplishing the goals of promoting good governance and preventing conflicts of interest. OGE is concerned that the lack of a conflict of interest analysis works against advancing these goals.

During our fieldwork, ethics officials explained that they do not conduct a financial conflict of interest analysis and their reason for not doing so. The NLRB, through its various field offices and the Board, processes approximately 30,000 labor-related cases a year. In 2005, the NLRB processed 24,736 unfair labor practice cases and 5,151 representation cases for a total of 29,887 cases. According to ethics officials, most of these cases involve companies in the private sector; moreover, any publicly owned company is a potential party to a case. Hence, they do not believe it is feasible to compile and maintain a list of companies that are currently or potentially parties to unfair labor practice cases or representation cases, nor have they utilized a contractor list in reviewing the reports. Additionally, ethics officials especially noted the difficulty of conducting a timely conflict of interest analysis of the annual public reports, whether using a list or not, because of the potentially

## **Ethics Program Review: NLRB**

protracted period of time from the end of the covered period to the filing and review of the report. The reports do not have to be filed until four and a half months after the end of the calendar year covered and may be reviewed as much as 60 days after being filed.

After the NLRB ethics officials review a report for technical compliance and certify it, the filer is sent a memorandum stating that the report reveals no apparent conflicts of interest. The memorandum also reminds the filer of the need to recuse him- or herself should a matter arise in which he or she has a financial interest. It is beneficial to send a memorandum to a filer notifying him or her of the status of the report and reminding him or her to recuse if necessary; however, the NLRB memorandum claims there are "no apparent conflicts of interest" when no such review for conflicts was conducted.

During our fieldwork, we suggested that some kind of conflict of interest analysis could be performed on the reports using a database of the cases assigned for the previous year. However, ethics officials expressed to us that this would create an undue burden with little or no value, given that the NLRB processes cases in real time. They contended that the employees in the agency are very cautious and the real ethics matters that arise are in relation to impartiality, not conflicting financial interests. They put more emphasis on education and training and count on the employees to police themselves. The EPO suggested that the topic of conflicting financial interests should be stressed during initial ethics orientation and annual ethics training.

These other approaches for promoting an ethical culture in the agency are beneficial; however, not doing a conflict of interest analysis precludes the reports from being properly certified and places the program in noncompliance with regulatory requirements. Ethics officials who are reviewing officials have a responsibility with regard to the certification of public and confidential reports, as provided by 5 C.F.R. §§ 2634.605 and 2634.909(a):

...[A] report which is signed by a reviewing official certifies that the filer's agency has reviewed the report, and that the reviewing official has concluded that each required item has been completed and that on the basis of information contained in such report the filer is in compliance with [the criminal conflict of interest statutes, the Ethics in Government Act, Executive Order 12731, the Standards of Ethical Conduct for Employees of the Executive Branch, and any other agency-specific statute or regulation governing the filer].

The basis for financial disclosure is rooted in two major laws, the Ethics in Government Act of 1978 and the Ethics Reform Act of 1979, which aim to promote public confidence in the integrity of Government officials. To do this, OGE's regulations and the financial disclosure format reflect the laws' mandates and dual purpose of avoiding conflicts of interest through reviewer analysis of disclosure, and ensuring public confidence in Government through disclosure as an end in itself. Thus, the purpose of a conflict of interest analysis is not to prevent conflicts only within the limited time period of when a report is required to be filed. Rather, it provides an opportunity for reviewers to begin any necessary conflict of interest counseling whenever disclosures are made.



## **Ethics Program Review: NLRB**

There is no general requirement that a filer's supervisor or any intermediate official examine or review the report. However, in determining the appropriate chain of review, each agency must ensure that all reviewers are familiar with the technical reporting requirements as well as the Federal conflict of interest laws, and can evaluate available conflict of interest remedies in light of the filer's duties.

At the exit conference, we suggested having an intermediate review of the reports by someone familiar with the filer's caseload. However, ethics officials stated that an intermediate review was not feasible as the cases are not assigned by a supervisor but instead come from the bottom up. For example, in the majority of cases, an individual may walk into a field office to file a petition [with a Board agent] which is docketed and investigated. The petition may work its way up to the RD who determines whether or not a charge has merit. The RDs are the only officials who are required to file a public financial disclosure report in a Regional Office, and because they are the highest level officials in that office, there is no one at the Regional Office level who can review their financial disclosure reports for conflicts of interest. We then suggested that whomever the RDs report to should perform the intermediate review. However, NLRB ethics officials advised that this too was not feasible because the RDs work autonomously.

✓ Based on this information, we reviewed the statutory structure of the agency to determine who has supervisory authority over the RDs' work. We learned that while RDs have been delegated authority to render initial decisions in representation matters, the Regional Offices are under the day-to-day supervision of the General Counsel. [The General Counsel exercises general supervision over attorneys employed by the Board (other than Administrative Law Judges, legal counsel to Board members, the Executive Secretary, and the Solicitor), and over the officers and employees in the Regional Offices.] In addition, the Division of Operations-Management (DOM), which is within the General Counsel's Office, assists in the coordination and integration of all operations in Washington DC, and of Washington operations with the field offices. DOM is also responsible for continuing liaison with field offices and for supervising and coordinating both substantive and administrative phases of their operations. Therefore, it seems plausible that an official in either the General Counsel's Office or DOM could perform an intermediate review of the financial disclosure reports filed by RDs.

We also suggested the use by confidential filers of an alternative procedure (e.g., a certification of no conflicts of interest form). However, ethics officials did not see how this would help address properly certifying the reports and felt it would require even more work. In the absence of NLRB agreement on these suggested actions, we are recommending that the NLRB develop a written proposal for identifying potential conflicts of interest on the part of its public and confidential financial disclosure filers and certifying their reports in accordance with 5 C.F.R. §§ 2634.605 and 2634.909(a).

Finally, the NLRB has written procedures in place regarding the financial disclosure systems. We found these procedures to generally comply with relevant requirements. Section 402(d)(1) of the Ethics in Government Act. However, we note a lack of implementation of the procedures regarding how a conflict of interest analysis is to be done as none is done at all.

## **Ethics Program Review: NLRB**

### **Public Financial Disclosure System**

The EPO is responsible for conducting an initial review of all the public reports and then forwarding them to the DAEO for final review and certification. To evaluate the administration of the NLRB's public system, we examined 50 of the 117 public reports required to be filed by non-Presidentially-appointed, Senate-confirmed (PAS) employees in 2005. The 50 reports consisted of 44 incumbent, 4 combined incumbent/termination, and 2 new entrant reports. All 50 of the reports were filed, reviewed, and certified in a timely manner.

However, as we noted above, the reports were not reviewed for conflicts of interest. In addition to promoting good governance, reviewing these public reports for conflicts of interest is important because these employees' responsibilities and the decision-making authority inherent in their positions may increase the potential for conflicts. The lack of a conflict of interest analysis also makes filers less accountable. Moreover, as agencies are required to make these reports publicly available within 30 days after receipt, not conducting a thorough initial review of the reports for conflicts of interest could leave the NLRB open to criticism if a conflict were found in a released report.

The NLRB does occasionally receive requests for the release of certain public reports. The EPO informed us that most of these requests are from unions and are for the reports filed by the DAEO and the PAS employees. The PAS employees are the General Counsel and the five Board members, including the Chairman. We reviewed the one recent request made in 2005 for six such public reports. The request was granted, and the reports were released in a timely manner.

We also reviewed the public reports required to be sent to OGE in 2005, filed by the PAS employees and the DAEO. Two of the Board Member positions were vacant, resulting in a total of five reports being filed. The five reports were from the DAEO, the Chairman, two Board members, and the General Counsel. All were filed, reviewed, certified, and forwarded to OGE in a timely manner.

### **Confidential Financial Disclosure System**

The EPO is responsible for the collection, review, and certification of all confidential reports. To evaluate the confidential system, we examined all 11 of the confidential reports filed by employees in 2005, which consisted of 4 OGE Form 450s and 7 OGE Optional Form 450-As. All forms were filed in a timely manner. Five filers requested and received filing extensions. The OGE Form 450s were reviewed and certified in a timely manner, as well. However, as noted above, the reports were not reviewed for conflicts of interest. The OGE Form 450-As were approved and dated when received by the agency, as determined by our review of the reports and the tracking system. We found only one technical issue and no substantive issues on the reports. Additionally, each filer who used the OGE Optional Form 450-A had an OGE Form 450 on file which, as required, was no more than three years old. 5 C.F.R. § 2634.905(d)(4).

## **Ethics Program Review: NLRB**

### **ETHICS EDUCATION AND TRAINING**

The NLRB's education and training program complies with the provisions of 5 C.F.R. part 2638. Indeed, the NLRB exceeds mere compliance by using model practices.

#### Initial Ethics Orientation

All employees at headquarters receive initial ethics orientation during their first day on duty. Employees in the field receive initial ethics orientation within 90 days of beginning employment. New employees are shown two ethics videos. They are also provided with a package of written materials that includes a copy of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), the NLRB supplemental regulation, ethics officials' contact information, and other ethics materials. They are given an hour of official time to review these materials and are required to certify they have received the training.

#### Annual Ethics Training

An annual ethics training plan was in place for 2005 and 2006 in accordance with 5 C.F.R. § 2638.706. In addition, all covered employees received annual ethics training in 2005. The annual training consisted of videos or PowerPoint presentations. Employees completed certification forms that the EPO used to track completion of annual ethics training. Finally, all PAS employees receive verbal annual ethics training every year.

In 2005, the DAEO made the determination to use the exception at 5 C.F.R. § 2638.704(e)(1), waiving the requirement for a qualified instructor to be available for verbal training of public filers because it would have been impractical. Several of the public filers are Administrative Law Judges who work from home and are dispersed around the nation. Consequently, last year, ethics officials used a CD with a PowerPoint presentation and voice over as a new method to provide annual ethics training to these employees. We examined this new ethics training tool and were favorably impressed with the presentation's format and content.

#### Model Practices

We commend the NLRB for their use of several model practices in the implementation of the ethics education and training program. One of the model practices we found is the monitoring of initial ethics orientation and annual ethics training by having employees complete certification forms. In addition, NLRB employees completed an evaluation of the annual training they received in 2005. Ethics training was also offered to non-filers such as contracting officers and employees holding Visa purchase cards. Moreover, the ethics officials include prudently sanitized information gleaned from advice and counseling and Office of Inspector General (OIG) cases in formulating topics for training. The ethics staff also maintains an ethics page on its intranet site with links to various ethics laws and regulations, question and answer documents, the OGE Web site, and other ethics information. Finally, the DAEO attends senior staff meetings and is given the opportunity to discuss ethics issues.

## **Ethics Program Review: NLRB**

### **ETHICS AGREEMENTS**

We were provided with documentation for six ethics agreements made by PAS employees since 2001. All six ethics agreements include recusals in which the PAS employees (members of the Board and the General Counsel) disqualify themselves from matters that pose a potential conflict of interest. The recusals appropriately identified the specific matters from which the PAS employees were recusing themselves.

Ethics officials explained to us the screening arrangements in place. The Executive Secretary serves as gatekeeper for the Board members; screening cases from which the Board members are recused. The Deputy General Counsel serves as gatekeeper for the General Counsel, screening cases that could represent a conflict of interest for the General Counsel. In addition, Deputy Directors receive copies of the General Counsel's recusal.

### **ETHICS ADVICE AND COUNSELING**

Ethics advice and counseling meets the requirements of 5 C.F.R. § 2638.203(b)(7) and (8). We examined a sample of approximately 70 pieces of advice dispensed on varying ethics-related issues, including gifts from outside sources and between employees, conflicts of interest, impartiality, outside employment and activities, and fundraising. We found that ethics officials generally respond to inquiries in a timely manner (often within the same day the inquiry was received) and provide exceptionally thorough advice. In addition, ethics officials keep extensive records of the advice rendered via e-mail and memorandum. Moreover, NLRB ethics officials maintain a phone log where they document any verbal advice given to employees over the phone. Also, we commend the DAEO for providing written advice covering seeking-employment and post-employment restrictions to all PAS employees two to six months prior to the end of their terms.

While the advice and counseling was accurate and consistent with applicable laws and regulations, the practice at the NLRB of allowing supervisors to solicit subordinates for contributions towards gifts for other employees raised concerns among NLRB employees who felt coerced to contribute. The coercion issue came up in the advice we examined responding to inquiries from employees concerned about coercive tactics used by supervisors and management at a field office. Additionally, we found documentation of a complaint regarding coercive tactics that was made on the Inspector General's (IG) Hotline. In accordance with 5 C.F.R. § 2635.302(c), an official superior shall not coerce the offering of a gift from a subordinate. We suggest that the NLRB review its policy of allowing solicitations by anyone who is in the supervisory chain, even where it is made clear that all contributions are voluntary or where the gift is for lower level employees. This issue was discussed at our exit conference, and the ethics staff agreed with our suggestion.

We also suggested expanding the phone log to include the identity of the ethics official who rendered the advice in order to enhance accountability. The ethics staff informed us that the majority of the advice documented in the phone log is rendered by the EPO, but occasionally it is rendered by another ethics official.

## **Ethics Program Review: NLRB**

### **OUTSIDE EMPLOYMENT**

According to the NLRB's supplemental standards of conduct regulation (supplemental regulation), an NLRB employee must obtain prior written approval from the Board or General Counsel for outside employment involving the practice of law. For outside employment not involving the practice of law, an NLRB employee must obtain prior written approval from his or her Chief Counsel, RD, Branch Chief, or the equivalent. 5 C.F.R. § 7101.102.

To evaluate the NLRB's compliance with the supplemental regulation, we noted any outside employment activities reported on the public and confidential financial disclosure reports we examined. We identified a total of 18 filers who reported outside activities. According to the EPO, 12 of these filers' activities did not involve the type of employment that would require prior written approval. Of the remaining six filers, one reported an activity which had not changed in scope since it was originally approved several years before the period covered by our review and hence did not have a record of the approval on file. Another filer reported an activity for which he did not get approval beforehand. In this case, the EPO followed up with the filer and requested information from him and his supervisor to get the outside activity approved. The remaining four filers had prior written approvals for their outside activities as required. The activities appeared to generally be approved according to the supplemental regulation.

### **ENFORCEMENT**

According to documentation provided to us by the Counsel to the IG, there were eight allegations of NLRB employees violating the Standards in 2005.

The allegations consisted of five misuse of Internet cases, one misuse of resources case, one misuse of e-mail case, and one misuse of time and equipment case. Of the eight allegations, five were found to be substantiated. Actions taken against the employees in these five cases included a 30-day suspension, oral counseling, and a reprimand, while one of the employees retired after the interview with the OIG and another resigned in lieu of removal. The actions to remedy these violations generally seemed to be undertaken in a prompt manner, in accordance with 5 C.F.R. § 2638.203(b)(9).

In addition, the EPO informed us that the ethics officials have a good working relationship with the OIG. The Counsel to the IG also expressed to us that he has a good relationship with the ethics officials. Officials in both offices are aware of the need to notify OGE of a referral to the Department of Justice of a potential violation of the criminal conflict of interest statutes. However, none has been made recently.

### **TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES**

The NLRB accepts travel payments from non-Federal sources for travel, subsistence, and related expenses incurred by agency employees on official travel for attendance at a meeting or similar function. 31 U.S.C. § 1353. The procedures for requesting and receiving authorization for

## **Ethics Program Review: NLRB**

acceptance of travel expenses from a non-Federal source are set forth in an NLRB Administrative Policy Circular (APC). Employees are instructed to complete a Form NLRB-5475 prior to the occurrence of the travel. The form and a copy of the invitation letter are then sent to the approving official and the DAEO for concurrence, as delineated in the APC.

The semiannual report required to be sent to OGE is compiled by a Finance Specialist in the Finance Branch of the Division of Administration, and the EPO reviews it and transmits it to OGE. We reviewed the two semiannual reports sent to OGE covering the period from October 1, 2004 through September 30, 2005. Both semiannual reports were sent to OGE in a timely manner using the appropriate SF 326 Form.

In addition, we examined the travel payments from non-Federal sources reported on the NLRB's semiannual report covering the period from April 1, 2005 through September 30, 2005. As part of this review, we examined the supporting documentation for all 43 reported acceptances. We found that while the majority of the Form NLRB-5475s were completed prior to occurrence of the travel, four were not. In one case, the employee was unaware of the prior approval requirement; in two other cases, the travel was originally to be charged to the NLRB, but a decision was later made for the travel to be paid for by a non-Federal source. These three Form NLRB-5475s were completed after the travel. In the fourth case, we could not find a corresponding Form NLRB-5475. The EPO informed us that this was either a result of a copy of the form not being made or an oversight by the employee. Aside from these issues, it appears that travel payments accepted under § 1353 are generally being properly authorized, including conflict of interest analyses being conducted as part of the approval process.

In addition to our review of travel payments accepted from non-Federal sources, the NLRB's OIG will be conducting a review of reimbursable travel. After our fieldwork, the NLRB's OIG contacted us to determine our scope, methodology, and findings relating to travel payments accepted from non-Federal sources under § 1353.

## **RECOMMENDATION**

To bring the NLRB's ethics program into full compliance with applicable laws and regulations, we recommend that the NLRB develop a written proposal for identifying potential conflicts of interest on the part of its public and confidential financial disclosure filers and certifying their reports in accordance with 5 C.F.R. §§ 2634.605 and 2634.909(a).

The NLRB's DAEO is to advise OGE within 60 days of the specific actions the NLRB has taken or plans to take on our recommendation. OGE stands ready to assist the NLRB in implementing our recommendation and suggestions, as well as other program initiatives that the NLRB may choose to undertake. OGE will formally follow-up with the NLRB in six months.



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
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November 23, 2005

Edgar M. Swindell  
Designated Agency Ethics Official  
Department of Health and Human Services  
700-E Humphrey Building  
200 Independence Avenue, SW.  
Washington, DC 20201

Dear Mr. Swindell:

The Office of Government Ethics (OGE) has completed a review of the ethics program at the Centers for Disease Control and Prevention (CDC). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (Ethics Act). Our objectives were to determine the ethics program's effectiveness and compliance with applicable laws and regulations. We also evaluated CDC's systems and procedures for ensuring that ethics violations do not occur. The review was conducted in June 2005. The following is a summary of our findings and recommendations.

#### HIGHLIGHTS

Based on the results of our review, we are concerned that CDC has not made significant improvement to its ethics program since our last review in 1999. Many of the same deficiencies identified during that review, most of which involved the administration of the financial disclosure systems, remain today. Moreover, without increased staffing to administer the program on a day-to-day basis, CDC runs the risk of failing to comply with the most basic ethics requirements.

#### EMPLOYEE ETHICS SURVEY

In May 2005, just prior to the beginning of our fieldwork, OGE completed a survey of CDC employees to assess the effectiveness of CDC's ethics program and agency ethical climate from the employees' perspective. Overall, employees who responded to our survey were favorable in their assessment of CDC's ethics program and ethical climate. Most respondents indicated that they were familiar with the rules of ethical conduct for executive branch employees and aware that there are officials in their agency with responsibility for addressing ethics concerns. These results indicate a relatively high level of program awareness among survey respondents. Most respondents also indicated that the ethics advice and training they had received were useful in making them more aware of ethics issues and guiding their decisions and conduct in connection with their work.

## PROGRAM ADMINISTRATION

The bulk of CDC's ethics program is centrally managed by the Ethics Program Activity within the Office of the Chief Operating Officer. The Deputy Chief Operating Officer serves as CDC's Deputy Ethics Counselor (DEC) and is primarily responsible for the program. However, the day-to-day administration of the program is overseen by the Ethics Program Activity's Ethics Program Manager. She is currently aided by two Ethics Program Specialists. In addition, the Ethics Program Activity receives routine support from your office (the Department of Health and Human Services (HHS) Office of the General Counsel/ Ethics Division (OGC/ ED); in particular, an HHS OGC/ED attorney is dedicated to assist the Ethics Program Activity with ethics issues.

The ethics program for members of CDC's Federal advisory committees is administered by the Committee Management Office of the Management Analysis and Services Office. Our findings with respect to this portion of the program will be detailed later in this report under the FEDERAL ADVISORY COMMITTEES heading.

### Ethics Program Activity Staffing Concerns

During our previous review of CDC's ethics program in 1999, we concluded that in order to successfully maintain and improve the program, CDC should consider expanding the ethics staff. We were concerned that if additional staff was not added, the program would not likely be able to comply with applicable laws and regulations.

A lack of staffing to effectively administer the ethics program appears to still be an issue at CDC. Although an additional Ethics Program Specialist was added to the program following our previous review, the Ethics Program Activity recently lost another Ethics Program Specialist to retirement and, although efforts are underway to replace her, the position has not yet been filled.

According to a memorandum from the DEC provided to us by the Ethics Program Manager, in light of anticipated additional duties for the Ethics Program Activity, the current staffing level will soon limit its ability to meet the ethics needs of the CDC community. For example, HHS' newly amended supplemental standards of conduct regulation is likely to increase the Ethics Program Activity's workload significantly. Moreover, the DEC anticipates that the number of employees required to file public financial disclosure reports will likely double by 2006 as a result of CDC's forthcoming equal classification request to OGE to require certain CDC employees occupying Senior Executive Service-equivalent positions to file public reports. The added responsibility to review these additional public reports, coupled with the responsibility to review CDC's over 2,300 confidential reports, will further stretch the Ethics Program Activity's already limited resources.

The findings of our current review support the DEC's concerns. The staffing level at the Ethics Program Activity still does not appear to be sufficient to maintain CDC's ethics program. In



fact, many of the deficiencies we identified during our previous review remain. While all of these deficiencies may not be the direct result of a lack of staffing in the Ethics Program Activity, it appears to be a contributing factor. A detailed explanation of our findings and their relationship to the Ethics Program Activity's staffing concerns follows.

#### PUBLIC FINANCIAL DISCLOSURE

CDC's public financial disclosure system requires improvement. In particular, stronger coordination between the Atlanta Human Resources Center (AHRC) and the Ethics Program Activity is required to ensure that public filers leaving (or entering) covered positions are identified by AHRC so that the Ethics Program Activity can notify them of the termination (or new entrant) public filing requirement in a timely manner.

To evaluate the public system, we examined 30 of the 32<sup>1</sup> public reports required to be filed with the Ethics Program Activity in 2004 and 5 of the 7 new entrant and termination reports required to be filed thus far in 2005.

All 35 of the reports we examined were filed by the appropriate deadlines, including any filing extensions, and all but 2<sup>2</sup> appeared to be reviewed and certified timely. However, we noted that several reports appeared to have been initially reviewed by an Ethics Program Specialist and certified by the DEC on the same day. We found this to be questionable considering that the Ethics Program Activity and the DEC are not physically located in the same building. Ethics Program Activity officials admitted that, based on a practice instituted by the former DEC, an Ethics Program Specialist would review and sign reports as the intermediate reviewer and then certify the reports using the DEC's signature stamp. The Ethics Program Manager added, however, that she will now personally provide the DEC with the public reports for his certification.

One of the two 2005 reports that we did not examine (a termination report) had not yet been filed at the time of our review because when the employee left CDC, AHRC did not notify the Ethics Program Activity and thus the employee was not notified of the termination filing requirement. Efforts are underway by the Ethics Program Activity to locate the employee and collect his termination report.

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<sup>1</sup>We did not examine the two reports required to be filed in 2004 by the CDC Director and DEC, as they are filed with your office for review and certification.

<sup>2</sup>One of these reports had been signed but was not dated by the DEC; therefore we could not assess the timeliness of the certification. The other report did not contain any review or certification signatures or dates at the time of our review. According to an Ethics Program Specialist, this report was originally filed timely but without being signed by the filer. Therefore, she had to return the report to the filer for her signature, thus delaying final certification of the report. She subsequently informed us that the report was certified on July 1, 2005 (after the completion of our fieldwork).

Ethics Program Activity officials informed us that coordination between their office and AHRC requires improvement. They explained that in addition to the case just noted, AHRC did not notify them of the recent departure of six other public financial disclosure filers. Fortunately, the Ethics Program Activity became aware of these departures through other means.

In an effort to ensure that new entrant and termination filers are captured in a timely manner, the Ethics Program Activity had previously met with AHRC officials to impress upon them their need to be provided timely information regarding any personnel actions involving Senior Executive Service employees. However, based on the just mentioned lapses in notification, it would appear that this process still requires improvement.

The other 2005 report we did not examine (a new entrant report) had just been filed prior to our review but had not yet been certified. This report was due on February 7, 2005. After several efforts by the Ethics Program Activity and the DEC to collect the report, it was finally filed on May 19, 2005. The employee has since been referred to your office, which is in the process of collecting the \$200 late filing fee from the filer.

Our examination of the public reports revealed no technical or substantive deficiencies.

#### Equal Classification Request

As previously noted, CDC is in the process of developing a request for OGE to determine that certain CDC positions are of equal classification to positions described at 5 C.F.R. § 2634.202(c) and require the filing of a public financial disclosure report. This request, which is anticipated to cover employees appointed under the authority of 42 U.S.C. § 209(f), certain members of the Senior Biomedical Research Service, and other similarly situated employees, will likely double the number of employees required to file public financial disclosure reports. This increase in the number of filers will further stretch the Ethics Program Activity's already limited resources.

#### CONFIDENTIAL FINANCIAL DISCLOSURE

CDC's confidential system also requires improvement. In particular, improvement is required in the timely collection and certification of confidential reports. However, we are concerned that without additional staff to assist in administering the system, full compliance with the confidential disclosure requirements will be difficult.

Prior to our examination of CDC's confidential system, we were informed that approximately 8 percent of the 2,300 annual confidential reports required to be filed in 2004 had not been filed as of the first week of May 2005. In an effort to collect the outstanding reports, the DEC directed the managers of delinquent filers to counsel the employees on their failure to file. Managers were provided a certification memorandum to document the counseling sessions. While these counseling sessions were not considered formal reprimands, the DEC subsequently authorized managers to issue

formal letters of reprimand to any employees who failed to file their reports by May 27, 2005. Moreover, any employee who had not filed by May 27 was notified that their computer system access privileges would be suspended, effective May 31. According to the DEC, as of June 6, only six employees, all of whom are assigned overseas, had not yet filed. He added, however, that these efforts to collect the missing confidential reports have impeded the Ethics Program Activity's ability to review those reports that were already filed and provide prompt ethics advice to CDC employees.

Despite these efforts and the assertion that only six reports had not yet been filed, we could not locate many of the 2004 reports we selected to review. We initially selected a sample of 239 reports from the master list of approximately 2,300 employees required to file in 2004. We could not locate files for 25 of these employees. Of the remaining 214 employees for whom we did locate files, 70 did not have a 2004 report in their files. (In these instances we examined the most recent report in the file, usually a 2003 report). Thus, of the 239 2004 reports we selected to examine, 95 could not be accounted for at the time of our review. Since the completion of our fieldwork, an Ethics Program Specialist has been able to locate all but 22 of the original 95 missing reports. Apparently, many of the reports we could not locate during our fieldwork had in fact been filed but were either still being reviewed or had already been reviewed and certified but had not yet been placed in the appropriate files.

Consistent with the information provided to us in a memorandum from the DEC at the start of our fieldwork, we found that 74 of the 214 reports we examined were filed late. Moreover, according to information provided to us by the Ethics Program Specialist, 25 of the 73 reports located after our fieldwork were filed late.

We also identified seven filers who had filed an OGE Optional Form 450-A but had no OGE Form 450 on file, or the most recent OGE Form 450 was filed more than three years prior. We informed the Ethics Program Activity officials that an OGE Form 450 must be on file for the position the employee currently holds in order for him/her to be eligible to file an OGE Optional Form 450-A. Moreover, after three years of filing an OGE Optional Form 450-A, a filer must file an OGE Form 450.

While all of the reports we examined were initially reviewed in a timely manner by an Ethics Program Specialist, 2 were certified late, and more notably, 14 were not certified at all. We also noted that, as with the public reports, an Ethics Program Specialist had been certifying the reports using the DEC's signature stamp. However, under a recently instituted change in procedure, the Ethics Program Specialists will now be certifying the confidential reports under their own signatures.

While it appears that the reports generally undergo a fairly thorough review, we did identify several technical errors during our examination. These included missing dates of appointment or the use of dates when the employee started work at CDC instead of the date when he/she entered a covered position (on new entrant reports), failure to check the "None" box when a filer had no information to report on a certain part, failure to list the source of a spouse's income, overreporting

of CDC salary and Federal Thrift Savings Plan account information, and failure to indicate whether filers were new entrants or incumbents.

The only substantive issue we identified was that one report was missing the entire second page (Parts II through V) but the report was still certified. According to an Ethics Program Specialist, this report was handled by the Ethics Program Specialist who recently retired. She added that she has been unable to locate any paperwork verifying that the filer had submitted the second page of the report. She is currently in the process of following-up with the filer.

We noted that some filers reported interests in pharmaceutical and health care-related companies such as Pfizer and Merck and asked Ethics Program Activity officials if these types of interests pose the potential for conflict. An Ethics Program Specialist explained that reports containing these types of interests are evaluated for potential conflicts on a case-by-case basis. When no conflict is present, filers listing these types of interests are routinely issued a cautionary memorandum reminding them to avoid participating in matters that could affect the interest(s). The memorandum also describes the corrective actions (recusal, divestiture, etc.) that must be performed if the interest should pose a conflict in the future.

Considering the large number of CDC employees who are required to file confidential financial disclosure reports, we questioned whether supervisors were being overly broad in their designations as to who should be required to file. The Ethics Program Manager stated that she suspects there is some over-coverage by supervisors. The Ethics Program Activity is now asking supervisors to provide written justification when designating filers under the GS-13 pay level. This may result in some decrease in the number of confidential filers and thus ease the burden of collecting and reviewing confidential reports on the Ethics Program Specialists.

## OUTSIDE ACTIVITIES

On July 30, 1996, HHS, with OGE concurrence, issued a supplemental standards of conduct regulation at 5 C.F.R. part 5501. Under this regulation, HHS employees, including those at CDC, were required to receive prior approval to engage in certain outside activities. These activities were (1) providing consultative or professional services, including service as an expert witness, (2) engaging in outside teaching, speaking, writing, or editing that relates to the employee's official duties within the meaning of 5 C.F.R. § 2635.807(a)(2)(i)(B) through (E) or would be undertaken as a result of an invitation to engage in the activity that was extended to the employee by a person who is a prohibited source within the meaning of 5 C.F.R. § 2635.203(d), as modified by section 5501.102, and (3) providing advice, counsel, or consultation to a non-Federal entity as an officer, director, or board member, or as a member of a group, such as a planning commission, advisory council, editorial board, or scientific or technical advisory board or panel.

On February 3, 2005, HHS issued a newly amended supplemental regulation as an interim final rule at 5 C.F.R. parts 5501 and 5502.<sup>3</sup> This regulation placed new restrictions and requirements primarily on employees of the National Institutes of Health. However, two new requirements were added for all HHS employees, including those at CDC. First, approvals of outside activities are effective for one year only. Employees must renew their requests for approval annually if they desire to continue with the outside activity. Second, employees for whom an outside activity has been approved or who has participated in any outside activity for which prior approval is required, must file an annual supplemental report (HHS Form 521) for all such activities undertaken in the previous calendar year.

#### CDC Compliance With Requirements Of Previous Supplemental Regulation

To evaluate CDC's compliance with the requirements of the HHS supplemental regulation in effect prior to February 3, 2005, we identified all positions reported as being held outside the U.S. Government on Part I of the SF 278s and Part III of the OGE Form 450s we examined. We then identified whether approval had been granted in accordance with the HHS supplemental regulation, if required.

Our examination of all available public reports required to be filed in 2004 and 2005 and a sample of confidential reports required to be filed in 2003 and 2004 revealed 62 reported activities. Of these, 21 were actually activities undertaken as part of employees' official duties and should not have been included on the employees' financial disclosure reports. We reminded Ethics Program Activity officials that only positions held outside the U.S. Government should be listed on filers' financial disclosure reports.

Additionally, five reported activities did not require prior approval (e.g., they did not involve the provision of consultative or professional services, etc.).

The remaining 36 reported activities were outside activities for which approval was required under the previous HHS supplemental regulation. We could not locate approvals for 15 of these activities. Of the remaining 21 activities, only 3 appeared to have been approved in a timely manner (prior to the activity's intended start date, as reported by the employee on the request form [HHS Form 520]). Seventeen appeared to have been approved late (after the reported intended start date).<sup>4</sup>

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<sup>3</sup>Since the completion of our fieldwork, HHS has issued an amended version of this regulation. However, this version does not contain any amendments that would specifically affect CDC.

<sup>4</sup>We could not determine the approval timeliness of the one remaining activity because, although we examined a copy of a letter to the employee approving the request, the related HHS Form 520 was not on file.

Included in the number of activities we considered to have been approved late were those for which approval had been previously granted but the approval period had lapsed prior to the activity being re-approved. Therefore, the activities had been undertaken without up-to-date approvals on file.

#### CDC Compliance With Requirements Of Newly Amended Supplemental Regulation

To evaluate CDC's progress in complying with the requirements of the newly amended HHS supplemental regulation, we examined all of the activities for which approval was requested thus far using the newly revised HHS Form 520 and all of the available annual supplemental reports of activities undertaken in the previous calendar year using the newly developed HHS Form 521.<sup>5</sup>

Since the issuance of the newly revised HHS Form 520 in April 2005, CDC employees have submitted 10 requests to engage in outside activities using this form. Our examination of these requests and their approvals revealed that 3 of the 10 requests were not approved until after the reported start date for each activity. In fact, in all three cases, the requests themselves were not submitted until after the reported start date.

We suggested that the Ethics Program Activity direct employees to submit their requests sufficiently before the proposed activity start date to ensure that prior approval can be granted. Ethics Program Activity officials estimated that the approval process should typically take approximately four weeks and stated that they have already apprised employees accordingly. However, they added that the review and concurrence of requests by the appropriate Associate Director for Management and Operations (ADMO) has been somewhat protracted in certain cases. They explained that concurrence by the ADMOs is one of many of their duties and thus may not always be given a high priority.

We also identified several instances where the ADMOs simply signed and dated HHS Form 520s without checking the forms' "Concur" or "Nonconcur" boxes, as appropriate. In addition, we identified one instance where a supervisor signed and dated the form but did not check the "Recommend Approval" or "Recommend Disapproval" box, as appropriate. Ethics Program Activity officials stated that in these cases, they assumed that the signature alone was sufficient to show concurrence or recommendation. While this may be a reasonable assumption, Ethics Program Activity officials should ensure that all required sections of the form are completed by the reviewing officials, to avoid any misunderstanding.

One particular request that we questioned from a substantive standpoint dealt with an employee who requested to serve as a member of American Nurses Credentialing Center's (ANCC)

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<sup>5</sup> According to the Ethics Program Manager, you authorized each HHS component to set its own due date for the 2004 annual supplemental reports. CDC set this date at June 28, 2005.

National Streamlining Task Force as an outside activity. According to the HHS Form 520 she submitted, most of her activities would involve participating in conference calls from CDC. Moreover, according to the form, she routinely interacts with ANCC on a routine basis in the course of her assigned duties. When we questioned Ethics Program Activity officials as to whether this type of request should be more appropriately approved as an official duty activity, we were informed that this activity was approved in accordance with an Office of Personnel Management regulation at 5 C.F.R. § 251.202(a) which states:

"An agency may provide support services to an organization when the agency determines that such action would benefit the agency's programs or would be warranted as a service to employees who are members of the organization and complies with applicable statutes and regulations."

According to an Ethics Program Specialist, approval letters to employees requesting approval for these types of activities typically include language that describes the allowable actions under this authority, as well as the relevant restrictions. However, the approval letter we examined for this request did not contain any such language. Based on follow-up conversations with the Ethics Program Specialist, we determined that the approval letter we examined was only a draft and had not yet been sent to the requesting employee. Following our original meeting, during which we brought this particular request to the attention of Ethics Program Activity officials, the approval letter was revised to include the appropriate language. We were provided a copy of the revised letter via facsimile after our fieldwork was completed.

We also examined all 22 of the HHS Form 521s submitted to date for 2004. We found that six of the original approval dates listed on the forms fell after the dates listed for when the activities had begun. In addition, while the HHS Form 521s we examined were otherwise generally complete, we noted three forms on which employees did not provide a date for which the activities listed on the form were originally approved.

According to the DEC, the revision of the HHS Form 520 to a much more detailed 16 page version, the new requirement that approvals be renewed on an annual basis, and the implementation of the HHS Form 521 process has significantly increased the workload of the Ethics Program Activity.

#### ETHICS EDUCATION PROGRAM

The Ethics Program Activity, in coordination with AHRC, provides initial ethics orientation and annual ethics training that comply with the requirements of OGE's ethics training regulation at subpart G of 5 C.F.R. part 2638. However, although the Ethics Program Activity utilizes a certification form to track employees receipt of training, efforts to collect these forms have been inconsistent.

### Initial Ethics Orientation

AHRC conducts initial ethics orientation for new CDC employees on a biweekly basis. During this orientation, employees are provided a package of materials prepared by the Ethics Program Activity. The package contains copies of the January 20, 2001 memorandum from President Bush regarding standards of official conduct, the executive branchwide standards of conduct, HHS' recently revised supplemental standards of conduct and a compilation of these standards combining the unchanged and revised sections into a single document, the OGE booklet "A Brief Wrap on Ethics," and the address for the Ethics Program Activity Web site. According to the DEC, he would prefer that an Ethics Program Activity official conduct the orientation, but the current shortage of staff does not allow for the practice.

### Annual Ethics Training

To meet the annual ethics training requirement for 2004, the Ethics Program Activity directed public and confidential financial disclosure filers to complete two computer-based training modules covering misuse of position and political activities. Upon completion of these modules, filers were directed to forward a training certification form to the Ethics Program Activity to verify that they had taken the training and for placement in their financial disclosure files.

During our review of the public and confidential financial disclosure reports, we noted that many files did not contain 2004 training certifications. Ethics Program Activity officials asserted that simply because certifications were not on file does not necessarily mean that filers did not complete the training. However, they admitted that, as with the collection of delinquent confidential reports, scarce resources have not enabled them to be as diligent in tracking down missing certifications as they might be. The Ethics Program Manager added that CDC is technically meeting OGE's annual training requirement by *providing* annual training.

While OGE's training regulation does not require that annual training attendance/completion be tracked, as a good management practice, we suggest that the Ethics Program Activity make a more concerted effort to ensure that covered employees complete annual ethics training. Failure to track training completion makes it impossible for ethics officials to certify that training has been completed.

### Additional Training

The Ethics Program Activity routinely provides ethics training and guidance in addition to the initial ethics orientation and annual ethics training. For example, the Ethics Program Activity periodically submits ethics-related articles for publication in CDC's daily online news source, *CDC Connects*. In 2004, such articles included coverage of the outside activity rules and the Hatch Act.

In addition to providing ethics training for employees, the Ethics Program Activity conducts biannual training for its ethics points of contact at the various CDC centers. These points of contact



are not part of the Ethics Program Activity staff and primarily assist with the completion and collection of certain ethics-related forms, such as requests to engage in outside activities.

## ETHICS COUNSELING

According to the Ethics Program Manager, approximately 65 percent of the Ethics Program Activity officials' time is spent providing ethics-related counseling to CDC employees. She added that since the Ethics Program Activity is physically located away from CDC headquarters, thus limiting routine face-to-face contact with most CDC employees, most of the counseling is provided in writing, typically via e-mail.

To evaluate the counseling, we examined a sample of the ethics-related written guidance provided by the Ethics Program Activity from 2004 to the time of our review. The guidance dealing with gifts, letters of recommendation, and endorsements appeared to be in compliance with applicable laws and regulations. However, other guidance, particularly that involving seeking and post-employment, contained insufficient facts from the employee and often there was simply no analysis to review. Consequently, we were unable to conclude that the advice given was adequate, nor could we conclude that the documentation of advice rendered was effective.

In the areas of seeking and post-employment, Ethics Program Activity officials created and/or borrowed from other sources boiler plate language that merely summarized the restrictions without providing any specific fact-based analysis. In the area of seeking employment, it was evident from the e-mail traffic that employees are aware of their basic obligations to recuse themselves from involvement in matters that involve or affect someone with whom they are pursuing employment. In several samples, in fact, the employee spoke of the need to recuse in the initial request for advice. However, we were troubled to note that the sample language/summary of the rules contained no definition/explanation of "seeking." The emphasis was exclusively on "negotiating," a term having a narrower meaning. In the absence of a working definition of "seeking" that informs the employee just how early in the job seeking process the recusal requirement actually applies, employees may inadvertently violate the standards of conduct, if not the criminal statute.

Similarly, in the area of post-employment, virtually all the guidance we reviewed provided little or no analysis of any specific facts, but merely summarized the potentially applicable restrictions. In a few examples, the ethics office did advise the employee to return for further analysis once they had specific facts, and in at least one example, the office had spoken with the employee over the phone (presumably about specific facts) and the e-mail was sent as a follow-up. However, in at least two examples, the employee provided specific facts and the e-mail merely contained a summary of the employee's facts and a summary of the post-employment restrictions that might apply. There was essentially no analysis.

In addition to the counseling about which we could not make assessments regarding their adequacy or effectiveness, there were several particular pieces which caused us specific concern.

While the advice provided in these pieces of guidance was not necessarily incorrect, we noted that it did not cover all of the statutory or regulatory issues and restrictions relevant to the questions that were posed.

We discussed our concerns with the Ethics Program Manager during the OGE Annual Ethics Conference in September 2005. The Ethics Program Manager stated that she has had similar concerns with the ethics advice provided, particularly that provided by the Ethics Program Specialists. She explained that because they are not attorneys, they are often hesitant to conduct in-depth analyses when providing advice, and thus typically provide only a summary or recitation of the applicable ethics rules. During the meeting, HHS' OGE Desk Officer offered to provide the Ethics Program Specialists training on some of the more common issues (e.g., seeking employment, post-employment, etc.) that appear to arise at CDC.

#### FEDERAL ADVISORY COMMITTEES

The ethics program for CDC's 22 Federal advisory committees appears to be generally effective. The day-to-day administration of this program is carried out by the Committee Management Office of the Management Analysis and Services Office. To evaluate this program, we examined the designations of committee members as either special Government employees (SGE) or representatives, the confidential financial disclosure system and ethics training program for SGE committee members, and the procedures for granting waivers under 18 U.S.C. § 208(b)(3), as well as the substance of the waivers themselves.

##### SGE vs. Representative Designations

CDC has designated 303 of its 383 advisory committee members as SGEs, thus subjecting them to certain ethics rules and the confidential financial disclosure filing requirements. The remaining 80 members are considered to be "liaisons." According to the Financial Conflict of Interest Specialist with whom we met, the liaisons are non-voting members who serve in a representative capacity. Our examination of the charters of committees whose membership includes liaisons confirmed this characterization of the liaisons' representative status. Each charter contains language specifying that the liaisons are to represent certain organizations, often specifically identifying the organization by name (e.g., American Academy of Family Physicians, Infectious Disease Society of America, etc.).

##### Confidential System For SGE Advisory Committee Members

To evaluate CDC's confidential system for SGE members of its advisory committees, we examined 134 of the 144 OGE Form 450s required to be filed in 2004 by SGE members of 11 of the 22 committees. We could not examine the remaining 10 reports because 5 had not been filed as required in 2004 and 5 were being utilized by reviewing officials in connection with their review of recently filed 2005 reports.

According to the Financial Conflict of Interest Specialist, the Committee Management Office used to collect term-appointed SGE committee members' new entrant confidential reports upon their initial appointment and follow-on new entrant reports annually thereafter on the anniversary of this appointment. However, the Committee Management Office is now moving toward collecting the follow-on new entrant reports simultaneously once each year on a specified date, as allowed by OGE DAEOgram DO-95-019. While either collection method is allowable, the Committee Management Office must ensure that reports are collected annually for each year of SGE committee members' terms.

Of the 134 OGE Form 450s we examined, 118 appeared to be reviewed and certified in a timely manner, based on the dates the reports were signed by the Executive Secretaries and the Director of the Management Analysis and Services Office as intermediate reviewers and certifying official respectively. Moreover, the Financial Conflict of Interest Specialist informed us that she and the Committee Management Specialist in her office conduct an initial review of the reports; however, they do not sign or date the forms indicating their review.

Our examination of the confidential reports revealed no substantive deficiencies. However, the reports contained some technical deficiencies, including filers: unnecessarily reporting auto loans and mortgages on their private residences on Part II, Liabilities, of the OGE Form 450; failing to provide the dates on which they signed their reports; not reporting full mutual fund names; not checking the "None" boxes when appropriate; and not reporting outside positions on Part III, Outside Positions, that presumably were the sources for income reported on Part I, Assets and Income, during the reporting period.

#### Ethics Training For SGE Committee Members

The Committee Management Office provides newly appointed SGE members of advisory committees a copy of the executive branchwide standards of conduct and a document entitled "Ethics Rules for Advisory Committee Members and Other Individuals Appointed as Special Government Employees," which summarizes the ethics rules applicable to them. SGE members are then requested to sign a certification form acknowledging their receipt and review of these materials. Annually thereafter, incumbent members are provided a copy of the summary document and required to sign a certification form.

Consistent with our findings with regard to regular employees who file financial disclosure reports with the Ethics Program Activity, we identified a number of SGE committee members who did not have 2004 annual training certifications in their financial disclosure files. The Financial Conflict of Interest Specialist reiterated the stance taken by the Ethics Program Manager that she is meeting the requirements of OGE's training regulation by providing the training materials to each committee member and that there is no requirement to track their review of the materials.

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18 U.S.C. § 208(b)(3) Waivers

In February 2002, an OGE attorney visited CDC to review the 18 U.S.C. § 208(b)(3) waivers granted to SGE members of CDC advisory committees and to assist CDC in addressing certain concerns OGE had with respect to these types of waivers. In a letter sent to you in April 2002 discussing the results of this visit, we concluded that CDC had taken steps to improve its advisory committee waiver process and further action was continuing. Our letter also suggested that you provide an attorney from your office to assist in the CDC waiver process.

Since our 2002 visit and letter, it appears that CDC has improved its waiver process, although we did make one suggestion to further improve the individual waiver language. Moreover, it appears that since our letter, you have in fact dedicated an attorney from your office to assist CDC, as we noted that the HHS OGC/ED attorney signed each waiver we examined as a concurring official. However, the forwarding of copies of waivers to OGE, as required by 5 C.F.R. § 2640.303, requires improvement.

To evaluate CDC's process for issuing 18 U.S.C. § 208(b)(3) waivers, as well as the waivers themselves, we examined all 22 of the waivers granted in 2004 to SGE members of its Federal advisory committees. These waivers were granted to members of 8 of CDC's 22 committees.

Each of the waivers was granted by the Director of the Management Analysis and Services Office, who, as the members' appointing official, has been delegated the authority to do so. The waivers are prepared by the officials in the Committee Management Office, in consultation with the relevant committee's Executive Secretary or Designated Federal Official, and provided to the Director of the Management Analysis and Services Office for his approval and signature. As previously noted, the attorney from your office concurs on each waiver granted. In addition, the member to whom the waiver is granted signs the waiver document, acknowledging and agreeing to its terms.

All of the waivers generally met the content requirements described at 5 C.F.R. § 2640.302, including a determination that the need for the SGE's services outweighs the potential for a conflict of interest created by the financial interest involved. However, we felt that in some cases these determinations were rather weak in their descriptions of the real need for the services. Since the need for the SGE's services is the overriding justification for granting a (b)(3) waiver, we suggest that the determinations in future waivers be further expanded and detailed.

According to the Financial Conflict of Interest Specialist, copies of the waivers are routinely sent to your office for forwarding to OGE as required by 5 C.F.R. § 2640.303. However, no copies of the (b)(3) waivers granted at CDC in 2004 appeared to have been forwarded to OGE.

## ENFORCEMENT

According to an Ethics Program Specialist, the HHS Office of Inspector General (OIG) would be responsible for investigating allegations of violations of the criminal conflict of interest laws. OIG would also be responsible for referring such allegations to the Department of Justice for prosecution, as appropriate, and concurrently notifying OGE of these referrals and their disposition. However, there have been no such allegations from 2004 to date.

Although there have not been any criminal conflict of interest violations at CDC since 2004, there have been two actions taken against CDC employees for standards of conduct violations during this time period. The Ethics Program Activity provided analysis and input into management's evaluation of both violations.

The first violation involved an employee with oversight of a contract who, according to the documentation we were provided, caused, encouraged, or allowed her adult son and daughter to be hired by the contractor and perform duties under the contract. The employee was found to have violated, among other things, the impartiality prohibitions of 5 C.F.R. § 2635.502. She was issued a letter of reprimand and relieved of all managerial responsibilities.

The second violation involved an employee's misuse of Government property and time, as well as the use of his Government position, to imply governmental sanction, all in violation of subpart G of 5 C.F.R. part 2635. This employee was also issued a letter of reprimand.

## RECOMMENDATIONS

To bring CDC's ethics program into full compliance with applicable ethics laws and regulations, we recommend you ensure that:

1. Sufficient staffing exists to adequately maintain the viability of CDC's ethics program and to assure it can meet all ethics-related requirements.
2. The Ethics Program Activity continues efforts to collect the one delinquent public termination report identified during our review.
3. AHRC provides the Ethics Program Activity with accurate and timely lists of employees entering into or departing from public financial disclosure filing positions.
4. The Ethics Program Activity collects confidential reports from regular covered employees in a timely manner.
5. The Ethics Program Activity continues efforts to collect, or otherwise account for, any outstanding 2004 confidential reports.

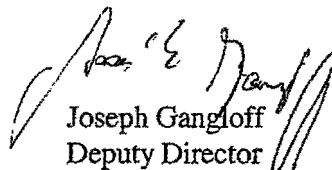
Mr. Edgar M. Swindell

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6. The Ethics Program Specialists certify confidential reports in a timely manner.
7. OGE Form 450-As are filed only by eligible employees who have a previous OGE Form 450 on file for the position they currently hold, in accordance with 5 C.F.R. § 2634.905(d)(2).
8. Term-appointed SGE advisory committee members file confidential reports annually for each year of their terms.
9. Employees obtain written approval prior to engaging in certain outside employment or activities in accordance with the HHS supplemental standards of conduct, specifically 5 C.F.R. § 5501.106(d). Also, ensure that requests are obtained, if appropriate, for the remaining 15 activities we identified for which approvals could not be located.
10. Copies of waivers granted under 18 U.S.C. § 208(b)(3) are forwarded to OGE as required by 5 C.F.R. § 2640.303.

In closing, I would like to thank all the CDC officials involved in this review for their efforts on behalf of the ethics program. Please advise me within 60 days of the specific actions you have taken or plan to take on our recommendations. A brief follow-up review will be scheduled within six months from the date of this report. In view of the corrective action authority vested with the Director of the Office of Government Ethics under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that CDC take timely actions to implement our recommendations. A copy of this report is being forwarded to the HHS Inspector General via transmittal letter. Please contact Dale Christopher at 202-482-9224, if we may be of further assistance.

Sincerely,



Joseph Gangloff  
Deputy Director  
Office of Agency Programs

Report Number 05- 022



United States  
**Office of Government Ethics**  
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April 3, 2006

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College Park, MD 20740-6001

Dear Mr. Runkel:

The Office of Government Ethics (OGE) recently completed a review of the National Archives and Records Administration's (NARA) ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (Ethics Act). Our objective was to determine the program's compliance with applicable ethics laws and regulations. We also evaluated the system and procedures for ensuring that ethics violations do not occur. Our fieldwork was conducted intermittently between August and October 2005 and focused on calendar year 2004 and 2005 activities. The following is a summary of our findings, conclusions, and recommendations.

#### HIGHLIGHTS

Our current examination found instances of both regulatory and statutory compliance with regard to some of the program elements we examined, including a strong advice and counseling program that addresses all ethics matters and is responsive to employees' needs in terms of timeliness. However, we are troubled by the scope of noncompliance found regarding several of the other program elements subject to our examination. More specifically, we found the lack of compliance with the ethics program requirements for special Government employees (SGEs) serving on NARA's advisory committees and the provisions on review of reports in 5 C.F.R. part 2634 with regard to the confidential financial disclosure system very disturbing. These requirements are there to prevent employees from being placed in jeopardy of violating substantive ethics laws and regulations, albeit unintentionally, such as those found in the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) (5 C.F.R. part 2635) and the criminal conflict of interest laws (18 U.S.C. §§ 203, 205, and 207-209). Moreover, we also have systemic concerns with regard to the prior approval system for outside activities and urge you to give some considerable attention to evaluating this program element.

Although this report details the substantive and systemic issues revealed during our review and our recommendations to address the issues and enhance the overall effectiveness of NARA's ethics program, it also provides a number of suggestions that we hope will help you manage the ethics program better. We note that we found these suggestions well received when they were presented. In fact, many of them you indicated were needed and you would begin to incorporate

Mr. Christopher Runkel  
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and/or were interested in considering, such as the use of an alternative disclosure form for some of your advisory committees. My staff, including the OGE Desk Officer assigned to NARA, Cheryl Kane-Piasecki, stands ready to provide any expertise or advice you may need to bring your ethics program into full compliance.

## EMPLOYEE ETHICS SURVEY

During our ethics program review entrance conference, we reported on the results of the survey we conducted of NARA employees regarding the effectiveness of your ethics program and their perspective on the agency's ethical climate.<sup>1</sup> Overall, we found employee responses to our survey favorable. Most respondents indicated a familiarity with the rules of ethical conduct for executive branch employees and were aware of to whom they should go to have their ethics concerns addressed. The results also indicated that both the ethics advice and education and training they receive are useful in making them more aware of the ethics issues that help to guide their decisions and conduct in connection with their work.

## BACKGROUND AND PROGRAM STRUCTURE

Under the direction of the Archivist, NARA is responsible for ensuring, for the citizen and the public servant, for the President and for the Congress and the Courts, ready access to essential evidence that documents the rights of American citizens, the actions of Federal officials, and the national experience. It does so by establishing policies and procedures for managing Government records; assisting and training Federal agencies in documenting their activities; administering records management programs; scheduling records; retiring non-current records; and managing the Presidential Libraries system.

You, as the Office of General Counsel's (OGC) Senior Counsel for Trust Fund and Foundation Policy, serve as the agency's Designated Agency Ethics Official (DAEO) for the approximately 2,700 NARA employees nationwide. Although the overall oversight responsibilities for coordinating and managing NARA's ethics program rest with you, prior to October 2004 the day-to-day administration of the program was assigned to an Ethics Program Specialist whose primary duties were confined to ethics and who also served as the agency's Alternate DAEO (ADAEO). In October 2004, in accordance with 5 C.F.R. § 2638.202(c), one of the Assistant General Counsels within OGC was appointed to replace the former Ethics Program Specialist who departed from the agency.

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<sup>1</sup> The survey was conducted from December 11, 2003 to January 16, 2004. However, because NARA's program review was rescheduled from 2004 to 2005, the survey results were not provided to NARA until the ethics program review entrance conference.



## SUPPLEMENTAL STANDARDS OF CONDUCT REGULATION

Part 7601 of 5 C.F.R requires NARA employees, other than SGEs, to obtain written approval before engaging in any outside employment whether or not for compensation. For purposes of this supplemental regulation, "employment" is defined as any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It also includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a non-profit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless the participation involves the provision of professional services or advice for compensation other than reimbursement for actual expenses.

For those who wish to engage in any outside employment, requests for approval must be submitted using NARA's NA 3015 form, Application to Engage in Outside Employment, Business, or Professional Activities, in accordance with the policies and procedures for prior review and approval of activities set forth in NARA's Administrative Procedures Manual (ADMIN. 201).

## STAFFING AND OVERSIGHT CONCERNS

From the outset, we recognize that many of the deficiencies identified during our current review can likely be attributable to the departure of the former Ethics Program Specialist, who at the time of our review had not been replaced by someone dedicated to ethics full-time. While we recognize that one of the Assistant General Counsels within OGC was promptly appointed to the ADAEO position, we also realize that you and the current ADAEO have many non-ethics-related responsibilities that have precluded you both from devoting full-time attention to the day-to-day functions of the program.<sup>2</sup> Though we know the challenges faced in transitioning from a program structure administered day-to-day by a full-time ethics official to one administered on a part-time basis and realize that our review was conducted in the midst of this transition, it remains imperative nonetheless that the program elements described in subpart B of 5 C.F.R. part 2638 be met at all times to ensure the public's confidence in an ethical Government. For this reason, it is also imperative that your involvement in coordinating and managing the ethics program increase, as you are accountable to the Archivist for ensuring that the weaknesses found within the various program elements we examined are corrected. These elements include financial disclosure, education and training, and ethics services for SGEs. This increased involvement is particularly pertinent when you

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<sup>2</sup> According to NARA's 2004 agency ethics program questionnaire, while you spend the greater amount of time on ethics, approximately 25 percent, the ADAEO currently spends approximately 15 percent of his time on ethics.

do not have the services of a full-time ethics official on which to rely to administer the day-to-day ethics functions.

While we were pleased to learn during the course of our review of your plans to soon hire another Ethics Program Specialist,<sup>3</sup> who will again handle the day-to-day functions of NARA's ethics program on a full-time basis, and believe full-time attention to the program will help strengthen the program overall, we still see a need for more. For example, in accordance with section 2638.202(a), every executive branch agency must make available sufficient resources, including audit, legal, and administrative staff, as necessary, to enable the agency to administer its program in a positive and effective manner. One of the responsibilities of a DAEO is to serve as an effective catalyst in assessing the resources of the ethics program to determine whether or not his or her ethics duties can be effectively carried out. Since DAEOs are not required to do all of the program elements themselves, we believe an effective means for you to coordinate and manage NARA's ethics program, in addition to having the ADAEO and a full-time ethics official available, would be to give those who are already designated as deputy ethics officials a significant role in the administration of NARA's ethics program. Interestingly, while all NARA OGC attorneys, with the exception of the General Counsel, are designated as deputy ethics officials pursuant to 5 C.F.R. § 2638.204, they have been delegated none of the duties referred to in § 2638.203. Therefore, by utilizing the services of these deputy ethics officials we believe the ethics program would not only be strengthened further but it would also be more than adequate in preventing minor deficiencies from becoming major, especially when there is no full-time ethics official available.

Throughout this report, we make continual references to the deficiencies we identified that were associated with the departure of the former Ethics Program Specialist/ADAEO and where we believe the services of deputy ethics officials would be useful.

#### PRIOR APPROVAL OF OUTSIDE EMPLOYMENT

Our review of NARA's outside employment prior approval system focused primarily on whether the prior approval requirement in NARA's supplemental regulation, at 5 C.F.R. § 7601.102, was being met, based on our examination of the outside employment reported on both the public and confidential financial disclosure reports we examined (see sections below on public and confidential financial disclosure systems). We identified 19 outside employment activities listed on the appropriate schedule/part of the public/confidential financial disclosure reports, but found only 3 approval forms (NA 3015) on file. We could not verify during our fieldwork for the remaining 16 employment activities whether prior approval had ever been obtained or NA 3015 forms had simply been misfiled. NARA confirmed for us after the conclusion of our fieldwork that only one of the four public reports on which we questioned the need for prior approval of outside employment needed such approval, which subsequently had been obtained and an NA 3015 form provided. However, the

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<sup>3</sup> Per our discussions with you, we were advised that the current ADAEO will continue to serve in his ethics capacity once a new Ethics Program Specialist is hired.

majority of the confidential reports on which we questioned the need for prior approval needed such approval, but no approval had been obtained nor had a NA 3015 form been properly filed.

We find this troubling since failure to obtain written prior approval precludes the transparency needed to ensure compliance with § 7601.102 and for the reviews of financial disclosure reports to be done in accordance with § 2634.605. This also places employees in jeopardy of being in actual or potential conflict of interest situations, including conflicts between their personal financial interests and their official duties or otherwise being at risk of violating the laws and regulations, including the Standards. Accordingly, we are recommending that NARA evaluate its outside employment prior approval system to ensure that all NARA employees (both filers and non-filers) have obtained prior approval in accordance with § 7601.102 (including having any employees whose outside employment we questioned obtain approvals after the fact, if warranted). Moreover, since copies of written approvals (or denials) should also be routinely maintained with the filer's financial disclosure report file for use in reviewing the financial disclosure report, we are also recommending that this become a routine practice during the review of financial disclosure reports.

In addition to the above, there were two other areas of concern regarding NARA's outside employment prior approval system:

First, during our examination of the 3 NA 3015 forms, we noticed that none of them included statements about the Privacy Act or the Standards, despite the form itself referring requesters to both statements on the reverse side of the form. Both statements serve to protect the employee in various ways.

Second, during our review of the ADMIN. 201, we noticed that the last update made to these procedures was in August 1996 when two significant changes were made to improve the organization and clarity regarding the coverage of outside employment. These changes included the addition of: 1) the special requirements applicable to persons holding non-career Senior Executive Service appointments;<sup>4</sup> and 2) the requirement that prior approval be obtained by employees who wish to serve in a leadership position (officer, director, or similar position) of a non-profit, charitable, religious, professional, social, fraternal, or similar organization that is a prohibited source.

Regarding the latter change to the ADMIN. 201, upon comparing this requirement with the language found in the supplemental regulation, we believe the current outside activity employment approval requirement has been broadened by expanding the definition of employment subject to the prior approval requirement. To make this point, we note that the current language in NARA's supplemental regulation states that prior approval does not cover "participation in the activities of a non-profit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless the participation involves the provision of professional services

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<sup>4</sup> Added were the restrictions provided in 5 C.F.R. §§ 2636.301 – 2636.307.

or advice for compensation other than reimbursement for actual expense [emphasis added]." Since the ADMIN. 201 is procedural in nature, it simply implements the supplemental regulation wherein employment has already been defined, which can be changed at NARA's discretion by amending the regulation.

Therefore, we are recommending that NARA cease enforcing the broader outside employment prior approval requirement in the ADMIN. 201, pending NARA's joint issuance with OGE, in accordance with 5 C.F.R. § 2635.105, of an amended supplemental regulation expanding the definition of employment consistent with the definition in the ADMIN. 201. Also, we are suggesting that the Privacy Act statement and brief statement about the Standards be indicated on the reverse side of the NA 3015 form (both the manual and electronic versions).

#### NARA ADVISORY COMMITTEES

Overall, we found this to be the weakest element of your ethics program and in need of the most attention. Ethics program services have not been provided to SGE members serving on some NARA advisory committees and uncertainty exists as to NARA's role in providing ethics services to others. We find this degree of noncompliance very troubling because transparency in the Federal advisory committee system relies on advisory committee members being, or perceived as being, free from conflicts of interest and balanced, as a whole, to ensure that their points of view are not biased or imbalanced in any way. Therefore, ethical lapses in the management of these committees can destroy the basic integrity of this process. Moreover, allowing members to participate without having a current financial disclosure report on file subjects the filer, the committee, and the agency as a whole, to potential ethical violations and criticism by the media, public interest groups, and the Congress. This also includes term appointees who may not participate in a committee meeting during a given calendar year.

We note that in our last review of NARA's ethics program conducted in 1998, we recommended that NARA complete a review of its advisory committees to ensure that all SGEs were identified and their new entrant reports collected initially and, if term appointees, annually thereafter. While those concerns eventually were found to be satisfied in a subsequent follow-up review (based on a determination that members of NARA's advisory committees were considered SGEs and assurances that NARA would begin to collect their reports on an annual basis), the concerns raised in our current review confirm for us that your involvement in coordinating and managing this element of the ethics program must increase. As was discussed during our review, we believe this would be a good program element in which to utilize the services of the deputy ethics officials.

#### Our Current Review

During our review, we requested and were provided the charters of the five standing Federal Advisory Committee Act (FACA) advisory committees that are currently active at NARA, as well as the charter for NARA's one non-FACA committee. These committees are: the Advisory Committee on Preservation; the Advisory Committee on Presidential Libraries; the Advisory Committee on the

Electronic Records Archives; the Advisory Committee on the Records of Congress; the National Industrial Security Program Policy Advisory Committee (NISPPAC); and the National Historic Publications and Records Commission, (NHPRC), the one non-FACA committee.

Of these committees, the NHPRC, the Advisory Committee on Preservation, and the Advisory Committee on the Electronic Records Archives, NARA's newest advisory committee, all have SGEs serving as members. However, at the time of our review, we found that the basic ethics program services, including the collection of confidential reports and the rendering of annual ethics training, were not being provided to the SGEs serving on the Advisory Committee on Preservation or the NHPRC. (We note that you advised us that you would be collecting new entrant confidential reports from the SGE members serving on the Advisory Committee on the Electronic Records Archives, as the first committee meeting would be scheduled prior to the end of this year). Additionally, although it was determined during our last review that NARA did not have the legal authority to collect financial disclosure reports from members of the Advisory Committee on the Records of Congress, since this committee is composed primarily of Congressional employees and persons appointed by Congress, it was agreed that steps would be taken to determine whether those members file financial disclosure reports with Congress and, if so, NARA would seek to obtain copies of those reports on an annual basis. During our current review, although we were provided a list of the members who were currently serving on this committee, which included three university members, the Historian of the United States Senate, and the Archivist, we found no evidence that steps had been taken to determine whether these members, with the exception of the Archivist, are required to file reports with Congress.

With regard to the two remaining committees, the Advisory Committee on Presidential Libraries and the NISPPAC, we were advised that all members on the Advisory Committee on Presidential Libraries serve as representatives and are not subject to the ethics program requirements. SGE or representative status, however, is uncertain with regard to the NISPPAC, as there has been some uncertainty as to what role NARA is to play in support of this committee.<sup>5</sup> Though we were advised that NARA has also expressed concerns regarding this uncertainty, the fact remains that a proper determination as to whether there are SGEs serving on NISPPAC has never been made.

In light of these findings, we are recommending that appropriate steps be taken, in collaboration with NARA committee management officials, to establish procedures for the notification of filers, the completion, submission, review, and retention of financial disclosure

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<sup>5</sup> NISPPAC is responsible for advising the President, the Secretary of Defense, the Director of the Information Security Oversight Office, and other Executive branch officials on all matters concerning the policies of the National Industrial Security Program (NISP). Membership consists of representatives of those departments and agencies most affected by the NISP and non-Government representatives of contractors, licensees, and grantees involved with classified contracts, licenses, or grants, as determined by the Chairman.

reports, and the clarification of all SGE-related ethics responsibilities. We are also recommending that steps be taken to ensure that practices at NARA for designating the status of advisory committee members for ethics purposes are adequate to determine whether individuals who serve as members of committees, councils, boards, commissions, etc., are properly designated as SGEs, since certain ethics requirements apply to SGEs that do not apply to non-SGEs. These steps should include:

- Collecting new entrant confidential reports initially from all SGE advisory committee members and, if term appointees, annually thereafter in accordance with § 2634.903(b);
- Ensuring that all NARA advisory committee members who are SGEs receive initial ethics orientation in accordance with 5 C.F.R. § 2638.703, including orientation on the most significant conflict-of-interest laws that apply to them, and, if term appointees, written annual ethics training thereafter in accordance with the exception at § 2638.705(d)(2);
- Ensuring that committee management officials (Designated Federal Officials) are educated and trained on the ethics rules related to SGEs, as part of the education and training program conducted in accordance with 5 C.F.R. § 2638.203(b)(6) and subpart G of 5 C.F.R. part 2638;
- Developing and maintaining a tracking system to ensure that all SGEs timely submit their new entrant confidential reports and, if term appointees, annually thereafter;
- Determining whether committee members from the Advisory Committee on the Records of Congress file financial disclosure reports with Congress and, if they do, obtaining copies of those reports annually;
- Formally determining whether members of NISPPAC are SGEs; and
- Ensuring that all SGEs on the Advisory Committee on the Electronic Records Archives have been identified and informed of the filing requirement, and have completed their new entrant confidential reports for 2005.

#### Potential Benefits of an Alternative Disclosure Form

After reviewing the duties associated with these committees, we believe the potential benefits of using an alternative disclosure form, in lieu of members filing a new entrant OGE Form 450, may better serve one or more of these committees due to the unique conflicts concerns associated with the members. For example, an alternative form such as a self-certification for the Advisory Committee on Preservation, which is responsible for advising the Archivist on matters relating to preservation of permanently valuable materials which are currently part of NARA, or which may be accessioned in the future, may better serve NARA since most of the information reportable on the OGE Form 450 may not address fully any potential conflict of interest concerns that may arise regarding these members. Using an alternative form filed before each meeting would allow for timely conflict-of-interest determinations rather than waiting to make the determination after an annual review of a new entrant OGE Form 450. It could also help to ease the administrative burden associated with the

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filing, collection, and review of confidential disclosure reports. We encourage NARA to consider the benefits of using an alternative disclosure procedure for this committee and the others. As a reminder, this procedure must be approved in writing by OGE prior to being implemented, in accordance with 5 C.F.R. § 2634.905(c).

## ENFORCEMENT

During our review, we discussed with NARA's Inspector General (IG) the requirements of 5 C.F.R. § 2638.203(b)(12) and determined that the services of this office are utilized when appropriate, including the referral by the DAEO of matters to and acceptance by the DAEO of matters from the IG's office. The IG advised us that there is and has been a continuing relationship between his office and the DAEO regarding matters of mutual interest including ethics-related matters.

To determine whether OGE is being concurrently notified about all referrals to the Department of Justice (Justice) of alleged violations of the conflict-of-interest laws, declinations by Justice to prosecute, and disciplinary actions taken by agencies in accordance with the requirements of 5 C.F.R. § 2638.603, we followed up with the IG regarding the one case about which we were advised was referred to the IG, in 2004. This case involved the investigation of a NARA employee who had potentially violated 5 C.F.R. § 2635.402(a) and 18 U.S.C. § 208(a), the status of which at the time of our review was unknown. We discussed this with the IG and although we learned that this case was referred to Justice, and was subsequently declined for prosecution, the IG was not aware of the requirements of § 2638.603. After discussing the requirements with him, he confirmed for us that his office would be responsible for notifying OGE of all referrals and other required follow-up information in the future.<sup>6</sup> We also suggested to the IG that he begin to concurrently notify the DAEO, when making a referral to Justice regarding the conflict-of-interest laws, to help in monitoring this system. As a result of our discussions and the fact that we received assurance that OGE will be notified of referrals in the future, we are making no formal recommendation in this program area. However, as a good management practice, we encourage you and the IG to periodically update and clarify the roles of each of your respective offices in NARA's system of enforcement.

In addition, NARA's Director of Human Resources, who is responsible for tracking the administrative actions NARA takes or considers, advised us that from October 2004 to September 2005 there were nine disciplinary actions taken or considered against NARA employees for ethics infractions.

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<sup>6</sup> We advised the IG that when notifying OGE of referrals and other required follow-up information in the future, the OGE Form 202, Notification of Conflict of Interest Referrals, must be used.

## WRITTEN PROCEDURES FOR ADMINISTERING THE FINANCIAL DISCLOSURE SYSTEMS

During our examination of NARA's written procedures for administering both its public and confidential financial disclosure systems, we noticed that the last update made to them was in November 1998. Although we found these procedures to generally comply with the requirements of section 402(d)(1) of the Ethics Act, we are recommending that you update them to more fully comply with the prescribed requirement. For example, under the "Public Financial Disclosure-Extension of Filing Due Date" section, the procedures indicate that an additional extension of time, of up to 45 days, may be granted to an employee by the OGE Director for good cause shown. However, as you know, OGE issued a final rule amending the regulation governing the granting of filing extensions and late filing fee waivers under the public financial disclosure system. Effective September 3, 2002, agencies were authorized to grant public filers the additional extension of time not to exceed 45 days, previously granted by the OGE Director and also were authorized to waive the late filing fee for public filers who submit their reports more than 30 days after the due date.

Other updates include: 1) changing the civil action amount from \$10,000 to \$11,000; 2) changing OGE's publication, "Public Financial Disclosure: A Reviewers Reference" (1994) to the 2004 edition; and 3) revising the sentence that says "No incumbent reports are required of SGEs, (5 C.F.R. § 2634.903)" found under the "Confidential Financial Disclosure-Other Filers" section. Although this statement is partially true, the sentence by itself is incomplete as SGEs are required to file new entrant reports annually upon each appointment or reappointment in accordance § 2634.903(b).

## PUBLIC FINANCIAL DISCLOSURE SYSTEM

We identified three procedural issues in our review of NARA's public financial disclosure system and they are discussed here. The one deficiency, NARA not using the outside employment prior approval forms in reviewing the public reports, has already been discussed above in the prior approval of outside employment section. At the time of our review, the public reports required to be filed in 2005 were still undergoing review by NARA; therefore, our findings were based on our examination on the public reports required to be filed in 2004. We note that during the 2004 annual public filing cycle, the former Ethics Program Specialist/ADAE0 was responsible for conducting both a technical and substantive compliance review of the reports before forwarding them to the DAEO for review and certification.

At the beginning of our examination we identified, based on our observation of the master list of NARA's public filers, a total universe of 25 filers that were required to file a public financial disclosure report in 2004, excluding reports filed by yourself; the Archivist, the only Presidential-appointed and Senate-confirmed NARA employee; and one Senior Executive Service position that was vacant during the time of our review. Of the 25 reports, we were provided with only 16 to examine at the time of our review, all of which were annual reports. All of them were filed, reviewed, and certified in a timely manner except for one report that was not certified. Of the 9



reports we did not examine, you later confirmed for us that all had been filed, reviewed, and certified. You also confirmed for us that the majority of public reports required to be filed in 2005 had been certified. We note that during the course of our examination, we identified three procedural issues regarding NARA's public financial disclosure system:

**First**, it initially appeared that the majority of the reports we examined had been reviewed late because they were certified on the last day in December 2004. Although we found evidence that appropriate follow-up had been conducted with filers, it was difficult to ascertain whether these notes reflected compliance with the 60-day review requirement since the dates of these conversations were not included. Notwithstanding this, we did confirm with you that all reports in question had been initially reviewed in a timely manner by the former Ethics Program Specialist/ADAE. We suggest that, in the future, to eliminate any timeliness of review concerns, the initial reviewer should note the dates of any conversations he/she has with the filer, including whether the completion of a review is pending additional information, to show evidence that reviews are commenced within 60 days of the report being filed. This is important since public reports are subject to public availability.

**Second**, to expound further on the fact that the majority of the public reports we examined were certified on the last day in December, there is no explicit requirement for public reports to be certified within 60 days. However, every effort should be made to certify these reports as soon as it is determined that they are complete and in compliance with applicable laws and regulations.

**Third**, of the 16 public reports we examined, 4 public reports listed an outside activity. Although we were advised that only one of these filers was required to obtain prior approval and subsequently obtained approval, we found no evidence that prior approvals were being utilized during the review of these reports. As a reminder, prior approvals should always be utilized, particularly with regard to those outside activities in which public filers engage. To ensure this is done, as already mentioned, a copy of each written approval (or denial) should be routinely maintained with the filer's financial disclosure report file for use in reviewing financial disclosure reports.

With regards to our examination of your annual report and the new entrant report filed by the Archivist, we confirmed that both reports had been filed, reviewed, and forwarded to OGE in a timely manner. In addition, we found the Archivist's ethics agreement, which described the steps he intended to take to avoid any actual or apparent conflicts, to have been completed timely.<sup>7</sup>

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<sup>7</sup> Although the Archivist complied with his ethics agreement in May 2005, it was not until July 2005 when the agreement was fully implemented. This was due to the fact that he wished to remain on the United States Institute of Peace Chairman's Advisory Council pending a decision on this "position" from the White House Counsel. The White House Counsel eventually approved the Archivist's request in July.

## CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

The deficiencies identified in our review of NARA's confidential financial disclosure system, discussed here, deal with the lack of timeliness in NARA's reviews of its confidential reports, and the lack of reviews at all. Again, as with the public financial disclosure system, the deficiency arising from NARA not using the outside employment prior approval forms in reviewing the reports was discussed above in the prior approval of outside employment section.

During our review, we selected a sample of 68 of the approximately 272 annual confidential reports that were filed in 2004<sup>8</sup> and 12 new entrant reports filed in 2005, and found none were certified even though the great majority of these reports listed few holdings. In addition, we found fewer than 10 reports that showed evidence that an initial review had been rendered. In view of the importance of financial disclosure in preventing employees from committing ethics violations, this is very troubling because untimely reviews or the lack of any review diminishes an agency's ability to provide timely and specific conflict-of-interest advice, which is a fundamental purpose of the ethics program.

Furthermore, we raised similar concerns in our last ethics program review, after finding substantial delays in the start of several annual confidential filing cycles.<sup>9</sup> Interestingly, we see similarities between the deficiencies noted in our last review and those currently identified; in both reviews the primary ethics official responsible for administering the system was absent from the program. Again, this demonstrates to us that your involvement as DAEO in coordinating and managing the ethics program must increase to help ensure the basic integrity of the system. Particularly during the periods when an ethics official confined to ethics is absent from the program, reports must be reviewed and should be certified no later than 60 days after being filed.<sup>10</sup> This is

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<sup>8</sup> At the time of our examination, there was one report we selected for our sample that we could not examine because NARA could not locate the filer's report. Therefore, we selected another report to examine.

<sup>9</sup> We found the 1996, 1997, and 1998 annual filing cycles to have been substantially delayed. In 1997, the delay was caused by the absence of the ethics official primarily responsible for administering the confidential financial disclosure system who was on detail outside the agency. In 1998, the filing cycle was again delayed for the same reason. Since the scope of our review was generally restricted to include only program requirements for calendar years 1997 and 1998, we mentioned the 1996 filing cycle only as a record of work and to document the late start of annual filing cycles.

<sup>10</sup> Although a report is not specifically required to be certified within 60 days, it should be certified immediately following the completion of the review unless the reviewer is awaiting requested additional information.

important because reports signed by a reviewing official is certification that a report has been reviewed, each required item has been completed, and the filer is in compliance with applicable laws and regulations.

Accordingly, we are recommending that all confidential reports filed in 2005 are reviewed and certified, in accordance with 5 C.F.R. §§ 2634.909 (a) and 2634.605(a) and (2). We note that this is another program element in which to utilize the services of the deputy ethics officials.

#### ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

NARA accepts payments from non-Federal sources for travel, subsistence, and related expenses incurred by agency employees on official travel under the authority of the General Services Administration (GSA) regulation at 41 C.F.R. chapter 304, implementing 31 U.S.C. § 1353. Employees who seek approval under this authority are required to complete a GSA Form 87 (Official TDY Travel Authorization) and to submit it to NARA's Financial Services Division (FSD), along with a copy of the invitational letter from the non-Federal source. The FSD is responsible for forwarding both documents to the ADAEO who ensures that the acceptances are approved in advance and are free from conflict-of-interest concerns. FSD officials are responsible for collecting the information to be reported, drafting the semiannual report using the required GSA standard form (SF) 326, and forwarding it to OGE.

We examined the travel payments from non-Federal sources reported on 2 NARA semiannual reports to OGE of travel payments of more than \$250 per event, covering the period from April 1, 2004 through March 31, 2005. We found the ADAEO's conflict of interest determinations supporting the approvals we examined were made timely and were guided by all relevant considerations regarding the conditions for travel acceptance described within the GSA regulation. In addition, we found the conflict-of-interest checklist used as part of the ADAEO's review process to be an excellent way to review the circumstances surrounding an offer to help ensure proper acceptance of payments from a non-Federal source.

It appears that travel payments accepted under § 1353 are being properly authorized, including conflict-of-interest analyses being conducted as part of the approval process, to enable NARA employees to attend events that are not required to carry out the agency's mission. However, we do have two suggestions regarding NARA's system for accepting and reporting travel payments from non-Federal sources:

First, we noticed that NARA's written procedures implementing 41 C.F.R. Chapter 304 were last revised in January 1995 and are referenced as interim guidance. Effective June 2003, GSA published its final rule amending the regulation. Accordingly, we are recommending that these procedures be evaluated and revised, as appropriate, to stay current with regulatory policy and/or agency procedural practices. For example, since GSA's final rule now requires the use of the SF 326 for reporting travel payments to OGE, this should be included in the written procedures.

Second, we noticed there was one travel payment listed on the April 2004 – September 2004 semiannual report and four payments listed on the October 2004 – March 2005 report that were received in a prior reporting period. In other words, one trip listed on the April - September 2004 report reflected a travel date in December 2003, while four trips listed on the October 2004-March 2005 reflected travel dates in September 2004. We discussed this with an FSD official and were advised that in both instances the information was collected too late to be reported during the appropriate reporting period and was included in the report for following reporting period.<sup>11</sup> We were advised, however, that all payments were reviewed prior to the trip commencing and were properly screened for conflicts. As we discussed with the FSD official, since OGE has been given the authority under § 1353 to retain these semiannual reports for public inspection, we are suggesting that when instances like this occur, FSD should note them in its letter transmitting the semiannual report. Doing so, would satisfy any questions of whether travel payments are approved timely.

## EDUCATION AND TRAINING

OGE's ethics education and training requirements at subpart G of 5 C.F.R. part 2638 are generally being met at NARA, including documenting the ethics training plan and satisfying initial ethics orientation requirements. However, we believe certain improvements can be made to strengthen this program element further in view of the importance of ethics education and training in preventing employees from committing ethics violations. Our suggestions and recommendations for improvement are discussed below.

### Annual Training Plan

OGE's training regulation, at 5 C.F.R. § 2638.706, has long-required that ethics officials develop a written plan at the beginning of each year. The plan must contain a brief description of the agency's annual ethics training; estimates of the number of employees who will receive verbal and written training, broken out between public filers and non-public filers; and estimates of the number of employees who will receive written training instead of verbal training, broken out according to the various exceptions to the verbal training requirements for public filers and non-public filers.

Although we found written plans had been developed for 2004 and 2005, we noticed that each year's plan provided only a written description of the agency's training plan and did not include the aforementioned numerical estimates. Although we are making no formal recommendation in this matter, we are strongly suggesting that to more fully meet the prescribed requirement and the overall intent of using the plan to prepare for each training cycle, the aforementioned numerical estimates

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<sup>11</sup> Regarding the trip reported in December 2003, we were advised that the traveler went on extended 5 U.S.C. § 552(b)(5) soon after returning which prolonged the collection of the required information to be reported.

should be added to all future plans, including the plan that has been developed for this year.<sup>12</sup> As a good management practice, we are also suggesting that a completion date be included on these plans to help OGE, in the future, determine timeliness, as these plans are to be completed by the beginning of each calendar year.

#### Initial Ethics Orientations for Regular Employees

We were advised that an initial ethics orientation (IEO) is provided to all new NARA employees, usually during their first day on duty, by the personnel offices located within the NARA program offices and regional facilities. In addition, we were pleased to hear that an in-person orientation was provided to the new Archivist who was sworn in February 16, 2005.

NARA's IEO includes providing new employees with the Standards, NARA's supplemental regulation, and OGE's A Brief Wrap on Ethics pamphlet, which includes the 14 Principles of Ethical Conduct for Government Officers and Employees (Principles). New employees are given an hour of official time to review these materials and upon completion are required to submit to their personnel office an NA Form 11002, Acknowledgement of Receipt of Standards of Ethical Conduct for Employees of the Executive Branch, which certifies their receipt of IEO. You advised us that you rely on the assistance of these personnel offices to provide a report by facility of the names and employment status (e.g., permanent, temporary, intermittent, etc.) of employees who signed the NA Form 11002, which are used to track IEO. Based on our review of a sample of the July 2005 reports, which covered the period from January 2005 to June 2005 and had been submitted to you from the various NARA facilities, it appears that the tracking of IEO is effective.

We note that during our review, we were advised that there has been some discussion as to whether the NA Form 11002 will continue to be used to track IEO. While OGE does not prescribe to a specific method for tracking IEO completion, if NARA does decide to discontinue its use, we would suggest that NARA adopt other appropriate means to continue to track IEO for timely completion.

#### General Observation

While we found the reports provided by the various personnel offices useful to our review in independently verifying that ongoing IEO is provided to new employees of NARA, we noticed that these reports gave no indication as to whether the new employee was entering into a position

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<sup>12</sup> Your written plan should also contain any other information that you believe will assist OGE in reviewing the agency's training program.

requiring them to file a confidential report.<sup>13</sup> Accordingly, we are suggesting that NARA obtain additional information to include the employee's: 1) entrance on duty date; 2) job title; 3) work telephone number and/direct extension; 4) grade and position description; and 5) their supervisor's name (if known), when requesting IEO reports from the personnel offices. Although this additional information is not required to carry out IEO, we believe that by cross-referencing a more detailed IEO list against the DAEO's own new entrant confidential filers' list, NARA will be able to ensure, as appropriate, that new employees entering covered positions do not "fall through the cracks" and are identified and instructed to file their confidential reports timely. This will also help NARA ensure that the most up-to-date master list of confidential filers is maintained as well.

#### Annual Ethics Training in 2004

In 2004, to meet the annual training requirement, NARA's training plan indicated the objective of providing in-person training to all covered employees, including staff at NARA's regional facilities and presidential libraries.<sup>14</sup> It also indicated the objective of providing procurement integrity briefings to members of NARA's procurement team. Although the majority of covered employees received training, not all were trained in 2004. With regard to more specific numbers, NARA's 2004 Agency Ethics Program Questionnaire (questionnaire) indicated that there were 4 public and 132 confidential filers who did not receive training. Though the reason listed on the questionnaire regarding the lapse of training completion for confidential filers was consistent with our findings in other areas with regard to the October 2004 departure of the former Ethics Program Specialist/ADAEO, we were advised that the lapse of training for the four public filers occurred because they were located outside the Washington, DC Metropolitan area and it was impractical to provide the training.

Since these public filers were unable to travel to attend the in-person training and a make-up training session could not be rescheduled prior to the end of the year, we remind you that verbal annual ethics training without a qualified instructor available or written training prepared by a qualified instructor, in accordance with the exception at 5 C.F.R. § 2638.704(e), would apply in this situation when it is impractical to provide verbal training with a qualified instructor available. To meet this exception in the future, please ensure that one hour of official duty time is provided for the training and a written determination is made regarding the impracticality of providing verbal training

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<sup>13</sup> New entrant confidential filers are routinely identified via the DAEO's receipt of the vacancy announcements that are sent out for the covered positions. Once received, the DAEO is responsible for notifying the covered employees of the filing requirement and for providing the necessary materials to them.

<sup>14</sup> The training covered a discussion of the Principles, the Standards, the criminal statutes, and NARA's outside employment regulation. Also, special emphasis was placed on outside employment/activities as well as the Hatch Act.

with a qualified instructor available. In these cases, written training prepared by a qualified instructor would satisfy the verbal training requirement for a public filer (or group of public filers).

#### Annual Ethics Training in 2005

To meet the annual training requirement for 2005, we were impressed to see your training objectives were to provide a mixture of both in-person and written ethics training, covering a range of ethics issues, targeted to different audiences (both covered and non-covered employees). We note that by the end of our review we were unable to evaluate this area completely, particularly with regard to training completion for covered employees, since we were advised that the bulk of the annual training was to be done during the months of November and December. We did however examine the various power point presentations that would be used and found them to comply with the requirements of subpart G of 5 C.F.R. part 2638.

#### Initial Ethics Orientation and Annual Ethics Training for SGEs

As we have already discussed in the NARA advisory committees section, we are recommending that NARA ensure that all SGE advisory committee members receive IEO on the conflict-of-interest laws and ethics regulations that apply to them when they first come on board, as well as written annual ethics training in accordance with the exception at 5 C.F.R. § 2638.705(d).

#### ADVICE AND COUNSELING SERVICES

As previously mentioned, the advice and counseling program is responsive to the needs of NARA employees in making ethical decisions, which is key in preventing conflicts of interest and other ethics violations from occurring. We not only found the advice rendered to comply with the requirements of 5 C.F.R. § 2638.203 (b)(7) and (8) but we believe this is one of the strongest parts of your program. We examined approximately 31 pieces of e-mail advice dispensed on varying ethics-related issues ranging from gift questions to seeking and post-employment matters and found virtually all of the advice to be prompt, clearly written, and thoughtful. Moreover, we found the application of the relevant law and regulation to be consistent and more than adequately documented.

## RECOMMENDATIONS

We recommend that you take the following actions:

1. As DAEO, increase your involvement in coordinating and managing the ethics program to ensure that program elements are in compliance, as described in subpart B of 5 C.F.R. part 2638.
2. Evaluate NARA's outside employment prior approval system to ensure that all NARA employees (both filers and non-filers) have obtained prior approval in accordance with § 7601.102 (including having any employees whose outside employment we questioned obtain approvals after the fact, if warranted). Moreover, copies of written approvals (or denials) should be routinely maintained with the filer's financial disclosure report file for use in reviewing the financial disclosure report.
3. Cease enforcing the broader outside employment prior approval requirement in the ADMIN. 201, pending NARA's joint issuance with OGE, in accordance with 5 C.F.R. § 2635.105, of an amended supplemental regulation expanding the definition of employment consistent with the definition in the ADMIN. 201. Also, begin to include the Privacy Act statement and brief statement about the Standards on the reverse side of the NA 3015 form for both the manual and electronic versions.
4. In collaboration with NARA's committee management officials (Designated Federal Officials), establish procedures for the notification of filers, the completion, submission, review, and retention of financial disclosure reports, and the clarification of all SGE-related ethics responsibilities. Also, ensure that practices at NARA for designating the status of advisory committee members for ethics purposes are adequate. These steps include: 1) collecting new entrant confidential reports initially from all SGE advisory committee members and, if term appointees, annually thereafter in accordance with § 2634.903(b); 2) ensuring that all NARA advisory committee members who are SGEs receive initial ethics orientation in accordance with 5 C.F.R. § 2638.703, including orientation on the most significant conflict-of-interest laws that apply to them, and, if term appointees, written annual ethics training thereafter in accordance with the exception at § 2638.705(d)(2); 3) ensuring that committee management officials are educated and trained on the ethics rules related to SGEs, as part of the education and training program conducted in accordance with 5 C.F.R. § 2638.203(b)(6) and subpart G of 5 C.F.R. part 2638; 4) developing and maintaining a tracking system to ensure that all SGEs timely submit their new entrant confidential reports and, if term appointees, annually thereafter; 5) determining whether committee members from the Advisory Committee on the Records of Congress file financial disclosure reports with Congress and, if they do, obtaining copies of those reports annually; 6) formally determining whether members of NISPPAC are SGEs; and 7) ensuring that all SGEs of the Advisory Committee on the



Electronic Records Archives have been identified and informed of the filing requirement and have completed their new entrant confidential reports for 2005.

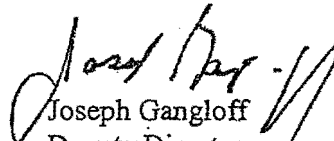
5. Update NARA's written procedures for administering both its public and confidential financial disclosure systems to more fully comply with the requirements of section 402(d)(1) of the Ethics Act.
6. Ensure that the confidential reports filed in 2005 are timely reviewed and certified, in accordance with 5 C.F.R. §§ 2634.909 (a) and 2634.605(a) and (2).
7. Update NARA's written procedures governing the acceptance and approval of 31 U.S.C. § 1353 travel, as appropriate, to reflect current regulatory and/or agency procedural changes.

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In closing, please advise me within 60 days of the specific actions NARA has taken or plans to take on our recommendations. A brief follow-up review will be scheduled within six months from the date of this report. In view of the corrective action authority vested with the Director of OGE under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that NARA take timely actions to implement our recommendations.

Copies of this report are being sent via transmittal letter to the Archivist and NARA's IG. Please contact David A. Meyers at 202-482-9263, if we can be of further assistance.

Sincerely,

  
Joseph Gangloff  
Deputy Director  
Office of Agency Programs

Report number 06- 007

cc: Patricia C. Zemple  
Associate Director, Program Services Division

Cheryl Kane-Piasecki  
Senior Desk Officer



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

June 2, 2006

Emma Monroig  
Designated Agency Ethics Official  
U.S. Commission on Civil Rights  
624 Ninth Street, NW.  
Suite 620  
Washington, DC 20425

Dear Ms. Monroig:

The Office of Government Ethics (OGE) has recently completed its review of the United States Commission on Civil Rights' (Commission) ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (Ethics Act). Our objectives were to determine the ethics program's compliance with applicable ethics laws and regulations and to evaluate the Commission's systems and procedures for ensuring that ethics violations do not occur. Our review was conducted intermittently from July through November 2005 and focused on calendar year 2004 and 2005 activities. The following is a summary of our findings, conclusions, and recommendations.

For purposes of this report, we are aware that under the direction of new leadership, the Commission is currently working to overcome profound management and financial challenges, which have developed over a period of many years, to address longstanding concerns voiced by Congress, the Government Accountability Office (GAO), and others about the agency's management.<sup>1</sup> With regard to ethics, we recognize that the agency's Designated Agency Ethics Official (DAEO), was reappointed in April 2003.<sup>2</sup> We note this to underscore our recognition that many of the concerns raised in our current review arose before you took over the duties of the ethics program in 2003. However, we found many of the same "issues/concerns" identified in the last two reviews of the Commission's ethics program to persist.

#### HIGHLIGHTS

This report details the substantive and systemic issues found during our current review and recommends specific actions that will help ensure compliance with applicable ethics laws and regulations. Most notably, we are recommending that the Commission commit a high level of

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<sup>1</sup> These challenges are well documented by a series of GAO and Office of Personnel Management (OPM) reports dating back to the 1990s. These reports document financial management, internal control, strategic planning, project planning, and internal communications failures, compounded by diminishing budgetary resources.

<sup>2</sup> Prior to this reappointment you had served in this capacity until May 1995, when you were reassigned from the position and detailed to another unit within the Commission.

agency support to the ethics program to help ensure that program improvements are sustained; revoke superseded provisions of the Commission's old Employee Responsibilities and Conduct regulation at 45 C.F.R. part 706;<sup>3</sup> assess the merits of continuing to pursue a prior approval of outside employment requirement; refer a specific matter for civil prosecution to the Department of Justice (Justice); improve the advice and counseling services as well as aspects of the education and training program; and establish practices, procedures, policies, and guidance for advisory committees that reflect their members' status as special Government employees (SGEs).

While we are confident the Commission will work to resolve our current concerns, we see this also as a good time to reiterate the fundamental requirements that make up a strong ethics program in anticipation of the Commission's efforts to improve the program under new leadership. For this reason, our report also provides a number of suggestions, including what we consider to be agency model practices, the Commission should consider incorporating into the daily administration of the ethics program. Not only will the implementation of these suggestions help in better coordinating and managing the ethics program, but it will ultimately help to protect the basic integrity of Commission employees as well as ensure the public's trust in an ethical Government, which is one of the fundamental purposes of an agency's ethics program. As always, my staff, including the Desk Officer assigned to the Commission, Cheryl Kane-Piasecki, stands ready to provide expertise and advice to assist you in bringing the Commission's ethics program into full compliance.

## BACKGROUND AND PROGRAM STRUCTURE

The Commission is an independent, bipartisan, fact-finding agency authorized under 42 U.S.C. 1975a(a) to investigate and monitor a broad range of civil rights issues, including complaints of individual voting rights and the study and collection of information relating to discrimination or denials of equal protection of the laws by reasons of race, color, religion, sex, age, disability, or national origin. The Commission is composed of eight members (Commissioners), not more than four of whom may be appointed from the same political party. Four members are appointed by the President, two appointed by the President pro tempore of the Senate, and two by the Speaker of the House of Representatives, with none of them requiring Senate confirmation.<sup>4</sup> A Staff Director for the Commission, who is also appointed by the President with the concurrence of a majority of the Commissioners, serves as the agency's Chief Executive Officer responsible for

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<sup>3</sup> In 1979, the Commission adopted a set of Employee Responsibilities and Conduct rules into its standards of conduct regulation at 45 C.F.R. part 706. Part 706.7 of that rule in pertinent part required employees to obtain approval, in writing, from their supervisor before engaging in outside employment.

<sup>4</sup> The Chairperson and Vice Chairperson of the Commission are designated by the President with the concurrence of a majority of the Commissioners. The Commissioners serve six-year terms. At the time of our review, there were two vacancies on the eight-member Commission.

providing leadership and direction to the agency's staff. The Commission has six regional offices that are responsible for coordinating the Commission's operations in their regions and for assisting the agency's state advisory committees in their activities. Each regional office is staffed with a director, civil rights analysts, and other administrative personnel.

The Commission's Solicitor serves as the agency's DAEO for approximately 50 Commission employees who are located at headquarters in Washington, DC and regional offices. Assisting the DAEO is an attorney advisor who was appointed as the agency's Alternate DAEO (ADAE) in February 2005. Also, we were advised that the Human Resources Division performs limited duties with respect to providing ethics information to new Commission employees.

#### PRIOR OGE REPORTS

This is OGE's fifth review of the Commission's ethics program. Prior OGE reports of ethics reviews at the Commission were issued in 1985, 1992, 1996, and, most recently, in 2000. In each of these reviews areas in need of improvement were identified. Though we have been encouraged with some of the improvements the Commission has made to strengthen its ethics program following these reviews, we remain troubled by the fact that the Commission has had difficulties sustaining these improvements. Those of major concern deal with the Commission's failure to revoke the superseded provisions of its old Employee Responsibilities and Conduct regulation at 45 C.F.R. part 706, while retaining and renumbering as appropriate any surviving provisions, and the need to finalize a proposed supplemental regulation that would require prior approval of outside employment and be issued in accordance with 5 C.F.R. § 2635.105. We discuss this and other issues in greater detail below.

In 1985, OGE conducted its first review of the Commission's ethics program and made several recommendations for improvement. The most notable recommendations were for the Commission to establish a confidential financial disclosure system; to designate an Alternate DAEO; and to make updates to part 706.

In our second review in 1992, we again recommended actions to improve the ethics program. Most notably, recommendations were made for the Commission to improve its public financial disclosure review process; again to establish a confidential financial disclosure system; and to determine in writing the status of the Commission's state advisory committee members. Although most of these recommendations were implemented, program improvements had not been sustained at the time of our review in 1996.

In our 1996 review, we found the ethics program in need of substantial improvement to bring it into full compliance with applicable ethics laws and regulations. Problems existed in almost all program elements, including the public and confidential financial disclosure systems, the advice and counseling services, and the acceptance of travel payments from non-Federal sources. In addition, a determination was still needed with regard to the status of members of the state advisory committees. Because of the pervasiveness of the deficiencies identified, a Notice of Deficiency, pursuant to

5 C.F.R. § 2638.402(a), was issued ordering that action be taken by the DAEO. In June 1997, OGE notified the Commission, pursuant to § 2638.402(c)(2), that all deficiencies had been corrected.

In our most recent review in 2000, we found the program improved from our review in 1996. During the 2000 review, the Commission decided to require its employees to seek prior approval for outside employment as previously required by the Commission's regulation at 45 C.F.R. part 706, which had been superseded by OGE's regulation at 5 C.F.R. part 2635.<sup>5</sup> As a result, we recommended that the Commission submit to OGE, for concurrence, a proposed supplemental regulation requiring prior approval. In view of the fact that part 2635 superseded many of the other provisions of part 706, we also recommended that the Commission revoke its superseded regulatory provisions, while retaining and renumbering as appropriate any surviving provisions. To help bring closure to both recommendations, the Commission submitted draft regulations to OGE in September 2000 and OGE provided a written response in October of the same year. Since we did not anticipate problems in approving these regulations, as the initial draft which had been submitted was substantially complete and the feedback we provided to the Commission was quite detailed, we closed both recommendations during our second six-month follow-up review conducted in 2001. This was done in good faith that finalized regulations would be published in the Federal Register. Though a final rule was published in November 2002 in the Federal Register revising the regulation, it did not revoke the superseded regulatory provisions nor was it a supplemental regulation, as we had recommended. Rather, the rule incorporated recommendations made from a Government Accountability Office (GAO) (then the General Accounting Office) audit to document the organizational structure, procedures, and program processes of the Commission.<sup>6</sup> We address the issue of prior approval in more detail in the "AGENCY-SPECIFIC ETHICS RULES" section below.

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<sup>5</sup> We recommended this also in the report of our 1996 review; however, the Commission decided not to pursue the requirement during a subsequent follow-up review that was conducted in 1997 because of the vacancy in the Staff Director's position. OGE reminded ethics officials that until the agency decided to issue a supplemental standards of conduct regulation, in accordance with 5 C.F.R. § 2635.105, it could not require employees to seek prior approval before engaging in outside employment.

<sup>6</sup> More specifically, the GAO report issued in 1997 noted that the Commission underwent a major reorganization in 1986, during which it eliminated several offices, including the Solicitor's Unit or Solicitor's Office. The report further noted that the Commission had been operating under obsolete documentation of its operating structure, as had been reflected by regulations that had not been revised since 1985. Furthermore, the position of Solicitor had not been formally filled since 1995 and attorneys within the Office of General Counsel had been handling matters assigned to the Solicitor's Office under the outdated 1985 regulations. In 1998 the Commission approved changes to its regulation as recommended by GAO. The proposed revisions to the regulation were published on April 10, 2002 in the Federal Register incorporating the GAO recommendations by reflecting the agency's organization, procedures, and practices.

Similarly, we also recommended in our earlier reports issued in 1992 and 1996 that the Commission take appropriate steps to determine whether members of the Commission's state advisory committees fell within the scope of financial disclosure and the criminal conflict-of-interest laws. While our 1992 recommendation was satisfied based on the Commission's projected plans to incorporate language into its reauthorization bill that would address this issue; we found during our 1996 program review that this was never followed through on. Accordingly, we recommended again in 1996 that action be taken to address this issue. Though we subsequently closed our 1996 recommendation based on the Commissions' determination that these members were excluded from confidential financial disclosure coverage because their services were provided in a non-employee "representative" status, our current review finds these members should be more appropriately considered SGEs instead. We address this issue in more detail in the "STATE ADVISORY COMMITTEES" section below.

#### ETHICS PROGRAM MANAGEMENT

Though we believe the Commission has been and still is committed to maintaining a viable ethics program for its employees, we recognize that the internal challenges faced at the Commission have made it difficult to do so. For example, over the years, the ethics program has suffered from constant turnover of its ethics staff, which has limited strong oversight and compliance monitoring of program elements.<sup>7</sup> Also, non-ethics Commission matters taking precedence over ethics-related program matters has resulted in a lack of timeliness in meeting some ethics regulatory requirements.<sup>8</sup> In addition to this, we also are aware of what can be described as "contentious working relationships" occurring between key players in the ethics program, which has also been a reason for the lack of timeliness in meeting regulatory requirements. Though we recognize these difficulties, it remains imperative that the agency's ethics program still comply at all times with the program requirements described in subpart B of 5 C.F.R. part 2638. Not only does compliance with these requirements help to ensure the public's confidence in an ethical Government, but it also prevents employees from violating substantive ethics rules, such as the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) (5 C.F.R. part 2635) and the criminal conflict of interest statutes (18 U.S.C. §§ 203, 205, and 207-209). Noncompliance, albeit unintentionally, will place employees in jeopardy of violating the Standards and criminal statutes.

Support from the top is critical in maintaining a viable ethics program, for employees as well as for the ethics officials who are responsible for administering the program on behalf of the agency. To help build a strong ethics program at the Commission, it is important for the Commission's leadership to become more involved in ethics by exercising their personal leadership in maintaining

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<sup>7</sup> Since 1995 high turnover has existed in the positions of both DAEO and ADAEO.

<sup>8</sup> For example, the Commission has yet to revoke the superseded provisions of part 706 and/or finalize its proposed supplemental regulation requiring prior approval, despite the fact that OGE recommended this action in two earlier reviews. See sections on "PRIOR OGE REPORTS" and "AGENCY-SPECIFIC ETHICS RULES."

and carrying out the agency's ethics program, as required by 5 C.F.R. § 2638.202(a). Not only will this help to better coordinate and manage the ethics program, but it also ensures the public's trust in an ethical Government, which is the fundamental purpose of an agency's ethics program. For this reason, we are recommending the Commission's leadership to develop and incorporate specific ethics leadership strategies into the day-to-day management of the Commission's ethics program to provide the leadership necessary to facilitate improvement that results in a strong and effective ethics program. Although this can be done in a number of ways, we offer several suggested strategies for the Commission's leadership to consider:

- Becoming more vocally supportive of ethics (e.g., making announcements/speeches in support of the activities of the ethics office, including ethics in senior staff meetings, routinely or even occasionally providing "all hands" memos that reiterate the Commission's dedication to maintaining an ethical culture).
- Attending ethics education and training classes with employees to highlight the importance of ethics training to the agency.
- Supporting administrative action by ensuring that appropriate action is taken in the cases of ethics violations or delinquency of financial disclosure reports.
- Contributing personally to ethics program policies
- Incorporating ethics-related challenges/accomplishments as part of strategic plans and annual reports.
- Participating in OGE or other ethics community events.

In addition to the above, it is also essential that you, the DAEO, in carrying out the ethics program on behalf of the agency head, effectively oversee the program by regularly monitoring all elements and responding to issues and problems in a timely manner, as required by subpart B of 5 C.F.R. part 2638. Therefore, we are also recommending that you:

- Periodically assess (or review) the state of the ethics program during periods when the ethics program is not subject to an OGE ethics program review;
- Regularly update ethics policies and procedures, including written procedures required for various program elements;
- Regularly disseminate OGE and other pertinent ethics-related guidance, with advice on how the guidance applies to the Commission's ethics program;
- Keep records of advice that is rendered, when appropriate, on ethics and standards of conduct matters, including post-employment and conflict of interest matters;

- Have filers and reviewers pay more attention to the errors associated with incomplete information on financial disclosure reports;
- Timely submit to OGE semiannual reports of certain travel payments accepted, including negative reports; and
- Annually assess agency training needs, reflecting the results in the ethics training plan and training materials, and monitor attendance at ethics training sessions.

#### AGENCY-SPECIFIC ETHICS RULES

OGE's Office of General Counsel and Legal Policy has been working with the Commission since 2000, with our most recent feedback provided to the Commission on April 22, 2005, to keep both the supplemental and revocation processes moving along as expeditiously as possible. However, the time has come for the Commission to devote its full-time attention to bringing this element of its ethics program into compliance. While we have already coordinated with several Commission officials on this issue, commenting on the Commission's prior drafts of both the supplemental and revocation rulemakings, during our review we were advised that the DAEO had recently been given the responsibility for updating these regulations. As a result, we have detailed below the actions necessary to bring this element of the Commission's ethics program into full compliance.

##### Revocation of the Commission's Superseded Residual Standards of Conduct

As addressed above in the "AGENCY-SPECIFIC ETHICS RULES" section, part 706 of 45 C.F.R. contains the Commission's old Employee Responsibilities and Conduct regulation, including provisions addressing prior approval of outside employment and standards of conduct, which have been superseded by the Standards, and provisions addressing financial disclosure, which have been superseded by 5 C.F.R. part 2634. Therefore, to bring this part of the program into compliance, we are recommending, for a second time, that the Commission revoke these superseded provisions while retaining and renumbering any surviving provisions and publishing the amended regulation in the Federal Register. This is extremely important because failing to comply may cause employees to rely on out-of-date regulations, placing them in jeopardy of inadvertently violating current regulations.

##### Supplemental Requirement for Prior Approval of Outside Employment

We initially recommended, in our report of our 1996 review, that the Commission submit to OGE for concurrence, in accordance with 5 C.F.R. § 2635.105, a proposed supplemental regulation requiring prior approval of outside employment if the Commission wished to continue the requirement. As also addressed above in the "AGENCY-SPECIFIC ETHICS RULES" section, we



reiterated this recommendation in the report of our 2000 review and a substantially complete draft regulation was submitted by the Commission to OGE on which we provided detailed comments back to the Commission. However, the comments were not addressed and the Commission has yet to publish a final regulation. Accordingly, we are recommending that the Commission assess the merits of continuing to pursue this requirement. This should be done by determining if Commission employees can be placed in jeopardy of being in actual or potential conflict of interest situations, or otherwise violating ethics laws and regulations, if prior approval is not required. Should the Commission decide to go forward with a prior approval requirement, we are also recommending that the Commission work expeditiously with OGE to finalize this regulation and publish it in the Federal Register.

## STATE ADVISORY COMMITTEES

Pursuant to 42 U.S.C. 1975a(d), the Commission charters and maintains advisory committees in each state and in the District of Columbia (DC).<sup>9</sup> In accordance with the Commission's enabling legislation and the Federal Advisory Committee Act (FACA), state advisory committees are established to advise the Commission on civil rights matters within their respective states and in DC that pertain to discrimination or denials of the equal protection laws based on race, color, religion, sex, age, disability, or national origin, or on the administration of justice, and to aid the Commission in its statutory obligation to serve as a national clearinghouse for civil rights information. Committee membership reflects a diversity of skills and experiences, including, but not limited to, social science research, legal research and analysis, and statistical analysis. State citizens, including educators, lawyers, business and labor leaders, social scientists, researchers, and news gatherers, who demonstrate an interest in civil rights issues are some of the more important professions and activities or avocations that serve on these committees. Members serve for a fixed term set by the Commission upon the appointment of the member with the basic size of each committee consisting of at least 11 members; however, more members can be appointed (up to a total of 19) when warranted. Depending upon resources, each committee is encouraged to meet at least twice a year or more often, when possible, and to conduct a project during the committee's chartering term. In short, these committees along with the regional staff are considered to be the eyes and ears of the Commission.

### Designating the Status of Committee Members SGEs vs. Representatives

Much of our delay in issuing this report was centered around our waiting to learn the findings and recommendations of the Commission's Working Group on state advisory committees and a possible determination on committee members' status as representatives or SGEs. The Working Group, established just shortly after our review began, made specific recommendations to the full

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<sup>9</sup> All relevant provisions of the Federal Advisory Committee Act of 1972 (Public Law 92-463, as amended) are applicable to the management, membership, and operations of the Commission's State Advisory committees and subcommittees, when applicable.

Commission for implementing administrative and policy reforms. These reforms included but were not limited to: the re-chartering of these committees; the committee membership selection process; the involvement of Commissioners in the committees' activities; and the cost-effective ways to conduct committee management and operations. While we found this review helpful, it did not provide us with a clear determination regarding members' status.<sup>10</sup> Though the Commission has always considered these members to be representatives, our examination of the committees' enabling law, charter, State Advisory Committee Handbook, as well as the factors discussed in the OGE Informal Advisory Memorandum 82 x 22<sup>11</sup> and our recently clarifying DAEOgrams found these members to more appropriately meet the definition of "an officer or employee" instead, which would make them SGEs.

As defined at 18 U.S.C. § 202(a), an SGE is someone who provides a temporary service to the Federal Government with or without compensation for not more than 130 days during any consecutive 365-pay period. The individual can be brought on board through designation, appointment, or retention and can fulfill his or her temporary duties either full-time or intermittently (i.e., the SGE can work every day for 130 days or work one day a week for 52 weeks). Although SGE is a term used for conflict of interest purposes, it is the type of service a person is asked to perform, and the degree of operational control exercised by the Government official to whom the person's services are being rendered, that are determinative of whether the person is an SGE or a representative. Representative members are specifically appointed to a committee to provide the committee with the points of view of nongovernmental entities or of a recognizable group of persons (e.g., an industry sector, labor unions, environmental groups, etc.) that have interests in the subject matter under a committee's charge. Unlike employee members, representative members are not being appointed on committees to exercise their own individual best judgment on behalf of the Government. Instead, they serve as the voice of groups or entities with a financial or other stake in a particular matter before an advisory committee.

Making the proper determination is essential since those who are appointed as SGEs are subject to financial disclosure requirements (5 C.F.R. part 2634), the Standards, and all or some of the provisions of four criminal conflict-of-interest laws (18 U.S.C. §§ 203, 205, 207, and 208), while those appointed as representatives are not. In making these determinations, members should never be designated as representatives to avoid ethics rules.<sup>12</sup> Accordingly, we are recommending that you

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<sup>10</sup> On November 4, 2005, the Commission published in the Federal Register a proposed amendment to its regulation at 45 C.F.R. part 703 on its state advisory committee membership criteria to ensure both diversity and nondiscrimination are considered in its committee member appointment process.

<sup>11</sup> These factors were recently clarified in OGE DAEOgrams DO-04-022, dated July 19, 2004, and DO-05-012, dated August 18, 2005.

<sup>12</sup> As a general rule, the determination of a member's status should always be made at the time of the individual member's designation, appointment, or retention and it should be made known at the time of the member's selection so that the individual may know his or her obligations under the criminal

take appropriate steps, in collaboration with the Commission's regional offices, to establish practices, procedures, policies, and guidance for advisory committees that reflect their members' status as SGEs. For purposes of administering the ethics program this would mean that you must ensure that:

- Appointment letters or other committee appointment documentation state clearly the member's status as an SGE and inform members of their status and of the application of Government ethics rules to them;
- New entrant confidential financial disclosure reports (OGE Form 450) are collected from SGE advisory committee members, in accordance with 5 C.F.R. § 2634.903(b), and if term appointees, annually thereafter even if they did not participate in a committee meeting during the calendar year;
- A tracking system is developed to ensure that all SGEs timely submit their new entrant reports;
- New policies and procedures are developed that reflect current practices for administering these committees, such as in the written procedures for the confidential financial disclosure system;
- Committee members who are SGEs receive initial ethics orientation in accordance with 5 C.F.R. § 2638.703, including orientation on the most significant conflict-of-interest laws that apply to them, and, if term appointees, written annual ethics training thereafter in accordance with the exception at § 2638.705(d)(2); and
- Committee management officials (Designated Federal Officials) are educated and trained on the ethics rules related to SGEs, as part of the education and training program conducted in accordance with 5 C.F.R. § 2638.203(b)(6) and subpart G of 5 C.F.R. part 2638.

#### Reclassification of Committee Members

Prior to the issuance of this report, you met with the OGE Desk Officer and the review team to discuss the determination of committee members' status. You advised us that you had already begun the process of reclassifying all committee members from representatives to SGEs. However, you raised concerns about how this change of designation may impact the ethics program, as the administrative burden associated with administering the financial disclosure requirements for potentially 51 committees with at least 11 committee members serving on each would be tremendous for an agency of the Commission's size.

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conflict of interest laws and other ethics rules.

To address these concerns, we are recommending, pursuant to 5 C.F.R. § 2634.905(c), that you work with the OGE Desk Officer to evaluate whether an alternative confidential disclosure system would be more appropriate to help screen SGEs for potential conflicts, in lieu of having members file new entrant OGE Form 450s. Should you decide that an alternative system would be more appropriate to prevent possible conflicts of interest, you must request OGE's permission to do so prior to its implementation.

#### WRITTEN PROCEDURES FOR ADMINISTERING FINANCIAL DISCLOSURE SYSTEMS

The Ethics Act requires that agencies document the process for collecting, reviewing, certifying, maintaining, and evaluating their public and confidential financial disclosure reports. While we found the Commission to have written procedures in place, we noticed that updates had not been made to them since December 1996. We are pleased to report, however, that prior to the conclusion of our review new procedures were drafted for our examination that complied more fully with the requirement by reflecting current practices for administering both financial disclosure systems. We strongly suggest these procedures remain updated to reflect significant changes as they occur to help ensure compliance with all applicable laws, regulations, and executive orders, as required by the Ethics Act.

#### FINANCIAL DISCLOSURE

Although we found both the public and confidential financial disclosure systems to generally accord with the Ethics Act and 5 C.F.R. part 2634, we identified several procedural issues with regard to the public system that you must be mindful of during future filing cycles.

##### Public Financial Disclosure System

As DAEO, you are responsible for identifying covered employees as well as for distributing the reporting forms and reviewing and certifying all public reports. We recognize that since the Commission has no Presidentially-appointed, Senate-confirmed employees your report is the only one forwarded to OGE for review and certification. We examined this report and confirmed that it was filed, reviewed, and forwarded to OGE in a timely manner. To evaluate the effectiveness of the public system for all other filers, we examined a total of 14 of the 16 public reports that were required to be filed in 2005, inclusive of the reports filed by Commissioners. Of the reports we examined, 5 were new entrant, 5 were annual, and 4 were termination reports. The two unexamined reports were annual reports and neither was available during our review, as we were advised that one filer was granted a filing extension and you were awaiting additional information from the other. Although our examination detected no real or apparent conflicts of interest, we observed four technical deficiencies:

First, our review of these reports found technical errors related to incomplete information. The vast majority of reports did not indicate dates of receipt; therefore, we based filing timeliness on the filers' signature dates. Using this method, there were no reports that were filed more than 30

days late with the exception of 3 new entrant reports for which timeliness of filing could not be determined due to the omission of the filers' new entrant appointment dates. Dates of receipt must be entered on the report, in accordance with 5 C.F.R. § 2634.605(a), to help assess compliance with the filing due date and 60-day review requirements. We also found some reports did not include categories of value/amount for the listed asset/income nor the types of income. To eliminate these errors in the future, we suggest that you have filers pay more attention to their reporting errors to ensure that they do not recur from year to year. We also suggest your increased correction of these errors to ensure that the forms are properly completed.

**Second**, we noticed that two new entrant reports were filed using an old June 1994 version of the form rather than the current March 2000 version. We remind you that it is important that filers use the current public disclosure form to ensure they properly avoid conflicts of interest before the fact. Our current version incorporates higher-category reporting, as required by amendments to the Ethics Act, for any assets, income, liabilities, and transactions over \$1,000,000 in value; reflects a higher reporting threshold for gifts and reimbursements; adds a continuation page for transactions (Schedule B, Part I); and includes a check-off box in the comments section of the front page of the form for indicating any filing extensions and, if so, indicating the number of days granted.

**Third**, we are aware that the budget appropriation of the Commission provides that the Commissioners can work no more than 75 days and the Chair no more than 125 days per year. As a result, they are considered SGEs. To avoid the administrative burden of managing the dual reporting cycles for SGEs and to eliminate the possibility of an SGE public filer filing both a public and confidential report in a one-year period, commissioners file SF 278s in lieu of filing an OGE Form 450. We remind you that these SF 278s may serve as either a public or confidential report, but should be treated as confidential until a Commissioner exceeds 60 workdays in the calendar year. At that point, the report would be treated as a public report and could be released to the public. Also, since the Commissioners are considered SGEs, they should file annual new entrant reports each year. This is important for technical compliance because a new entrant filer, unlike an annual filer, does not have to report transactions, gifts, or travel expenses.

**Finally**, during our overall assessment of the public system, we noticed that a former Commissioner did not file his 2004 annual report or a subsequent termination report due in 2005, despite documented attempts informing him to do so. Though we were pleased to see your persistence in trying to obtain this delinquent report, the fact that administrative action for his failure to file was not considered, in accordance with 5 C.F.R. § 2638.203(b)(9)(ii), is troubling and raises concerns that this matter might have gone unaddressed until being raised during the course of this review. We address this issue in more detail in the "ENFORCEMENT" section below.

#### Confidential Financial Disclosure System

To evaluate the administration of the confidential system, we examined all three of the confidential reports required to be filed in 2004. Of these three reports, one was a new entrant and two were annual reports. We noticed that none of these reports indicated dates of receipt. Therefore,

we based filing timeliness on the filers' signature dates. Using this method, there were no reports that were filed more than 30 days late. Other than this, we detected no technical deficiencies nor any real or apparent conflicts of interest.

## ENFORCEMENT

The Commission does not have its own Inspector General nor does it utilize the services of an outside investigative organization to help ensure that certain program elements described at 5 C.F.R. § 2638.203(b)(11) and (12) are carried out. Instead, we were advised that in the event the Commission is required to make a criminal referral to Justice, or to investigate an alleged ethics violation prior to considering appropriate disciplinary or corrective action against an employee, the Staff Director would be the one responsible for doing so. Although OGE regulations do not require agencies that do not have their own Inspector General to utilize the services of another agency's investigative organization, we would strongly encourage the agency leadership to consider doing so. This could be done by means of a memorandum of understanding and we would be happy to work with the Commission in suggesting several investigative organizations that it might consider.

While we were advised that no alleged violations of the criminal conflict of interest laws were referred for prosecution to Justice, as addressed above in the "Public Financial Disclosure System" subsection, we noted during our examination of the public reports filed by Commissioners that there was a former Commissioner who had not filed his annual report due in 2004 or a subsequent termination report due 30 days after he resigned from the Commission in January 2005. After examining other reports filed by this individual, we were also troubled to find instances of late filing during previous annual filing years.<sup>13</sup> In light of this, we are recommending this matter be referred for civil prosecution to Justice, as provided in 5 C.F.R. § 2634.701(b).

## ADVICE AND COUNSELING SERVICES

As DAEO, you are responsible for providing Commission employees with advice and counseling on all ethics-related matters. While you advised us that you render the majority of your advice verbally, some advice is provided in written form. Pursuant to 5 C.F.R. § 2638.203(b)(7) and (8), we were unable to determine whether the advice and counseling services at the Commission are adequate in preventing ethics violations from occurring given our limited sample size and issues we identified. For example, only four written ethics-related determinations were issued during the time-frame associated with our review.<sup>14</sup> During our examination of these determinations we found two

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<sup>13</sup> For example, in November 2002, this filer sent two separate \$200 checks to the Commission for failing to file both his 2000 and 2001 annual public reports on time. The filer signed and filed both years' reports in November 2002. The 2000 report was never reviewed or certified and the 2001 report was reviewed and certified in May 2003.

<sup>14</sup> You advised us that additional pieces of written advice may have also been provided during this time-frame but due to a computer crash many of your files were lost.

dealing with outside activities to have provided the requesting employee with detailed descriptions of potentially applicable restrictions but did not provide a definitive answer to the question of whether the proposed activity was permissible. We also noticed that one other determination, which pertained to gifts from outside sources, clearly misapplied the widely attended gathering exception to the gift prohibitions.

We find these instances troubling, as an agency's counseling program is key toward preventing conflicts of interest and other ethics violations from occurring. To strengthen this program element, we are recommending that you routinely document in writing more of the advice that you render to help protect employees who, in good faith, seek and follow your advice and to ensure that the advice you render accurately and completely applies the provisions of any substantive statute or regulation.

#### When to Document Ethics Advice

As you may recall, in our recent DAEOgram D0-05-019, dated November 17, 2005, we shared some of the concerns and observations we have about when and how ethics officials should document ethics advice and suggested that this be used as a guide to help implement their agency's advice and counseling services successfully. Though we understand that it is not possible to document all oral advice, ideally ethics officials should maintain written documentation in circumstances where it is most likely questions could arise concerning the conduct at issue. As it pertains to the Commission's ethics program, here are a few reasons why this is important:

- As DAEO, you are most likely asked the same question more than once. Having a record of the response you provide can ultimately save you time and ensure that you provide uniform responses.
- Employees occasionally "shop around" for ethics opinions. Having a record of the advice you provided can prevent misunderstandings.
- Since the ethics program has suffered high turnover in its ethics staff, records of past advice and counseling can be a handy learning tool when training new ethics officials.
- Lastly, when considering topics for annual ethics training, many ethics officials find it useful to look over ethics advice rendered during the year. Often there is a common theme, which may be worth addressing during ethics training.

For these reasons, we are also recommending that a policy be developed, whether formal or informal, on the circumstances that weigh in favor of reducing ethics advice to writing. For example; advice that is provided to the Commissioners and to the Staff Director; advice regarding state advisory committee members; advice on the application of criminal laws to specific facts; and advice on any complicated or sensitive ethics issues. Additionally, as a good management practice, we suggest also that any written documentation of ethics advice that is rendered incorporate the following: (1) an indication of when the advice was given; (2) a summary of the relevant facts as

described by the employee; (3) a citation to the applicable legal authority; (4) an analysis of the application of the law to the facts; and (5) a conclusion. Members of my staff as well as your OGE Desk Officer stand ready to provide assistance to you as needed.

## EDUCATION AND TRAINING

In view of the importance of ethics education and training in preventing employees from committing ethics violations, certain aspects of this system must be corrected for this system to comply with the provisions in subpart G of 5 C.F.R. part 2638.

### Annual Training Plan

OGE's training regulation has long-required that agency ethics officials develop a written plan at the beginning of each year for accomplishing the agency's annual training program. During our 2000 review, we found the Commission's ethics training plan had been developed three months late. In our current review, you advised us that rather than documenting plans in 2004 and 2005, you and the ADAEO instead informally discussed with the Staff Director how you intended to accomplish training. While we encourage you to continue discussing your training objectives with the Staff Director and other senior officials, informal discussions do not meet the requirements specified in our training regulation, at 5 C.F.R. § 2638.706. Instead this regulation requires you to develop a written training plan. Therefore, we are recommending you document in writing the 2006 ethics training plan and all future plans, including how the Commission will provide verbal training to those who are required to receive it, especially to its most senior employees. We remind you that the plan must contain a brief description of the agency's annual ethics training; estimates of the number of employees who will receive verbal and written training, broken out between public filers and non-public filers; and estimates of the number of employees who will receive written training instead of verbal training, broken out according to the various exceptions to the verbal training requirements for public filers and non-public filers.

In addition, the training regulation provides that a training plan "may contain any other information that that [DAEO] believes will assist [OGE] in reviewing the agency's training program." Many agencies have used this suggestion to their advantage, by adding more information to their training plans since a comprehensive training plan can be integral in focusing on an agency's training needs as far as deciding who to train and how to train them; what to cover and how to deliver the training; and what facilities and resources will be needed to implement the training. As a result, the DAEO may wish to add certain information to the Commission's plan to include:

- Annual training and initial ethics orientation procedures, such as when to schedule annual training, where to schedule it, and when to send notices;



- Suggested time frames for launching the annual training cycle, such as when to schedule training, notify employees of scheduled training, disseminate training materials, have certifications of attendance from employees returned, and send out reminder letters about upcoming training; and
- Ethics training goals for the year, such as sending employees periodic reminders throughout the year.

#### Initial Ethics Orientation for Regular Employees

For many new employees, the initial ethics orientation that is provided will be their first exposure, and for some their only exposure, to ethics during their career at the Commission. Therefore, it is important to ensure that Commission employees know about conflicts of interest and other ethics violations by providing an informative and thorough orientation whenever new employees enter on duty. Because employees can be disciplined and even referred for criminal prosecution, it is crucial that the DAEO ensure that all new employees are properly trained.

During our review, you advised us that you rely on the assistance of the Human Resources Division to provide new Commission employees with the agency's Employee Handbook (Handbook), to satisfy the initial ethics orientation requirement. Though we found the contents of the Handbook to include ethics-related topics, such as outside employment and gifts, we found the Handbook alone did not satisfy the core requirements of 5 C.F.R. § 2638.703. More specifically, we found the Handbook did not include a summary of the Standards; the 14 Principles of Ethical Conduct at Part I of Executive Order 12674, as modified by Executive Order 12731; or the contact information for yourself and the ADAEO. In addition, we also found the Handbook did not include a citation to the training regulation and its purpose. Therefore, we are recommending the Commission incorporate fully the materials required by § 2638.703 when providing initial ethics orientation to new Commission employees. This could be done either by incorporating the required information into the Handbook or by having the required summaries available along with the Handbook. With regard to the lack of a citation to the training regulation and its purpose, we suggest the DAEO either incorporate this language into the Handbook or provide it separately to help inform employees that the ethics summaries they are reading are being distributed to them to help satisfy their initial ethics orientation requirement. (Our concern is that employees may not always read the materials if they do not understand that the information is being distributed in pertinent part to satisfy a requirement.) We would also suggest that a section be added in the Handbook that discusses the financial disclosure requirements for new entrant employees.

#### Annual Ethics Training for Regular Employees

For 2005, both covered and non-covered headquarters and eastern regional office employees were shown OGE's Integrity in Public Service: Earning the Public's Trust videotape and were also

provided with OGE's A Brief Wrap on Ethics pamphlet to help satisfy the annual training requirement. As a good record keeping procedure, we were pleased to see that the completion of annual ethics training is tracked using a sign-in sheet to certify training attendance. At the time of our fieldwork we found the majority of covered employees to have completed their annual training during a training session held in July 2005. We were advised that training for all remaining employees, both covered and non-covered, would be provided prior to the end of 2005. We applaud you for exceeding the minimum regulatory requirements by providing training to non-covered employees and encourage you to continue these efforts.

We note that annual training was not provided to covered employees in 2004. After discussing the circumstances surrounding why this was not accomplished, we reiterate the importance that the ethics program receive a high level of support and attention from top-level officials.

#### Ethics Training for Commissioners

Commissioners are provided with annual written ethics training in lieu of in-person, verbal training, in accordance with 5 C.F.R. § 2638.705 (d)(2). In an effort to meet the training requirement in 2005, a copy of the Standards and a summary of the ethics rules for SGEs were provided to each commissioner for their review. As noted above, as a good record keeping procedure, we are pleased to see that completion of training is tracked by having each Commissioner submit to you an e-mail acknowledging that they read and understood the material provided.

#### ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

Though the Commission allows its employees to accept payments, on behalf of the agency, from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under 31 U.S.C. § 1353, gifts of travel to Commission employees are rarely offered. However, we were advised of one travel payment greater than \$250 that was accepted by the Staff Director who was on official travel during the reporting period of April 1, 2005 to September 30, 2005. We confirmed that this payment was forwarded to OGE timely using the General Services Administration Standard Form 326 (SF 326) and appeared to be properly accepted.

We note that even though the Commission has had a limited history of accepting § 1353 travel payments, as there were no other travel payments accepted during other periods covered by the time-frames of our review, we did evaluate other areas to help us assess the agency's system of accepting § 1353 travel payments and reporting them to OGE. Though we identified two procedural issues during our evaluation that needed improvement, we are pleased to report that once they were brought to your attention swift action was taken to address our concerns:

- **Written procedures implementing 41 C.F.R. part 304-1-** While we found written procedures in place to accept travel payments from non-Federal sources, we noticed that updates had not been made to them since December 1991. As we discussed during our review, despite the infrequency of Commission employees accepting travel payment from non-Federal sources, the agency's written procedures should reflect the most up-to-date GSA changes made to 41 C.F.R. part 304-1. We note that as with the written procedures for financial disclosure, you swiftly drafted new procedures, which now reflect the most recent changes to the prescribed requirement. We remind you to keep these procedures updated to reflect significant changes as they occur.
- **Forwarding timely semiannual travel reports to OGE-** During our review of the semiannual reports the Commission has submitted to OGE in past, we noticed that with the exception of the negative report submitted to us covering the reporting period of October 1, 2004 through March 31, 2005, all other negative reports that were submitted since May 2001 have been submitted to OGE late, with the longest being submitted eight months late. Though we recognize there is no penalty for late or incomplete reports, this is yet another example of how the Commission's oversight of ethics-related matters must be strengthened. The Commission must make every effort to submit in a timely and complete fashion the semiannual reports, including negative reports, as OGE has been given the authority to retain these reports for public inspection.

## RECOMMENDATIONS

The following recommendations are considered necessary to bring the Commission's ethics program into minimum compliance with current OGE regulations. The Commission should:

- 1) Ensure that specific ethics leadership strategies are developed and incorporated into the day-to-day management of the Commission's ethics program.
- 2) Take steps to increase oversight of the ethics program by regularly monitoring all program elements and responding to issues and problems in a timely manner, as required by subpart B of 5 C.F.R. part 2638. This can be done using combinations of the following: 1) periodically assess (or review) the state of the ethics program during periods when the ethics program is not subject to an OGE ethics program review; 2) regularly update ethics policies and procedures, including written procedures required for various program elements; 3) regularly disseminate OGE and other pertinent ethics-related guidance, with advice on how the guidance applies to the Commission's ethics program; 4) keep, when appropriate, records of advice that is rendered on ethics and standards of conduct matters, including post-employment and conflict of interest matters; 5) having filers and reviewers pay more attention to the errors associated with incomplete information on financial disclosure reports; 6) timely submit to OGE semiannual reports of certain travel payments accepted, including negative reports; and 7) annually assess agency training needs, reflecting

the results in the ethics training plan and training materials, and monitor attendance at ethics training sessions.

- 3) Revoke the superseded provisions at 45 C.F.R. part 706 while retaining and renumbering as appropriate any surviving provisions and publish the amended regulation in the Federal Register.
- 4) Assess the merits of continuing to pursue the prior approval of outside employment requirement. Should the Commission decide to go forward with a prior approval requirement, the Commission must work expeditiously with OGE to finalize this regulation and publish it in the Federal Register.
- 5) In collaboration with the Commission's regional offices, establish practices, procedures, policy, and guidance for advisory committees that reflect their members' status as SGEs. In doing so, we are recommending, pursuant to 5 C.F.R. § 2634.905(c), that you work with the OGE Desk Officer to evaluate whether an alternative confidential disclosure system would be more appropriate to help screen SGEs for potential conflicts, in lieu of having members file new entrant OGE Form 450s.
- 6) Refer for civil prosecution to Justice, as provided in 5 C.F.R. § 2634.701(b), the former Commissioner for failing to file his last annual and termination public reports.
- 7) Routinely document in writing more of the advice and counseling that is rendered to help protect employees who, in good faith, seek and follow your advice and ensure that the advice rendered accurately and completely applies the provisions of any substantive statute or regulation.
- 8) Develop a policy, whether formal or informal, on the circumstances that weigh in favor of reducing ethics advice to writing.
- 9) Document in writing the 2006 ethics training plan and all future plans, including how the Commission will provide verbal training to those who are required to receive it, especially to its most senior employees.
- 10) Incorporate fully the materials required by 5 C.F.R. § 2638.703 when providing initial ethics orientation to new Commission employees.

Ms. Emma Monroig  
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In closing, I encourage the Commission to take advantage of any assistance that OGE can provide to improve the ethics program and to bring the program into compliance. OGE is ready to provide expertise and advice. Please advise me within 60 days of the actions you have taken or plan to take on each of the recommendations of our report. A brief follow-up review will be scheduled six-months from the date of this report. A copy of the report is being sent by transmittal letter to the Commission Chairman. Please contact David A. Meyers at 202-482-9263, if we can be of further assistance.

Sincerely,



Joseph Gangloff  
Deputy Director

Office of Agency Programs

Report number 06-015<sup>09</sup>

cc: Patricia C. Zemple  
Associate Director, Program Services Division

Cheryl Kane-Piasecki  
Senior Desk Officer



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

July 1, 2005

Karen L. Elias  
Designated Agency Ethics Official  
National Endowment for the Arts  
1100 Pennsylvania Avenue, NW., Room 518  
Washington, DC 20506

Dear Ms. <sup>Karen</sup> Elias:

The Office of Government Ethics (OGE) has completed a review of the National Endowment for the Arts' (NEA) ethics program. The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objective was to determine the program's compliance with applicable laws and regulations. We also evaluated NEA's systems and procedures for ensuring that ethics violations do not occur. The review was conducted in April 2005. This report summarizes our findings.

#### HIGHLIGHTS

Since OGE's last report in 1999, NEA continues to have a generally strong and viable ethics program. We did find that the financial disclosure reports of members of one of NEA's advisory committees had been misplaced and members of another committee did not file reports. However, you addressed these problems prior to the end of the fieldwork. Also, we made a few suggestions concerning the processes for approving outside employment and travel payments from non-Federal sources, which you said that you have either implemented or will consider implementing.

#### PROGRAM STRUCTURE

The current staffing level appears to be appropriate considering the size of the agency and your ability to allocate the appropriate time and effort to the ethics program. The ethics program is administered within the Office of General Counsel. You have served as the Designated Agency Ethics Official (DAEO) since 1991, and perform all elements of the ethics program in addition to your other duties. The Alternate DAEO acts as your backup and one administrative employee occasionally assists you.

#### SUPPLEMENTAL REGULATION

With concurrence from our Office, NEA issued a supplement to the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). Section 6501.102 requires employees to obtain prior written approval to engage in any outside employment involving a prohibited source. Employees are required to obtain written approval from their immediate supervisor as well as from you. Outside employment requests and approvals were included in our examination of written

advice described in the "Counseling and Advice" section below. Prior to our review, employee requests were often e-mailed to you, you responded to the requester, and you sent a copy of your response to the immediate supervisor. However, you informed us that since our review, employees are now required to receive prior approval from their supervisor before seeking your approval. We agree with this new process since it complies with § 6501.102 (as well as reflecting the fact that supervisors are generally in a better position to know whether the outside employment will interfere with the employee's official time or pose a conflict of interest).

#### SPECIAL GOVERNMENT EMPLOYEES

NEA has four advisory committees created under the Federal Advisory Committee Act (FACA)—the Arts Advisory Panel (AAP), the Federal Advisory Committee on International Exhibitions (FACIE), the National Council on the Arts (NCA), and the President's Committee on the Arts and Humanities (PCAH). We identified problems related to these committees, which NEA addressed prior to the end of our fieldwork.

FACA Committees	SGEs	Non-SGEs
Arts Advisory Panel	161	0
Federal Advisory Committee on International Exhibitions	3	0
National Council on the Arts	13	7
President's Committee on the Arts and the Humanities	26	13

In 1992 and 1994, OGE approved NEA's use of a substitute confidential financial disclosure (Alternative) report format, in lieu of the OGE Form 450, for the panel reviewers of AAP and FACIE and the SGE members of NCA, respectively.

Our examination of the collection and maintenance of the Alternative reports disclosed that most reports were filed prior to each meeting. Although a few reports were misplaced, they have since been located. We selected a sample of 177 Alternative reports filed by panelists for 25 of the 60 sub-panel meetings held by AAP during 2004-2005 and found that 5 reports could not be located. You informed us that, to avoid future misplacing of any Alternative reports, all Alternative reports would be maintained centrally under your control. We examined the one FACIE teleconference meeting that took place in 2004 and found that no reports were filed by FACIE's three members. You informed us that FACIE members would be required to file prior to the next meeting in 2005. We examined the Alternative reports filed by members of NCA for its March 2005 meeting and found that all 13 members had filed their reports prior to the meeting.

With regard to PCAH, you informed us that the SGEs were excluded from filing in 2004 because the duties of their positions made remote the possibility that they would be involved in a real or apparent conflict of interest. Nonetheless, you expressed your concern about providing a blanket exclusion determination since, for future meetings, the SGE members' duties might change. We

suggested that you analyze the agenda prior to each meeting and determine whether the SGE members are required to file, and you agreed to implement this suggestion.

In addition, our examination of the process for screening AAP sub-panelists and NCA members for potential conflicts of interest disclosed that the process appeared to be adequate. We examined a sample of two AAP panel meetings—one held in November 2004 and another held in January 2005. We compared the 23 outside affiliations listed by nine panelists on their Alternative reports with the 105 applications for Multidisciplinary grants and we compared the 28 outside affiliations listed by six panelists with 90 applications for Arts on Radio and Television grants. We found no conflicts. In addition, we examined the March 2005 NCA meeting, comparing the Alternative reports with the grant applications, which disclosed that 10 of the 13 SGE members disqualified themselves from discussing and voting on 42 of 2,025 applications. Again, we found no conflicts.

#### PUBLIC SYSTEM

NEA's public financial disclosure system appears to be well managed and maintained. NEA's comprehensive written Financial Disclosure Review Policy details the public financial disclosure report filing, review, and retention requirements. We examined all 14 public reports required to be filed since January 2004 with the exception of your report and the Chairman's report, which were filed, reviewed, and transmitted to OGE in a timely manner. Our examination of 11 incumbent, 2 new entrant, and 1 termination reports disclosed that the reports generally were filed in a timely manner; however, one new entrant filer who filed late paid the \$200 late filing fee in accordance with 5 C.F.R. § 2634.704. Our examination of the review process disclosed that the reports were both timely and thoroughly reviewed. We were impressed with the thoroughness of the review as indicated by your annotations in the comment section of the reports. Finally, we found that of the three filers who reported outside employment, two received prior approval and one did not require approval.

#### CONFIDENTIAL SYSTEM

NEA's confidential system for covered employees who are not SGEs appears to be well managed and maintained. NEA's comprehensive written Financial Disclosure Review Policy details the confidential financial disclosure report filing, review, and retention requirements. We examined all 45 OGE Form 450s required to be filed in 2004, including five new entrant reports. We found that of the 45 reports, a new entrant report was filed late; nonetheless, it appears that the new employee notification process appears to be sufficient, since the other new entrant reports were timely filed and you immediately followed up to collect the late report. Our examination of the review process disclosed that the reports were both timely and thoroughly reviewed. Again, we were impressed with the thoroughness of ethics officials' review of the reports. Finally, we found that although two filers reported outside employment, neither required prior approval.



## EDUCATION AND TRAINING

You generally provide initial ethics orientation to new full-time employees in person. The orientation covers the Standards, the supplemental regulation, frequently asked questions, and access to OGE information. New employees also receive a condensed version of the Standards, and in the future they will also be receiving a copy of NEA's supplemental regulation. You provide written or verbal initial ethics orientation materials to SGEs prior to outset of their service. In addition, you also provide all employees with an in-person exit briefing that covers post-employment issues as part of the employee out-processing.

You determined that all NEA employees are required to receive annual ethics training, pursuant to 5 C.F.R. § 2638.705(a)(6). You have made this determination because the work at NEA often requires teamwork. Public filers receive one hour of verbal training either in-person or electronically. Moreover, you assure that the Chairman receives one-on-one confidential advice as needed. All other full-time employees complete a one-hour ethics quiz on the Intranet. You are available by telephone, email, and in-person to answer questions from all employees. Employees notify you when they complete their training, which you track using an all-employee list. Our examination of this list indicated that all employees received ethics training for 2004. You also provide written ethics training materials to SGEs prior to each meeting. Varying the topic, you plan to provide similar training for 2005. We commend you for keeping all employees interested in the ethical issues that may occur during their tenure at NEA.

## COUNSELING AND ADVICE

You informed us that most ethics advice is provided through e-mail. However, oral advice is provided in more routine cases. We examined a sample of 51 written determinations during 2004 and 2005 up to the beginning of our fieldwork. The advice appeared to be comprehensive and in compliance with the ethics laws and regulations. Topics covered in the sample included gifts from outside sources, gifts between employees, conflicting financial interests, travel payments, outside writing and speaking, post employment, widely attended gatherings, and prior approval of outside activities.

## ETHICS AGREEMENTS

There were no ethics agreements made within the last year.

## ACCEPTANCE OF TRAVEL PAYMENTS

NEA has comprehensive written procedures to accept travel payments from non-Federal sources under 31 U.S.C. § 1353. As part of that process, employees forward invitation letters to you for conflicts analyses, after which you may approve their travel authorizations.

Karen L. Elias

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We examined the seven payments listed on NEA's semiannual report to OGE of payments of more than \$250 per event for the period ending September 30, 2004, which was timely forwarded to OGE. We found that the types of travel consisted of attendance at assemblies, commencements, conferences, and lectures. Although you informed us that you performed conflicts analyses for all of the payments approved by supervisors, we could only find three of seven approvals for which there was any indication of an analysis having been performed. We suggested that a single form be used to simplify and unify the process and ensure that the analyses are documented. Moreover, we provided you with another agency's form as an example, and you agreed to consider adopting it or a similar form for NEA's use.

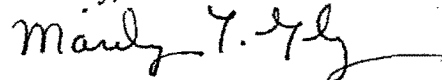
#### ENFORCEMENT

Both the DAEO and Inspector General (IG) indicated that an effective working relationship and good communications exist between the respective offices overall and, in particular, on matters concerning violations of the Standards or the criminal conflict of interest laws. There have been no alleged violations of the laws or any ethics regulations during 2004 and 2005 up to the end of our fieldwork.

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In closing, we wish to thank you for your efforts on behalf of the ethics program. A copy of this report is also being sent to NEA's Inspector General. Please contact Jean Hoff at 202-482-9246, if we may be of further assistance.

Sincerely,



Marilyn L. Glynn  
Acting Director



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

August 29, 2005

Carl R. Sosebee  
Designated Agency Ethics Official  
Peace Corps  
Suite 8200  
1111 20th Street, NW.  
Washington, DC 20526

Dear Mr. Sosebee:

The Office of Government Ethics (OGE) has completed a review of Peace Corps' ethics program. The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objective was to determine the program's compliance with applicable laws and regulations. We also evaluated Peace Corps' systems and procedures for ensuring that ethics violations do not occur. The review was conducted in April and May 2005. The following summarizes our findings.

#### HIGHLIGHTS

Peace Corps is well served by your appointment as the Designated Agency Ethics Official (DAEO). It is obvious that your experience, combined with support from Peace Corps' senior management officials, has led to a well known and respected program.

You have established processes to meet the challenge of high turnover of Peace Corps employees (due to the use of term appointments) to ensure all new employees are provided the required initial ethics orientation and that those employees who are required to file financial disclosure reports are identified to meet new entrant and termination filing requirements in a timely manner.

Our previous review of the ethics program in 2000 resulted in 10 recommendations to improve the program. It is notable that upon your arrival and appointment as DAEO in 2002, you had taken action to clear all previous recommendations, provided ethics training to all of Peace Corps' employees, and reviewed and re-designated all positions requiring the filing of confidential financial disclosure reports.

Because of the improvements you have already made to the ethics program, combined with the many best practices you have implemented (which enhance the basic requirements of an ethics program), we have no recommendations for improvement at this time.

Mr. Carl R. Sosebee

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## EMPLOYEE ETHICS SURVEY

As part of the pre-review of Peace Corps' ethics program, OGE conducted a survey of employees to assess the effectiveness of the ethics program and agency ethical climate from the employees' perspective. As already reported to you, employees who responded to our survey were favorable in their assessment of the program and ethical climate. The 45 percent response rate is higher than the average response rate for other agencies that have been surveyed by OGE and is consistent with rates obtained in other Web-based surveys conducted during that period of time.

## PROGRAM STRUCTURE

You currently have four Deputy Ethics Officers (DEO) assisting you in the ethics program. You appointed two associate general counsels (one of which is the Alternate DAEO), an administrative officer, and a staff assistant as DEOs. Peace Corps consists of the headquarters, 11 regional recruitment offices, and overseas operations in 71 countries.

## ADVICE AND COUNSELING

Advice and counseling services are a notable part of your ethics program. The advice provided is exemplary, post-employment counseling is provided to all departing employees, and communication about current ethics issues is a regular part of the program.

We determined that you provide prompt responses to ethics inquiries and that your analysis and application of the relevant law and regulations were thorough and consistent. This was based upon our examination of a sample of the advice provided to employees during the period from 2002 through March 2005, which covered a variety of ethics subjects.

Post-employment counseling has been integrated into the process employees must go through when departing Peace Corps. You provide in-person, one-on-one post-employment counseling to all employees departing through the headquarters and provide, via e-mail, a summary of the post-employment restrictions to employees departing from regional or overseas locations. We consider this to be a best practice.

As another best practice, you communicate regularly to employees through memorandum to keep them abreast of ethics issues. We noted your timely notification to employees whose sudden and recent designation as senior employees made them subject to the post-employment restriction at 18 U.S.C. § 207(c).

## EDUCATION AND TRAINING

Ethics education and training appear to meet all requirements and in many instances exceed the requirements. According to your training plan, you provide verbal initial ethics

orientation and strive to provide verbal annual ethics training to all employees. You have implemented several procedures that OGE identifies as best practices.

#### Initial Ethics Orientation

Initial ethics orientation is provided to Presidentially-appointed, Senate-confirmed (PAS) and other public filers during in-person, one-on-one instruction. For most other employees, initial ethics orientation is provided in-person to groups of employees by you or your alternate. You coordinate and schedule approximately one hour for initial ethics orientation during bi-weekly New Employee Orientation sessions held by the Office of Human Resource Management. Employees are also provided written materials and contact information for any ethics inquiries. Additionally, many employees hired for overseas positions receive in-person instruction by you during their Overseas Staff Training programs; you provide emphasis on the types of ethical situations that will likely occur while serving in a host country.

You provide information, including employee-signed certifications, to the DEOs who maintain a tracking database used to ensure that everyone required to receive initial ethics orientation has done so. To assess compliance, we obtained bi-weekly lists of new employees, selected individual names, and requested evidence that the employee had received the initial ethics orientation. The DEOs were able to provide such evidence.

Best practices include your use of in-person, one-on-one initial ethics orientation for PAS and all other public filers, the use of in-person group instruction for others, tailoring of the instruction for specific circumstances, and the use of signed certifications to record the receipt of the instruction.

#### Annual Ethics Training

You strive to provide verbal annual ethics training to all public and confidential financial disclosure report filers. In fact, PAS and other public filers were provided with in-person, one-on-one training. Furthermore, annual ethics training was recommended for all employees, not just covered employees, and included personal service contractors.

Training was presented by you several times during 2004; you maintained sign-in sheets as a record. Those employees who could not attend the in-person group training were required to watch the OGE ethics video titled, "You've Got It!" In two cases where the video was not available, employees used the OGE Web-based training modules; in one other case, the records indicate you provided the employee verbal ethics training via a telephone call. Employees who did not attend in-person group training were required to notify your office of the completion of the training.

To assess whether all employees who were required to receive training in 2004 had done so, we obtained the master list of financial disclosure report filers and compared the names to a sign-in sheet, an e-mail acknowledging completion of the training, or an entry in the tracking

database indicating the date of training. With the help of the DEOs, supporting evidence of training was found for all names.

Best practices include using in-person, one-on-one annual ethics training for PAS and other public filers, using verbal training for other covered employees, recommending training for all employees including personal service contractors, and using sign-in sheets or other acknowledgements of the completion of the training.

#### ENFORCEMENT

You maintain an effective relationship with the Inspector General. Furthermore, prompt and effective action is taken for violations of the standards of conduct and for failure to file financial disclosure reports.

We examined documentation of your coordination with the Inspector General and the Inspector General's responses to you, including information required to be reported on OGE's Agency Ethics Program Questionnaire. This provided satisfactory evidence of the cooperation and coordination between your offices.

Although there were no referrals to the Department of Justice for potential violations of the conflict-of-interest statutes, two instances of employee violations of the standards of conduct occurred during the period from 2003 through 2004. One case involved the improper use of nonpublic information and the second case involved impartiality in performing official duties. In both cases the employees were provided with a notice of termination. These actions were prompt and effective.

In addition, we noted one case of a failure to file a public financial disclosure report for which the offending filer received a letter of reprimand from Peace Corps' Director. This action was effective in that it resulted in subsequent compliance and the payment of a late filing fee.

#### FINANCIAL DISCLOSURE SYSTEMS

The financial disclosure systems appear to comply with the requirements of 5 C.F.R. part 2634. Reviewers use a current vendor list when reviewing financial disclosure reports. Cautionary memorandums are sent to the filers to notify them of potential conflicts of interest; we consider these memorandums to be a best practice.

##### Public Financial Disclosure

We examined all 26 public financial disclosure reports required to be filed in 2004. This included 17 incumbent (including 2 PAS and your reports which are forwarded to OGE), 1 new entrant, 3 termination, and 5 combination termination/incumbent reports.

The PAS and your reports were filed, reviewed, certified, and forwarded to OGE in a timely manner. Furthermore, the remaining 23 reports were also filed, reviewed and certified in a timely manner. Written extensions were granted when requested and necessary.

There were a few technical, but no substantive, errors on the non-PAS reports. Notations on the reports indicated a thorough review, cautionary memorandums were sent to filers regarding holdings that were on Peace Corps' vendor list, and written recusals were executed when necessary.

#### Confidential Financial Disclosure

Your review of the universe of covered positions in 2004 resulted in a reduction of the number of positions that are required to file by approximately 28 percent. The master list of filers for 2004 showed that 199 employees were required to file reports. We selected a sample of 87 reports to review, which included 49 incumbent and 38 new entrant reports. Six of the new entrant reports were filed by special Government employees.

The reports were filed, reviewed, and certified in a timely manner. This timeliness is particularly notable considering the number of new entrant reports due each year. New entrant reports are a common problem for agencies.

As with the public reports, there were a few technical, but no substantive, errors. Notations on the reports indicated a thorough review and cautionary memorandums were sent to filers regarding holdings that were on Peace Corps' vendor list. Correspondence in the report folders indicated that your review resulted in opportunities to counsel employees on the prevention of conflicts of interest.

#### ETHICS AGREEMENTS

Peace Corps' PAS employees (the Director and Deputy Director) have ethics agreements involving both resignations and recusals. The recusals included a description of the screening arrangements. The agreements were coordinated with OGE and satisfied in a timely manner.

#### ACCEPTANCE OF TRAVEL PAYMENTS

Although Peace Corps accepts very few travel payments from non-Federal sources under 31 U.S.C. § 1353, it has developed strong written procedures which require that a conflict of interest determination be made by you. Furthermore, you compile and review the semiannual reports which are forwarded to OGE.

We examined four semiannual reports covering the period from October 1, 2002 through September 30, 2004. Two reports included a total of three payments (the other two were negative reports). The payments were accepted in accordance with § 1353, 41 C.F.R. chapter 304, and applicable procedures.

Mr. Carl R. Sosebee  
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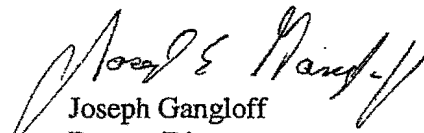
#### PERSONAL SERVICE CONTRACTS

Peace Corps has approximately 2,500 personal service contracts which are primarily used to support the overseas operations. For those not familiar with Peace Corps, many of these contractors may appear as though they are Government employees. Peace Corps reinforces its ethics program by incorporating standards of conduct in its contracts, and a contract may be subject to termination for contractor violations of the standards. We believe this is a creative way to deal with the problems of having contractors in the Government workplace and encourage Peace Corps to continue incorporating the standards of conduct into the contracts.

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Other than a few suggestions made during the course of the review, we have no formal recommendations to improve the program at this time. We wish to thank you and your staff for your efforts on behalf of the ethics program. A copy of this report is being forwarded to Peace Corps' Inspector General. Please contact Jerry Chaffinch at 202-482-9221, if we may be of further assistance.

Sincerely,



Joseph Gangloff  
Deputy Director  
Office of Agency Programs

Report Number 05-017





United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

February 22, 2006

Mary Anne Gibbons  
Designated Agency Ethics Official  
United States Postal Service  
Room 6147  
475 L'Enfant Plaza West, SW.  
Washington, DC 20260

Dear Ms. Gibbons:

The Office of Government Ethics (OGE) has completed its review of the United States Postal Service's (USPS) ethics program within USPS headquarters. The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (Ethics Act). Our objective was to determine the strengths and weaknesses of the ethics program and to assess its compliance with applicable statutes and regulations. The review was conducted from July through October 2005. The following is a summary of our findings and conclusions.

#### HIGHLIGHTS

We found serious deficiencies in the administration of the confidential financial disclosure system within some headquarters components. Most importantly, a significant number of confidential financial disclosure reports are not being reviewed or reviewed adequately for conflicts of interest. We are also concerned that there is no process in place to accurately track the number of days special Government employees (SGE) serve. Additionally, we believe that guidance provided to employees regarding widely attended gatherings (WAG) was not adequate. Our report discusses each of these issues in detail.

We also observed that you incorporate a number of best practices into your ethics program. These include the issuance of "vigilance letters" to financial disclosure report filers and the preparation of a monthly "Conflict of Interest Memorandum" which highlights potential conflicts of interest for members of the Postal Board of Governors (Board) prior to monthly Board meetings. We also strongly endorse your practice of specifically tailoring annual ethics training to particular components or offices.

#### PROGRAM STRUCTURE

The USPS ethics program provides required ethics-related services to USPS employees within headquarters components. As USPS' Senior Vice President and General Counsel, you also serve as the DAEO. Within your immediate office, you are assisted by the Alternate DAEO, who is the Chief Counsel, Ethics and Federal Requirements, and one other full-time and two part-time attorneys. Additionally, the ethics program is supported by one full-time

paralegal; however, that position was vacant at the time of our review. There is also at least one person (ethics official) appointed within each of headquarters' 25 components who primarily serves to administer the confidential system within their respective component. Additionally, there are more than 20 part-time ethics officials who serve the employees within USPS' 10 regionally-based area offices.

We interviewed ethics officials from 6 of the 25 headquarters components. According to them, their ethics responsibilities are not clearly, if at all, included in their position descriptions. Further, their performance appraisals do not typically include a significant discussion of their ethics-related activities. As discussed below, we consider this to be a potentially contributing factor to the most serious deficiencies identified during our review.

#### PUBLIC AND CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEMS

We found serious deficiencies in the administration of the confidential financial disclosure system within some of the 25 headquarters components. Most importantly, a significant number of confidential financial disclosure reports are not being reviewed or reviewed adequately for conflicts of interest. Also, some components have no process to identify new entrant confidential filers and ensure they submit timely new entrant confidential reports. Additionally, the criteria found at 5 C.F.R. § 2634.904, which define who should be required to file confidential reports, are not always applied consistently. These failures leave USPS and its employees vulnerable to the consequences of real or apparent conflicts of interest. They also subvert the purpose, usefulness, and regulatory requirements of the confidential system and must be addressed immediately.

Based on our interviews with component ethics officials and experience with other similarly structured ethics programs, we conclude that, in large part, the deficiencies are a result of delegating ethics functions to ethics officials who perform those functions as additional duties and who are not directly supervised by a more experienced ethics official (e.g., the Alternate DAEO). We also acknowledge that it may be impractical for the Alternate DAEO or another senior ethics official to directly administer one confidential system for all headquarters components. We are, therefore, recommending that you and the Alternate DAEO provide greater oversight of the confidential system within the components.

As a part of this recommendation, and to further enhance the chances of component ethics officials' success, USPS should incorporate ethics-related responsibilities into their position descriptions and encourage supervisors to evaluate their performance, specifically as ethics officials, as part of the performance appraisal process. We consider these steps to be strong management tools to ensure ethics officials are aware of their responsibilities and that they will be held accountable for their performance as ethics officials.

In contrast to our findings regarding the confidential system, we found the public financial disclosure system to be administered effectively and in compliance with applicable regulations. We note that the Alternate DAEO and other senior ethics officials within her office are responsible for directly administering this element of USPS' ethics program.

#### Confidential Financial Disclosure

A significant number of confidential reports filed within headquarters' 25 components are not being adequately reviewed for conflicts of interest. Each of the 25 components which make up USPS headquarters essentially administers its own confidential system. We met with ethics officials from six headquarters components. Ethics officials from three of these six components told us that they do not conduct a conflict of interest analysis before they sign a report as the certifying official. These three components alone account for almost one third (29 percent) of the confidential reports filed within headquarters. Additionally, some of the components made no attempt to identify new entrant filers within 30 days of the date they enter covered positions and did not apply consistently the confidential filing criteria at 5 C.F.R. § 2634.904.

Ethics officials who are reviewing officials have a responsibility with regard to the certifications of confidential reports, as provided at 5 C.F.R. §§ 2634.605 and 2634.909(a):

...[A] report which is signed by a reviewing official certifies that the filer's agency has reviewed the report, and that the reviewing official has concluded that each required item has been completed and that on the basis of information contained in such report the filer is in compliance with [the criminal conflict of interest statutes, the Ethics in Government Act, Executive Order 12731, the Standards of Conduct for Employees of the Executive Branch, and any other agency-specific statute or regulation governing the filer].

Typically, when OGE examines financial disclosure reports, we seek to identify any potential conflicts of interest by considering a filer's disclosed interests, the filer's title, the agency's list of contractors or vendors,<sup>1</sup> and any other available means. If we suspect there is a conflict of interest, we ask an ethics official who signed the report, either as the intermediate reviewer or certifying official, how he or she determined that the holding in question does not constitute a conflict of interest.

In addition to the sections of part 2634 governing the review and certification of reports, § 2634.903(b) requires that new entrant filers submit their reports not later than 30 days after

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<sup>1</sup> The Alternate DAEO explained that USPS does not maintain a contractor list because it would be prohibitively large and expensive to maintain. The Alternate DAEO also explained that reviewers of both public and confidential financial disclosure reports are instructed to assume that any entity the filer discloses an interest in could be a USPS contractor.

assuming a covered position, and § 2634.904 provides the confidential filing criteria that OGE expects each agency to apply consistently.

USPS requires ethics officials within each headquarters component to ensure that master lists of filers are updated each year, report forms are provided to designated filers, and completed reports are collected, reviewed, and certified. The Alternate DAEO stated that all component ethics officials receive training to prepare them to administer the confidential system, including how to review confidential reports for completeness and conflicts of interest.

We examined a sample of 193 of 1,348 annual reports required to be filed in 2004 and new entrant reports required to be filed during 2004-05 at 14 of the 25 USPS headquarters components. Annual reports were generally filed timely and both new entrant and annual reports were generally reviewed and certified timely. However, the majority of new entrant reports were filed late, usually during the annual filing cycle. We also found that there were missing reports, there were uncertified reports from prior to 2004, and there was one ethics official who certified her own report. Moreover, questions relating to the reviews of the reports in general resulted in discussions with ethics officials from 6 of the 14 components,<sup>2</sup> wherein we learned of the inadequacies of the reviews and the lack of consistency in applying the filing criteria. The following table describes the confidential reports required to be filed and the sample of reports examined by us for each of the 14 components.

Headquarters Components Sampled	Number of Filers on Master List	2004 Annual Reports Examined	2004/2005 New Entrant Reports Examined	Filed in 2004, Type could not be determined	Total Reports Examined
Chief Financial Officer	48	4	2/0	0	6
Chief Technology Officer	80	10	0/0	0	10
Consumer Advocate	22	7	3/0	0	10
Controller	73	10	0/0	0	10
Employee Resource Management	74	8	1/0	0	9
Engineering	111	12	1/1	0	14
Facilities	269	32	2/0	2	36
Government Relations and Public Affairs	55	7	1/0	0	8
Intelligent Mail and Address Quality	23	7	0/0	0	7
Network Operations Management	91	12	0/0	0	12
Product Development	50	11	1/0	0	12
Sales	69	9	0/1	0	10
Services and Market Development	25	9	1/0	0	10
Supply Management	358	34	3/2	0	39
<b>Totals</b>	<b>1,348</b>	<b>172</b>	<b>15/4</b>	<b>2</b>	<b>193</b>

<sup>2</sup> Discussions were held with ethics officials at Network Operations Management (NOM), Chief Technology Officer (CTO), Facilities, Engineering, Consumer Advocate, and Supply Management.

The following information was gleaned from the interviews we conducted with ethics officials from the six components.

#### Network Operations Management

We selected NOM primarily because filers' reports from 2002 and 2003 were not certified.

The ethics official from NOM stated that he conducts no conflict of interest analysis of reports, even though he signs as the certifying official and there is no intermediate review of reports he certifies. Unless something appeared to be an "obvious conflict of interest," he would take no action to determine if there was a conflict of interest. For instance, if he was not familiar with a particular stock symbol listed as an asset, he would not seek to determine what company the symbol represented. Or, if a report disclosed the filer held stock in a company which was listed by its full name and he was not familiar with the company, he would not make an effort to determine what business it was engaged in or if it was a USPS contractor.

The NOM ethics official also stated that there was no system in place to identify new entrant filers within 30 days of their entering a covered position. However, he told us that he would implement procedures to do so. Since the ethics official only recently assumed the duties of the component ethics official, he could not explain why reports from 2002 and 2003 were never certified.

#### Chief Technology Officer

We selected this component because of its size and because we noted that some filers' reports from prior years were missing from their individual file folders (e.g., the folder holding the filers' reports contained reports from 2005, 2004 and 2000, but no reports for 2001-03).

The ethics official from CTO stated that she conducts no conflict of interest analysis of reports, even though she signs as the certifying official. She relies on filers' supervisors, who sign their subordinates' confidential reports as intermediate reviewers, to review their subordinates' financial disclosure reports for conflicts of interest.

While the ethics official did recall attending training to prepare her to administer the confidential financial disclosure system, which was provided by the Alternate DAEO, she did not recall that the training included instruction on how to conduct a conflict of interest analysis.

Regarding the apparently missing reports, we were told that a series of reorganizations over the last few years has resulted in employees moving in and out of covered positions and from one supervisor to another. The CTO ethics official stated that supervisors are not always consistent in deciding who should file financial disclosure reports.

### Facilities

We selected this component primarily because of its size and some minor technical errors noted during the examination of reports from the component's filers.

The two ethics officials we spoke with from this component also stated that they do not conduct a conflict of interest analysis of reports before they sign as the certifying officials. They rely on supervisors, as intermediate reviewers, to identify conflicts of interest. The ethics officials also stated that prior to 2005 there was no system in place to identify new entrants within 30 days of the date they enter covered positions. They have since developed procedures to capture new entrants as they enter covered positions and feel the new system has been successful.

### Engineering

We selected this component because we noted that most of the 2004 annual confidential reports we examined were filed in February and March 2005.

The ethics official who administers the confidential system within Engineering was appointed to her ethics position in February 2005.

5 USC § 552(b)(6)

The current ethics official further advised us that there has been no system in place to identify new entrants within 30 days of the date they enter covered positions.

We are encouraged that headquarters ethics officials took action to address the problems in Engineering's confidential financial disclosure system. Our discussion with the current ethics official within Engineering also left us confident that the component's confidential financial disclosure system will be brought into full compliance with applicable regulations. Although the reports we examined were not filed timely, they were reviewed and certified timely and the current ethics official assured us they were thoroughly reviewed for conflicts of interest. We found no issues in our examination of reports, aside from those already discussed.

### Consumer Advocate and Supply Management

We chose to interview ethics officials from these components because the ethics official from Consumer Advocate certified her own report and Supply Management is one of the largest headquarters components in terms of the number of confidential reports required to be filed.

We found the confidential system within both of these components to generally be sound. The Consumer Advocate ethics official recognized that it was inappropriate for her to certify her own report, even though she had no reportable assets or liabilities, and agreed to have a

supervisor certify her report in the future. Aside from this particular issue, we were satisfied that these two components were in compliance with 5 C.F.R. part 2634, subpart I, governing the administration of the confidential system, including a thorough conflict of interest analysis of each report. We found no substantive issues in our examination of reports from these components, aside from that already mentioned.

### Summary of Findings

You and the Alternate DAEO must provide greater oversight of the confidential financial disclosure system within headquarters components. Accordingly, as part of our recommendation that there be greater oversight of the system, USPS should: ensure that all component ethics officials who review or certify confidential reports conduct a thorough conflict of interest analysis of each report before it is signed; ensure that all component ethics officials work with supervisors to consistently apply the criteria at 5 C.F.R. § 2634.904, which define who should be required to file a report; and ensure that all components have a process to identify new entrants within 30 days of entering covered positions. Additionally, as previously discussed, you should incorporate ethics-related responsibilities into component ethics officials' position descriptions and encourage supervisors to specifically evaluate ethics officials on the performance of their ethics-related duties during the performance appraisal process. This recommendation applies to all 25 headquarters components.

### Public Financial Disclosure

The USPS public financial disclosure system is in compliance with applicable regulations. The system is administered by the Alternate DAEO with assistance from other senior ethics officials who review financial disclosure reports. Ethics officials told us that they conduct a thorough conflict of interest analysis of each report. They use their knowledge of filers' duties and, when necessary, consult filers' supervisors to determine if disclosed financial interests could conflict with filers' official duties. Written records of requests for follow-up information and analysis are maintained.

We saw a variety of documentation indicating thorough reviews were conducted. Even when a determination was made that a filer had no conflicts of interest, ethics officials often prepared a "vigilance letter" which highlighted the filer's responsibility to avoid participating in any matter which could cause a conflict of interest in the future. The vigilance letters identified the particular interests most likely to create a conflict of interest and advised filers to immediately recuse themselves and seek advice any time they learn their official duties may involve an entity in which they have an interest. We consider this to be a best practice and encourage you to continue providing these letters to individuals when appropriate.

We examined the five public financial disclosure reports required to be filed by USPS' Presidentally-appointed, Senate-confirmed (PAS) employees in 2005; all but one of the reports were annual reports. They were all filed, reviewed and certified timely. Those reports required to be forwarded to OGE were forwarded timely.

We also examined a sample of 73 of the 986 public reports required to be filed in 2004 by non-PAS employees. The sample consisted of 14 new entrant reports, 44 annual reports, and 15 termination reports. They were generally filed timely or less than 30 days after the applicable due date. The reports were reviewed and certified timely. Five of the reports in our sample were filed more than 30 days beyond the applicable due date. We received documentation showing that report filers who filed their reports more than 30 days late were assessed the \$200 late filing fee, as appropriate. Our examination identified no substantive deficiencies.

#### ETHICS AGREEMENTS

We examined the ethics agreements entered into by the members of the Board, all of whom are PAS/SGE employees, during 2004-05. These included two 18 U.S.C. § 208(b)(1) waivers and two recusals. OGE received the final versions of the waivers which identified the particular matters covered and the personal participation that was permissible. The Alternate DAEO stated that OGE was consulted concerning both waivers. The recusals appeared to have been appropriately handled. They were in regard to particular matters to be discussed at Board meetings, wherein the Board members agreed to leave the room while the matter was discussed.

In an ongoing effort to help Board members avoid conflicts of interest, ethics officials prepare a monthly Conflict of Interest Memorandum. This memorandum provides an analysis of potential conflicts of interest based on Board members' disclosed interests and the matters to be discussed at Board meetings. Any private entities which may be doing or seeking to do business with USPS are identified for Board members. The memorandum reminds Board members of the obligation to avoid conflicts of interest and provides them with guidance to determine if they may have a potential conflict of interest. If ethics officials identify a conflict, a recusal is prepared for the affected Board member to sign. The USPS General Counsel and the Secretary to the Board are provided copies of the recusals. One or both of these officials is always present at Board meetings and ensure that recusals are carried out. We consider the memorandum to be a best practice and will suggest it to other agencies when appropriate.

#### STATUS OF THE MEMBERS OF THE BOARD OF GOVERNORS

As previously indicated, you have determined that Board members are SGEs, based on your interpretation of relevant guidance and your good faith estimate that they are not expected to serve in excess of 130 days during any period of 365 consecutive days. However, we are concerned that you do not track the total number of days each member serves. USPS does track members' attendance at regular Board meetings, other scheduled meetings and conference calls, and official meetings with members of Congress, with the understanding that working even part of a day counts as one entire day of work. However, USPS makes no attempt to track the substantive ad hoc phone calls, e-mails, or other occasional work that members do.



The Secretary to the Board told us that members "probably" do not approach the 130-day limit, even including the ad hoc or other occasional work they perform. In addition, you and the Alternate DAEO assured us that ethics training provided to members includes an explanation of the 130-day limit and the consequences for exceeding that limit. You may continue to designate members as SGEs based on your good faith estimate that they will serve no more than 130 days in the ensuing 365-day period. However, you must have some valid basis for making that estimate. We suggest that you could begin by establishing a written policy defining what constitutes a day of work and providing that policy to Board members. Then, take some reasonable steps to demonstrate that the work performed does not constitute more than 130 days. This could be something as simple as canvassing Board members to determine if, under the written policy, the work they perform exceeds the 130-day limit. Accordingly, our report recommends that you take action to establish a sustainable method to provide a valid basis for your good faith estimate.

#### ENFORCEMENT

Ethics officials have a close working relationship with the Office of Inspector General (OIG); in accordance with 5 C.F.R. § 2638.203(b)(11) and (12). Ethics officials, OIG representatives, and other officials were confident that USPS takes effective actions against those who commit ethics violations, as required by 5 C.F.R. § 2638.203(b)(9). However, their ability to provide documentation regarding those actions was very limited, precluding us from assessing USPS' compliance with § 2638.203(b)(9). USPS is aware of the requirement to concurrently notify OGE of referrals to the Department of Justice (DOJ) of alleged violations of the criminal conflict of interest laws, as required by 5 C.F.R. § 2638.603(b), and has done so, although in most cases not timely.

Ethics officials consult on information and findings developed by OIG and utilize the services of OIG as necessary. In addition, ethics officials work closely with the Chief Counsel, Employment Law, who assists supervisors in taking appropriate administrative actions against employees for misconduct, including ethics violations. Coordination of efforts to identify potential ethics violations, investigate those potential violations, and take actions when violations are substantiated were evident in our discussions with ethics and OIG officials and the Chief Counsel.

Ethics and OIG officials and the Chief Counsel agreed that USPS is aggressive in pursuing allegations of ethics violations and taking effective administrative actions against those found to have committed violations. However, they also concurred that their ability to provide comprehensive records of potential violations, subsequent investigations, and possible administrative actions taken was extremely limited. Ethics officials do not maintain records of individual cases of ethics violations. The Chief Counsel was adamant that the financial burden alone of maintaining a data base of disciplinary actions taken against employees would not permit such an effort or justify any benefits that could accrue.

OIG also does not maintain a data base that can readily provide either statistical or substantive information restricted to ethics violations that occurred or were investigated within a given time frame. We met with representatives of OIG to discuss USPS' ability to track this information and requested that they provide examples of cases of potential ethics violations that occurred between January 2003 and August 2005. OIG subsequently provided six Reports of Investigation (RI) concerning allegations of ethics violations which were investigated during 2003-05. One of these cases concerned an alleged violation of 18 U.S.C. § 207 and another concerned an alleged violation of 18 U.S.C. § 209. The four remaining RIs involved the misuse of Government equipment and official position and failure to pay a just debt (income taxes).

All six RIs concerning allegations of ethics violations documented that thorough investigations were carried out. They recorded numerous interviews and the collection of other evidence (contracts, e-mail, correspondence, etc.). The two RIs involving criminal violations resulted in referrals to DOJ. The case involving 18 U.S.C. § 207 was referred to the local U.S. Attorney on April 28, 2003 who declined to prosecute because it was determined the case lacked prosecutorial merit. The investigation was subsequently closed and there was no indication in the RI if any administrative action was considered or taken. OGE did not receive notification of the referral until February 17, 2005, almost two years later. The case involving 18 U.S.C. § 209 was referred to the local U.S. Attorney on November 1, 2004 and was declined because the amount involved fell below minimum dollar thresholds. The RI for this case indicated only that "actions by the [redacted] postmaster are pending." OGE received notification of the referral on November 24, 2004. Another case, involving an alleged violation of 18 U.S.C. § 201, was referred on October 24, 2003, but declined for prosecution because the local U.S. Attorney found that it "lacked the prosecutorial appeal and the financial threshold of his office." While agencies are not required to provide OGE with concurrent notification when referring cases involving only 18 U.S.C. § 201, notification was provided on February 3, 2004. There was no indication if any action was taken after this investigation was closed.

RIs concerning two of the four non-criminal investigations determined that the allegations were not substantiated and no action against the subject employees was considered. A third RI substantiated allegations of misuse of Government property and failure to pay a just debt. The case was "closed and forwarded to Postal Service management for review"; no further information was provided in the RI. The remaining RI involved multiple parties and was redacted in a way which made it difficult to determine what specific violations were alleged against which parties. The RI did state that a letter from an individual identified as "Manager," "concluded that [redacted] failed to perform the duties as a COR [Contracting Officer's Representative] in a satisfactory and ethical manner."

In addition to the two RIs provided by OIG that resulted in referrals to DOJ, USPS provided notification of seven additional referrals made to DOJ during 2003-05, as described in the following table:

USPS Assigned Case Number	Date of Referral to DOJ	Date OGE Received Notification	Statute(s) Allegedly Violated
01HIRS0245C2NC	February 3, 2003	April 24, 2003	18 U.S. C. § 207
01HIRS0245C2NC	February 20, 2003	April 24, 2003	18 U.S. C. § 208
04UIHQ0701B2FU	June 25, 2004	October 20, 2004	18 U.S. C. § 201, 208
02UISM0371M3NC	July 9, 2003	February 17, 2005	18 U.S. C. § 208
04UIML0226C4FC	March 26, 2004	February 17, 2005	18 U.S. C. § 208, 209
04UIHQ1301C1SI	December 10, 2004	April 4, 2005	18 U.S. C. § 208
03UIPO472C3FC	December 29, 2004	January 14, 2005	18 U.S. C. § 208

As demonstrated by the RIs provided by OIG during the review and the table above, USPS has not been timely in its notification to OGE of referrals made to DOJ. Prior to our review, OIG officials provided quarterly reports to OGE of referrals made to DOJ. OIG will now provide monthly reports to OGE to satisfy the requirement at 5 C.F.R. § 2638.603(b) to provide *concurrent* notification to OGE when such referrals are made. They are confident this will greatly improve the timeliness of reporting.

#### ADVICE AND COUNSELING

Ethics advice and counseling services generally met the requirements of 5 C.F.R. § 2638.203(b)(7) and (8). We examined a sample of ethics-related advice and counseling provided by ethics officials to PAS and non-PAS employees. We concluded that most of the written advice, which covered a variety of subjects, was consistent with applicable ethics statutes and regulations and was provided timely. However, we had some concerns regarding the advice and counseling provided to employees regarding WAG, one of the exceptions to the gift prohibitions at 5 C.F.R. § 2635.204(g).

We examined five individual WAG determinations and provided our analysis to the Alternate DAEO. As a result, ethics officials have agreed to consider including some additional standard language in future WAG determinations. The language would address the requirement that financial disclosure report filers who accept gifts of free attendance at WAGs disclose those gifts on their reports when they meet the reporting threshold. Additionally, determinations would mention that employees subject to a leave system must attend WAG events on their own time unless they are officially authorized excused absence.

#### EDUCATION AND TRAINING

USPS's education and training program generally exceeds OGE's requirements at 5 C.F.R. §§ 2638.703 and 2638.704.

##### Initial Ethics Orientation Program

All new employees receive initial ethics orientation during new employee in-processing sessions which are conducted every two weeks. We attended one of these sessions and found the training to be comprehensive, well-prepared, well-presented, and well-suited for the wide variety

of new employees that may be in-processing at any given time. The content of the training met relevant requirements. While necessarily general in nature, the training video and materials provided to new employees and the discussion facilitated by an ethics official were all designed to show new employees that ethics rules are relevant to them, regardless of their position. Since all new employees are required to attend an in-processing session, and all sessions include initial ethics orientation, it is accepted that all new employees receive the required training.

The Alternate DAEO confirmed that she provided in-person initial ethics orientation to all PAS employees appointed during the current and preceding three calendar years.

#### Annual Ethics Training Program

All covered employees, both at headquarters and throughout USPS' various components and field offices, received annual training during calendar year 2004. Ethics officials solicited input from USPS' components regarding issues that should be addressed during training for their employees. With this input, ethics officials prepared a wide variety of Power Point slide presentations, incorporating suggestions and covering all the material required by 5 C.F.R. § 2638.704. They used these individual presentations in appropriate combinations to provide well-tailored training for USPS' components. When necessary, they created new presentations to address issues specific to the component being trained. We examined a number of these presentations. It was obvious that a great deal of effort was required to develop both the number of presentations and their tailored content. We consider the use of training specifically tailored for individual components/offices to be a best practice which enhances the impact of ethics training.

All USPS officers (USPS' rough equivalent of the Senior Executive Service), including PAS employees, received in-person verbal training from either headquarters or local ethics officials in 2004. Training was provided to other covered employees through a combination of in-person and computer-based verbal presentations. Moreover, ethics officials provided tailored verbal training to any office that requested it. This often included training for non-covered employees whom the component felt would benefit from the training. Ethics officials ensured completion of annual training by all covered employees through USPS' national tracking data base.

We were provided with USPS' 2004 and 2005 annual training plans. They were highly detailed and comprehensive in scope. However, they did not estimate the numbers of employees who would be required to receive annual training, as required by 5 C.F.R. § 2638.706. The Alternate DAEO agreed to include the estimate in the 2006 annual training plan.

#### AGENCY SPECIFIC ETHICS PROHIBITIONS, RESTRICTIONS, AND REQUIREMENTS

USPS' supplemental standards of conduct regulation is located at 5 C.F.R. part 7001. Section 7001.102(a) prohibits certain outside employment and business activities with or for

persons who conduct certain types of business with USPS. Section 7001.102(b) requires prior written approval for outside employment and business activities with or for persons who have certain other types of business with USPS. Other than USPS' implementing procedures, there were only a few written approvals available as documentation of the enforcement of the supplemental regulation. Ethics officials explained that USPS employees were very sensitive to the restrictions on outside employment and only rarely engaged in any activity that would require prior approval or which could be called into question under the supplemental regulation.

#### TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

USPS is not eligible to accept payments for travel, subsistence, and related expenses from non-Federal sources under 31 U.S.C. § 1353. USPS does not fit the definition of an "executive agency" as defined in section 105 of title 5, which determines which agencies have the authority to accept such payments. Section 105 of title 5 defines "Executive Agency" to mean an Executive department, a Government corporation, or an independent establishment. The U.S. Code Annotated contains a note of decision stating that the "Postal Service is not an 'executive agency'...." Consistent with this interpretation, USPS has not accepted any such payments.

#### RECOMMENDATIONS

We recommend that you:


1. Provide greater oversight of the confidential financial disclosure system within headquarters components, to include:
  - Ensuring that all component ethics officials who review or certify reports conduct a thorough conflict of interest analysis of each report before they are signed, including annual reports filed during the 2005 annual filing cycle.
  - Ensuring that all component ethics officials work with supervisors to consistently apply the criteria at 5 C.F.R. § 2634.904, which define who should be required to file a report.
  - Ensuring that all components have a process to identify new entrants and require them file a confidential reports within 30 days of entering a covered position.
  - Incorporating ethics-related responsibilities into component ethics officials' position descriptions and encouraging supervisors to specifically evaluate ethics officials on the performance of their ethics-related duties during the performance appraisal process.

2. Establish a sustainable method of providing a valid basis for the estimate of the number of days each Board member serves in a 365 day period following their designation or re-designation as an SGE.

Please advise me as soon as possible, but no later than 60 days from the date of this report, of the specific actions you have taken or plan to take to implement our recommendations. It would be particularly useful to provide at least a preliminary proposal outlining a plan of action to address our recommendations. The Office of Government Ethics is committed to assisting your agency in resolving the noted deficiencies. If you believe that we can be of assistance, we invite you to contact your desk officer, Jennie Keith, at (202) 482-9295, or Doug Chapman, at (202) 482-9223. A follow-up review will be scheduled approximately six months from the date of this report. In view of the corrective action authority vested with the Director of OGE under subsection 402(b)(9) of the Ethics Act as implemented in subpart D of 5 C.F.R. part 2638, it is important that you take timely action.

In closing, I would like to thank you for your efforts on behalf of the ethics program. We look forward to working with your agency towards achieving full compliance with regulatory requirements.

Sincerely,



Joseph E. Gangloff  
Deputy Director  
Office of Agency Programs



United States Office  
Of Government Ethics

Report Number 06-012

## **Highlights**

### **Issues of Compliance**

- The CIA is not collecting new entrant confidential financial disclosure reports as required (5 C.F.R. § 2634.903(b)(1)).

### **Model Practices**

- Ethics officials provided comprehensive training for Deputy Ethics Officials who review confidential financial disclosure reports.
- Initial ethics orientation and annual ethics training creatively and effectively related ethics rules to employees' personal situations and engaged them in discussion.

## **OGE Suggests**

- OGE suggests that the CIA review and certify each report filed by a Presidentially-appointed, Senate-confirmed employee as soon as possible after the intermediate review is completed and then immediately submit the report to OGE.
- OGE suggests that the CIA ensure that all authorizations granted under the authority of 5 C.F.R. § 2635.502(b) are specific as to the particular matter involved and the nature of the authorized participation.

## **OGE Recommends**

- OGE recommends that the DAEO ensure that new entrant confidential financial disclosure filers are identified timely and that reports are collected within 30 days of the filers assuming covered positions, within both headquarters and NRO.

For more information, contact  
Doug Chapman at 202-482-9223  
or [dchapma@oge.gov](mailto:dchapma@oge.gov)

## Ethics Program Review

# Central Intelligence Agency

August 2006 Report

## **Executive Summary**

The Office of Government Ethics (OGE) has completed its review of the ethics program at the Central Intelligence Agency (CIA), including the National Reconnaissance Office (NRO), a joint CIA-Department of Defense activity. The purpose of a review is to identify and report on the strengths and weaknesses of the program by: (1) measuring agency compliance with ethics requirements found in the relevant laws, regulations, and policies; and (2) evaluating ethics-related systems, processes, and procedures in place for administering the program. OGE determined that there is reasonable assurance that the performance and management of the CIA's ethics program is effective, with the exception of the collection of new entrant confidential financial disclosure reports.

OGE recommends that the CIA's Designated Agency Ethics Official (DAEO) ensure that new entrant confidential financial disclosure filers are identified timely and that reports are collected within 30 days of the filers assuming covered positions, both within CIA headquarters and NRO. 5 C.F.R. § 2634.903(b)(1).

Additionally, public financial disclosure reports filed by Presidentially-appointed, Senate-confirmed employees are not submitted to the OGE as soon as they are approved, as required by OGE guidance issued in DAEOgrams DO-05-009, dated April 13, 2005, and DO-06-010, dated April 7, 2006. Further, authorizations granted under the authority of 5 C.F.R. § 2635.502(d) are not always specific as to the particular matter involved and the nature of the authorized participation. Therefore, the report suggests that the CIA strengthen its program further by taking actions to address these issues. The report also discusses some of the model practices the CIA's ethics officials have implemented.

This report has been forwarded to the CIA's DAEO and Inspector General.



United States Office  
Of Government Ethics

Report Number 06-012

## Ethics Program Review

# Central Intelligence Agency

August 2006 Report

## Introduction

### OGE MISSION

The Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance initiatives.

### PURPOSE OF A REVIEW

An ethics program review identifies and reports the strengths and weaknesses of an executive branch agency's ethics program. An ethics program includes both substantive and structural aspects. For example, a review measures agency compliance with ethics requirements found in the relevant laws, regulations, and policies. A review also evaluates ethics-related systems, practices, processes, and procedures in place for administering the program. 5 C.F.R. § 2600.103(e)(1)(iii). A review does not investigate any particular case of employee misconduct.

### REVIEW AUTHORITY AND SCOPE

OGE has the authority to evaluate the effectiveness of executive agency programs in preventing conflicts of interest. These programs may include the financial disclosure systems, ethics education and training, ethics agreements, advice and counseling, and the enforcement of ethics laws and regulations. Title IV of the Ethics in Government Act of 1978, as amended, and 5 C.F.R. part 2638.

In addition to reviewing the ethics program in place at the Central Intelligence Agency's (CIA) headquarters, OGE also reviewed the ethics program within the National Reconnaissance Office (NRO), a joint CIA-Department of Defense activity. The on-site portion of this review was conducted from October 2005 through February 2006.



## **Ethics Program Review: CIA**

# **Findings**

### **PROGRAM STRUCTURE**

The CIA's Acting General Counsel serves as the Designated Agency Ethics Official (DAEO). The Chief, Administrative Law Division and the Ethics Counsel, both within the Office of General Counsel, have been appointed Alternate DAEOs. However, the ethics program is primarily administered by the Ethics Counsel, with support from the Ethics Compliance Officer. The Ethics Counsel and the Ethics Compliance Officer are the CIA's only full-time ethics officials. In addition, there are 31 Deputy Ethics Officials (DEO) throughout the CIA's various Directorates and remote activities, including the NRO. DEOs, who include attorneys within the Office of General Counsel, provide varying degrees of support to the ethics program. DEOs within the CIA's Directorates and remote activities are primarily responsible for reviewing public and confidential financial disclosure reports.

### **OGE's LAST REVIEW OF THE CIA**

OGE last conducted a review of the CIA's ethics program in 2000. This review found that the CIA had many effective, and in some instances, exceptional ethics program elements. It was also our conclusion that ethics officials made every effort to ensure that the CIA's employees were supported with effective ethics services.

### **FINANCIAL DISCLOSURE SYSTEMS**

Our current review found that the public and confidential financial disclosure systems are generally well-managed. Ethics officials have developed sophisticated electronic filing programs which allow the majority<sup>1</sup> of public and confidential financial disclosure report filers to electronically file their reports. Ethics officials also review and certify reports electronically. This provides for the efficient processing and tracking of filed reports.

The public and confidential electronic filing programs were approved by OGE in April 2002 and September 2001, respectively, as pilot programs. The examination of the programs during this review permits the conclusion that they have enabled ethics officials to effectively manage the financial disclosure elements of the ethics program.

The review also included an examination of ethics agreements made by public and confidential financial disclosure filers. These agreements were generally well-constructed; however, OGE suggests that the CIA be more consistent in providing specific guidance as to what constitutes a particular matter and permitted participation when granting authorizations under the authority of 5 C.F.R. § 2635.502(d).

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<sup>1</sup>Those who do not have access to the CIA's Intranet file their reports manually.

## **Ethics Program Review: CIA**

### **Public Financial Disclosure System**

The public financial disclosure system within both the CIA headquarters and NRO is well-managed. The review team examined a number of reports as indicated below and identified no substantive problems. However, OGE questions whether reports filed by Presidentially-appointed, Senate-confirmed (PAS) employees are being submitted to OGE as soon as possible.

#### **PAS Reports**

We examined all four PAS public reports required to be filed in 2005, consisting of three incumbent reports and one termination report. All were filed in a timely manner except for the termination report. The termination report was filed more than 30 days late, but the DAEO waived the late filing fee, as allowed by 5 C.F.R. § 2634.704(b). All of the reports were reviewed timely by an intermediate reviewer before being forwarded to the DAEO for final review and certification. However, the Alternate DAEO advised us that none of the reports are forwarded to the DAEO until the intermediate reviews of all of the reports have been completed. This has resulted in a delay in the final review and certification of the reports by the DAEO and submitting of the reports to OGE.

OGE's DAEOgram, DO-05-009, dated April 13, 2005, provided guidance (repeated in OGE's DAEOgram DO-06-010, dated April 7, 2006) to agencies regarding the prompt submission to OGE of PAS reports as soon as they are approved. While the CIA submitted reports in accordance with the DAEOgram's instructions that reports be submitted to OGE "as soon as approved by [an] agency or department, but no later than August 1, 2005," the intent of the DAEOgram was to encourage agencies to review and certify these reports as soon as possible so that they could be submitted to OGE at the earliest possible date. As these reports are filed by the highest-level executive branch officials, it is vital that they be reviewed and certified by both the CIA and OGE as soon as possible to bolster public confidence in Government processes, enhance employee respect for the ethics program, and prevent the embarrassment of the filers. Therefore, OGE suggests that the CIA review and certify each report as soon as possible after the intermediate review is completed and then immediately submit the report to OGE.

#### **Non-PAS Reports**

We also examined non-PAS reports filed by 118 CIA headquarters employees and 20 employees detailed to NRO. The reports were filed, reviewed, and certified timely. Reviewers' notations were attached to the reports and documented thorough conflict of interest analyses. It was clear that reviewers had to deal with issues unique to the intelligence community and appear to have addressed and resolved those issues in compliance with applicable regulations without impeding filers in the performance of their duties.

## **Ethics Program Review: CIA**

### **Confidential Financial Disclosure System**

The confidential financial disclosure system is well-managed except for ensuring that new entrant filers submit reports within 30 days of assuming covered positions. However, the program is highly effective in managing the filing, review, and certification of annual reports. Additionally, the CIA has an excellent training program for DEOs who review confidential reports.

#### **New Entrant Reports**

The CIA does not generally identify new entrant confidential financial disclosure filers within 30 days of the filers assuming covered positions, as required by 5 C.F.R. § 2634.903(b)(1). Failure to collect and review confidential financial disclosure reports in a timely manner puts employees at risk of running afoul of the ethics rules. During the annual filing cycle, supervisors typically re-evaluate positions to determine whether they meet the criteria at 5 C.F.R. § 2634.904 for filing a confidential report. As part of this process, new entrants are identified and then notified of the filing requirement.

We examined a sample of 23 new entrant reports filed at CIA headquarters and a sample of 5 new entrant reports filed at NRO. All reports in both samples were filed in 2004. All of the new entrant reports filed at CIA headquarters were filed during the annual filing cycle. Several new entrant reports appeared to have been filed timely because they indicated dates of appointment that were the same as the dates they were filed. The remaining reports indicated dates of appointment throughout the year, or did not indicate dates of appointment at all. Our findings in regard to the new entrant reports filed at NRO were consistent with those at CIA headquarters. Four of the five new entrant reports examined were filed during the annual filing cycle. Two noted dates of appointment in June and February; the remaining three reports did not indicate dates of appointment. Based on OGE's experience, this pattern generally indicates a weakness in identifying new entrant filers timely.

OGE recommends that the DAEO ensure that new entrant confidential financial disclosure filers are identified timely and that reports are collected within 30 days of the filers assuming covered positions, both within CIA headquarters and NRO. It is our experience that this may be accomplished through close coordination with other elements of the agency, such as:

- frequently reminding DEOs to monitor the assignment of new employees to their components,
- educating supervisors concerning the filing criteria at 5 C.F.R. § 2635.904,
- addressing the issue at initial ethics orientation sessions to encourage new employees to consider asking their supervisors if they should be filing a report, and

## **Ethics Program Review: CIA**

- addressing the issue at annual ethics training presentations to remind supervisors of the new entrant filing requirement.

We identified no substantive concerns regarding disclosed interests. Reports were reviewed and certified timely. Notations by both reviewing and certifying officials indicated thorough conflict of interest analyses.

### Annual Reports

Ethics officials have effective procedures for notifying annual filers of the requirement to file, providing guidance to filers, and tracking the submission of reports. The electronic filing program also provides definitive documentation of the filing, completion of review, and certification of reports.

We examined a sample of 110 annual reports filed at CIA headquarters and a sample of 25 annual reports filed at NRO. All reports in both samples were filed in 2004. We identified no substantive concerns regarding disclosed interests. The reports were reviewed and certified timely. Notations by both reviewing and certifying officials indicated thorough conflict of interest analyses.

### Training for DEOs

The review team attended a training session for new DEOs who would be responsible for reviewing confidential financial disclosure reports. The Ethics Counsel explained the basic principles of financial disclosure reporting requirements, the reason for requiring supervisory (intermediate) review of reports, and the role of the DEO in the reporting process. The Ethics Counsel further explained the importance of conducting a thorough conflict of interest analysis for each report and how to determine whether a disclosed interest represents a real or potential conflict for the filer. DEOs were strongly encouraged to consult with more senior ethics officials at any time they may need assistance. We consider this type of formal training for reviewers of financial disclosure reports to be a model practice.

### Ethics Agreements

There was one written ethics agreement, entered into by a PAS employee. The agreement, requiring the employee to divest of some interests and execute a recusal, was carried out in accordance with applicable regulations and the terms of the agreement. The recusal and the evidence of compliance made available to OGE were classified.

## **Ethics Program Review: CIA**

We also examined six authorizations granted to non-PAS employees pursuant to 5 C.F.R. § 2635.502(d).<sup>2</sup> Four clearly specified the particular matters involved and the nature of the participation authorized, while two were relatively open-ended authorizations for the employees to participate in essentially any matters involving the specific parties.

The four that were specific emphasized that there was no violation of 18 U.S.C. § 208 because the interest was either (1) less than \$15,000 and exempted in accordance with § 208 (b)(2), and therefore no authorization was actually required, or (2) not a direct interest (e.g., spouse who is employed by a CIA contractor but does not work on the particular matter). However, although we concluded that all of the authorizations essentially complied with 5 C.F.R. § 2635.502(d), authorizations should always be specific as to the particular matters involved and the nature of the participation. This specificity is necessary to ensure that: (1) employees are aware of the particular matter in which they are authorized to participate, and (2) this participation does not exceed that which has been authorized. Consequently, OGE suggests that the CIA ensure that all such authorizations granted in the future be specific as to the particular matter and nature of the participation.

Finally, we examined 12 classified and 9 unclassified recusals executed by non-PAS employees. The recusals were completed with guidance from ethics officials. They were well-constructed and provided for screening arrangements. The screening arrangements specified the relevant matters to be referred to a subordinate, identified by name. Employees agreed to revise and update recusals, whenever appropriate, and advise immediate subordinates and others of any changes.

## **ETHICS EDUCATION AND TRAINING**

The CIA provides initial ethics orientation (IEO) and annual training for all covered employees. The review team attended both an IEO and an annual training session, concluding that the training was comprehensive in terms of addressing all required content. More significantly, it was clear that ethics officials were dedicated to providing training that was meaningful to employees and would help them avoid inadvertently violating ethics rules. Beyond the formal training provided to employees, ethics officials often publish articles in the CIA's employee newsletter. Additionally, the Office of General Counsel's home page on the CIA's Intranet includes links to ethics information, including ethics officials' contact information.

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<sup>2</sup>Where an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. § 208(a), but would raise a question in the mind of a reasonable person about his impartiality, the agency designee may authorize the employee to participate in the matter based on a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.

## **Ethics Program Review: CIA**

### Initial Ethics Orientation

IEO is conducted as part of a multi-day orientation course all new employees are required to attend. During the session attended by the review team, all required content was addressed in terms of its most likely application to CIA employees. The DEO who conducted the training used actual cases to illustrate the potential consequences of violating the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). 5 C.F.R. § 2635. The DEO also stressed that ethics officials are available to counsel employees should they have questions regarding ethics rules and that it is prudent to seek such counsel prior to engaging in any questionable activity. The DEO explained the provisions of 5 C.F.R. § 2635.107, which provide that disciplinary action will not be taken against an employee for violation of the Standards if the employee relied in good faith upon the advice of an ethics official and made full disclosure of all relevant circumstances. OGE considers this emphasis on § 2635.107 to be a model practice, which encourages employees to seek advice prior to engaging in potentially prohibited conduct. Ethics officials also provided handouts and Intranet site addresses where the full text of ethics laws and regulations, as well as other guidance and contact information, could be found.

The Ethics Counsel confirmed to us that all current PAS employees appointed during 2005 and the three previous calendar years received IEO.

### Annual Ethics Training

CIA headquarters employees are generally trained by attending live presentations or completing interactive computer-based training modules, both of which qualify as verbal training. Videotapes of the live training sessions are provided to employees in remote locations. NRO employees are required to attend live presentations that are tailored to meet their needs. These tailored sessions also qualify as verbal training. Methods of tracking the completion of training both at CIA headquarters and NRO appear to ensure that all covered employees receive the required training. The Ethics Counsel and NRO DEO confirmed that all covered employees within CIA headquarters and NRO, respectively, received the required training in 2005.

#### Live and Videotaped Presentations at CIA Headquarters

Ethics officials conduct live presentations every year for public financial disclosure filers stationed at CIA headquarters. Confidential filers are also invited and encouraged to attend these sessions.<sup>3</sup> These presentations meet the requirements for providing verbal ethics training and are videotaped for public filers located at remote sites. Training provided by videotape meets the requirements for verbal training, except where employees are located in time zones where they are not able to view the tapes during times when a qualified instructor is on duty and available to

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<sup>3</sup> Confidential financial disclosure report filers are required to receive verbal ethics training at least once every three years and to receive written ethics training in the intervening years. 5 C.F.R. § 2638.705.

## **Ethics Program Review: CIA**

immediately answer questions from employees. In accordance with 5 C.F.R. § 2638.704(e), written determinations are made in these circumstances that providing verbal training to public filers with a qualified instructor available is impractical.

Ethics officials track completion of live training by providing instructions for attendees to self-certify in the ethics training database, via the CIA's Intranet. Remote sites provide CIA headquarters ethics officials with lists of employees who have completed the videotaped ethics training. Ethics officials enter the data into the ethics training database.

We attended a live presentation conducted by the Ethics Counsel. It covered all required content and, like the IEO session the team attended, there was an explanation of the provisions of 5 C.F.R. § 2635.107. The presentation creatively incorporated both humor and real-life examples of public officials who had committed ethics violations. This served to hold employees' attention and make the presentation more interesting. The movie clips and cartoons the Ethics Counsel selected to include in her presentation were relevant and illustrated the spirit of the rules being addressed. They also appeared to provide credibility to the Ethics Counsel as not just an ethics official, but someone who could relate to the ethical issues employees typically encounter and help them to avoid violating ethics rules. The manner of presentation encouraged employees to engage in discussion when they had questions. The questions employees asked indicated that their awareness and understanding of ethics rules had been improved as a result of the training. This is, of course, one of the primary objectives of ethics training.

In addition, we viewed the videotape of a 2004 annual training session provided to some employees as their annual training. The presentation was in plain English and integrated examples of real-life ethics violations that had appeared in news reports. The videotape included the address for the Office of General Counsel's home page and ethics officials' contact information. It was well-produced, informative, accurate, and incorporated relevant movie clips and cartoons in order to hold the employees' attention. OGE encourages this creativity as a model practice and an effective means of leveraging the limited amount of time ethics officials have to provide meaningful ethics training to employees.

### Computer-based Presentations

Verbal ethics training in the form of a computer-based presentation is another option available to confidential filers who do not attend or view a videotape of a live presentation.<sup>4</sup> Employees are presented with information covering a particular ethics topic, such as gifts or misuse of Government equipment, and are then asked a series of questions relevant to the information covered and based on scenarios constructed to demonstrate the practical applications of the rules. These questions must be answered correctly before the employee can progress from one topic to the

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<sup>4</sup> The training qualifies as verbal training because it was prepared by qualified instructors and presented by computer. 5 C.F.R. § 2638.705(c).

## **Ethics Program Review: CIA**

next. Completion of the training is automatically recorded by the computer, creating a database which ethics officials use to verify that covered employees have completed training.

### NRO Annual Training

While the review team was not able to attend one of the live presentations held for NRO employees, we examined the presentation slides and outline used by the presenter and determined that they addressed all required content. The training addressed issues relevant to the audience, and appeared well-designed to assist employees in applying the ethics rules to situations they were likely to encounter. The NRO DEO incorporated relevant movie clips into the training to effectively illustrate ethics issues.

### Senior Employee Training

The Ethics Counsel provides verbal training to senior employees, including PAS employees. Training for these senior employees is tailored to address the issues they are most likely to encounter and is typically presented either one-on-one or in small groups. The Ethics Counsel confirmed that all current PAS employees received annual training in 2005 and the previous three years.

## **ETHICS ADVICE AND COUNSELING**

Ethics-related advice and counseling are provided to CIA employees primarily by the Ethics Counsel and DEOs within the Office of General Counsel. The DAEO or Alternate DAEO may contribute when advice is provided to senior employees or when advice constitutes a policy decision. To evaluate the advice and counseling provided, a sample of approximately 100 written determinations rendered during the period covered by the review was examined. The advice pertained to every aspect of the ethics program: conflicts of interest; seeking and post employment<sup>5</sup>; authorizations pursuant to 5 C.F.R. 2635.502(d); fundraising; gifts from outside sources; gifts between employees; misuse of position; teaching, speaking and writing; and other outside activities. The advice was thorough, and appeared to be responsive to employees' needs. OGE acknowledges the CIA's policy of requiring employees seeking an opinion to do so in writing, unless the question is of a simple nature. Additionally, OGE would like to commend the agency for the development of a questionnaire that is provided to employees engaged in seeking non-Federal employment. The questionnaire seeks specific information to provide a complete picture of the employee's official duties. Upon receipt of the completed questionnaire, ethics officials are able to extract information from the form in order to provide comprehensive advice tailored to an employee's specific activities. OGE considers the use of the questionnaire to be a model practice.

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<sup>5</sup>None of the advice and counseling included in the sample involved the application of the restrictions found in 18 U.S.C. § 207(c), which is the subject of a CIA request for an opinion from the Department of Justice's (DOJ) Office of Legal Counsel.



## **Ethics Program Review: CIA**

The CIA has learned that one aspect of its interpretation of the post-employment restriction contained in 18 U.S.C. § 207(c) is not shared by OGE. Upon discovery of this difference of opinion, the CIA immediately coordinated with OGE and revised the advice it was providing to employees and former employees regarding § 207(c), in accordance with OGE's interpretation. However, the CIA has asked the DOJ's Office of Legal Counsel to render an opinion, which is currently pending.

## **ENFORCEMENT**

Both ethics officials and the Assistant Inspector General for Investigations (AIGI) indicated that there was an effective working relationship between their two offices. This relationship allows for coordination to ensure that information developed by the AIGI's office regarding ethics violations is shared with ethics officials (insofar as it is permitted by security restrictions). 5 C.F.R. § 2638.203(b)(11) and (12). Ethics officials and the AIGI stated that the CIA takes effective action against those who commit ethics violations. 5 C.F.R. § 2638.203(b)(9). However, the review team was provided no documentation to support this statement, precluding OGE from assessing the CIA's compliance with § 2638.203(b)(9). The AIGI is aware of the requirement to concurrently notify OGE of referrals to DOJ of alleged violations of the criminal conflict of interest laws. 5 C.F.R. § 2638.603(b). According to both ethics officials and the AIGI, there have been no such referrals during the period covered by our review.

## **31 U.S.C. § 1353 TRAVEL PAYMENTS**

The CIA consistently files with OGE timely semiannual reports of travel payments accepted from non-Federal sources of more than \$250 per event. This is based on a review of the three reports covering the period October 1, 2003 through March 31, 2005, on which nine acceptances of travel payments were reported. An examination of the supporting documentation for the three acceptances listed on the report covering October 1, 2004 through March 31, 2005, indicated that the payments were in compliance with the 31 U.S.C. § 1353 and the implementing regulation at 41 C.F.R. Chapter 304.

## **RECOMMENDATION**

To bring the CIA's ethics program into full compliance with applicable laws and regulations, we recommend that the DAEO:

Ensure that new entrant confidential financial disclosure filers are identified timely and that reports are collected within 30 days of the filers assuming covered positions, both within CIA headquarters and NRO.



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

February 8, 2006

The Honorable Phyllis Fong  
Inspector General  
U.S. Department of Agriculture  
1400 Independence Avenue, SW.  
Room 117-W  
Washington, DC 20250

Dear Ms. Fong:

The Office of Government Ethics has completed its review of the ethics program at the Economic Research Service (ERS). The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objective was to determine the ethics program's compliance with applicable statutes and regulations. We also evaluated the systems and procedures for ensuring that ethics violations do not occur. The review was conducted in August 2005. The following is a summary of our findings, conclusions, and recommendation.

We commend the Research, Education, and Economics (REE) Mission Area ethics officials for having made significant programmatic strides since the last ethics program review. That review was conducted from November 1995 through January 1996. During the current review we noted visible and marked improvement in several areas of the program. However, there is still room for further improvement, particularly in the administration of the confidential financial disclosure system and the prior approval of outside employment process. We are making a recommendation to address these areas.

As you are well aware, recent events have brought about an intense scrutiny of agencies with a large number of employees with scientific and research-related duties; the missions and work of such agencies are very similar to those within the REE Mission Area.<sup>1</sup> As a result, while this review focused solely on ERS, many of our observations concerning the ethics program may also be applicable to the entire REE Mission Area since the majority of the processes and procedures are identical.

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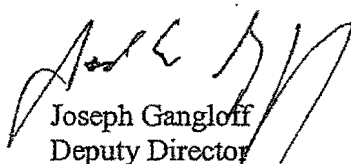
<sup>1</sup> In addition to ERS, the REE Mission Area includes the following U.S. Department of Agriculture component agencies: Agricultural Research Service; Cooperative State Research, Education and Extension Service; and National Agricultural Statistics Service.

The Honorable Phyllis Fong  
Page 2

During the course of our review, we made several observations and discussed with REE Mission Area ethics officials and representatives from the U.S. Department of Agriculture's Office of Ethics various means of enhancing the program and bringing weaker areas into full compliance. We also discussed with ethics officials the current placement of the ethics program within the Employee Relations Branch of the Agricultural Research Service, and, while the scope of this review was not designed to assess a linkage between the location of the ethics office and the quality of ethics services provided, REE Mission Area ethics officials may wish to give further consideration to this potential linkage.

I have enclosed a copy of the report for your information. Please call me at 202-482-9220, if I may be of assistance.

Sincerely,



Joseph Gangloff  
Deputy Director  
Office of Agency Programs

Enclosure



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

February 8, 2006

Ray Sheehan  
Acting Designated Agency Ethics Official  
Office of Ethics  
U.S. Department of Agriculture  
1400 Independence Avenue, SW.  
Room 209, J.L. Whitten Building  
Washington, DC 20250

Dear Mr. Sheehan:

The Office of Government Ethics (OGE) has completed its review of the Economic Research Service (ERS). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978 (Ethics Act), as amended. Our objective was to determine the ethics program's compliance with applicable ethics statutes and regulations. We also evaluated the systems and procedures for ensuring that ethics violations do not occur. The review was conducted in August 2005. The following is a summary of our findings, conclusions, and recommendation.

#### HIGHLIGHTS

We commend the Research, Education, and Economics (REE) Mission Area ethics officials for having made significant programmatic strides since the last ethics program review. That review was conducted from November 1995 through January 1996. During the current review we noted visible and marked improvement in several areas of the program. However, there is still room for further improvement, particularly in the administration of the confidential financial disclosure system and the prior approval of outside employment process. We are making a recommendation to address these areas.

As you are well aware, recent events have brought about an intense scrutiny of agencies with a large number of employees with scientific and research-related duties; the missions and work of such agencies are very similar to those within the REE Mission Area.<sup>1</sup> As a result, while

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Mr. Ray Sheehan  
Page 2

this review focused solely on ERS, many of our observations concerning the ethics program may also be applicable to the entire REE Mission Area since the majority of the processes and procedures are identical.

During the course of our review, we made several observations and discussed with REE Mission Area ethics officials and representatives from the U.S. Department of Agriculture's (USDA) Office of Ethics various means of enhancing the program and bringing weaker areas into full compliance. We also discussed with ethics officials the current placement of the ethics program within the Employee Relations Branch (ERB) of the Agricultural Research Service (ARS), and, while the scope of this review was not designed to assess a linkage between the location of the ethics office and the quality of ethics services provided, you may wish to give further consideration to this potential linkage.

#### PROGRAM STRUCTURE

ERS has approximately 400 employees, most of whom are located within the Washington, DC area. ERS mainly employs economists and social scientists who research and analyze a wide range of agricultural and related topics. Their findings are designed for use by Government and private sector decision makers.

Ethics officials working out of ARS are responsible for managing the ethics programs of agencies within USDA's REE Mission Area, which includes ERS. Organizationally, the REE ethics program is located in the ERB of the Human Resources Division of ARS.

A Supervisory Human Resources Specialist, serving as the REE Mission Area Ethics Advisor, leads the ethics program. She is supported by a staff of one part-time employee and three full-time employees. At times, since the employees are part of the ERB, they are called upon to perform non-ethics related functions. REE Mission Area ethics officials also maintain close liaison with USDA's Office of Ethics which is responsible for administering the public financial disclosure system and training for those filers.

In addition, an ethics liaison position was created for a non-ethics employee from each REE Mission Area agency who is familiar with trends in both the scientific and ethics communities. The ethics liaison serves as a link between REE Mission Area ethics officials and ERS employees. We applaud the creation of this position and strongly encourage ethics officials to continue pursuing means to dialogue with the scientific community. This is an excellent start in conveying ethics rules that are often different from scientific codes of conduct.

#### FINANCIAL DISCLOSURE SYSTEMS

There is room for improvement in the administration of the financial disclosure systems, particularly the confidential system, to bring ERS into full compliance with 5 C.F.R. part 2634.

Responsibility for the financial disclosure systems is bifurcated with USDA's Office of Ethics responsible for administering the public system, and REE Mission Area ethics officials responsible for administering the confidential system. The two offices work well together, each keeping the other apprised of new developments.

#### Public System

We examined the eight public reports required to be filed by ERS employees in 2005.<sup>2</sup> Six of the reports were annual reports, one was a new entrant report, and one was a termination report. Our examination revealed that the new entrant report was not filed in a timely manner due to an administrative error, and the filer received a waiver of the \$200 late filing fee. Two of the six annual reports were not filed in a timely manner;<sup>3</sup> however, all reports were reviewed and certified in a timely manner. Overall, the review of the reports appeared to be thoroughly conducted, as our examination found no substantive deficiencies and noted extensive follow-up notes sent to the filers during the review. Furthermore, a well-developed tracking system and written policies and procedures contribute to a timely review and certification of the reports.

#### Confidential System

We examined the 72 confidential reports required to be filed by ERS employees in 2004. Overall, the review of the reports appeared to be thoroughly conducted, as our examination found no substantive deficiencies and noted appropriate follow-up notes sent to the filers during the review. We did, however, find problems with the timely identification of new entrant filers and a recommendation is being made to address this issue.

#### Annual Reports

Sixty-seven of the reports we examined were annual reports and all were filed, reviewed, and certified in a timely manner. During our examination of these reports, we also observed that a significant number of employees had filed their reports late in 2003. We commend ethics officials for having made significant progress to increase compliance with the filing deadline, resulting in all employees meeting the filing deadline in 2004.

#### New Entrant Reports

Five of the reports we examined were new entrant reports. Due to an administrative error, REE Mission Area ethics officials were unaware of the promotion and subsequent covered status of four of the five new entrant filers until the annual filing cycle in October 2004. Human Resources Staffing Specialists are responsible for notifying REE Mission Area ethics officials

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<sup>2</sup> ERS has no Presidentially-appointed, Senate-confirmed employees.

<sup>3</sup> One was filed on June 22, 2005 and the other on June 30, 2005.

when an employee enters a covered position and for updating the appropriate codes in USDA's National Finance Center database from which ethics officials receive official notification of an employee's status. For all four of the late new entrant reports, the appropriate coding was not entered into the database in a timely manner.<sup>4</sup>

The timely identification of new entrant confidential filers not only ensures that employees become aware of their filing obligations, but enables ethics officials to identify and mitigate potential conflicts of interest. Accordingly, we recommend that REE Mission Area ethics officials develop a written proposal for remedying the late filing of new entrant confidential reports. Such a proposal should take into consideration our suggestion to REE Mission Area ethics officials that Human Resources Staffing Specialists be rated on this portion of their collateral ethics duties, thereby creating incentives for the successful completion of the task.

#### OUTSIDE EMPLOYMENT

USDA's supplemental standards of conduct regulation, located at 5 C.F.R. part 8301, was enacted on October 2, 2000. The regulation requires prior written approval for outside employment by financial disclosure report filers. Requests are submitted through a filer's supervisor for approval by the agency designee. We examined approvals granted for eight filers whose activities covered the time period from 2000 through the end of our review. We found several deficiencies during our examination that warrant further attention, especially given that the processes and procedures implementing the supplemental regulation at ERS are applicable to the other agencies within the REE Mission Area. A recommendation is being made to address this issue.

First, we found that in four cases the filers did not complete the Application for Approval to Engage in Non-Federal Employment or Activity (the REE 101) correctly. We found vague descriptions of beginning and ending dates of the employment listed on their forms, as well as insufficient descriptions of the employment. As a result, we were unable to determine whether the filers submitted the REE 101 prior to the commencement of employment. Full disclosure and appropriate follow-up requests to the filers allow for a more rigorous conflict of interest analysis and provide a safeguard for the agency should an issue arise. During the course of our review, you contacted filers and sought additional information that had not been fully disclosed on the forms.

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<sup>4</sup> We note that the problem of identifying new entrant confidential financial disclosure report filers in a timely manner had been identified in the previous review of ERS from November 1995 through January 1996. In the subsequent report, a formal recommendation had been made to require ERS to develop a process for identifying these filers. This recommendation was not closed until the completion of a fifth follow-up review by OGE in 2001, at which time the current process was instituted.

Second, we found that one filer apparently commenced his outside employment before requesting approval.

Third, we found that in three cases the filers completed the REE 101, but did not need prior approval for their outside employment as it did not meet the regulation's definition of employment.

Accordingly, we recommend that REE Mission Area ethics officials develop a written proposal for remedying the deficiencies found in the prior approval of outside employment process. Such a proposal should take into consideration the following good management practices which were discussed with REE Mission Area ethics officials: (1) providing additional guidance to filers on the filing requirements (e.g., via an ethics newsletter to employees); (2) formalizing internal procedures governing the collection and review of the REE 101; (3) considering a requirement for the approvals to be evaluated more frequently; and (4) maintaining a list of all REE 101s to use as a cross-check in reviewing the financial disclosure reports and in tracking outside employment trends.

We are aware that supervisors currently maintain copies of the REE 101s in their files. We consider this a good management practice as it keeps supervisors involved in the process and aware of the projects in which their employees are engaged.

Finally, we are aware that USDA's Office of Ethics is revising an ethics issuance on adjunct positions to include the topic of scientific involvement in outside organizations. Again, in light of recent events and given our findings at ERS, this is a highly apropos time to be revising and reissuing such guidance.

#### ETHICS EDUCATION AND TRAINING

ERS' education and training program meets OGE's requirements, but there is room for improvement. Similar to the administration of the financial disclosure systems, ERS' ethics education and training program is bifurcated. USDA's Office of Ethics provides training to public filers and REE Mission Area ethics officials provide training to confidential filers. Moreover, both offices work together to ensure that all ERS employees receive appropriate ethics education and training.

##### Initial Ethics Orientation

REE Mission Area ethics officials assured us that all new employees received initial ethics orientation in 2004. All new employees are notified of the requirement for initial ethics orientation in their entrance on duty letter. Training is provided with written materials which meet the content requirements of 5 C.F.R. § 2638.703, including the provision of a current copy of USDA's supplemental standards of conduct regulation. Occasionally, employees receive



initial ethics orientation in a classroom during a new employee orientation program conducted twice a year. Employees certify their completion of the training.

#### Annual Ethics Training

An annual training plan was in place for 2004 and 2005, in accordance with 5 C.F.R. § 2638.706. All covered employees received annual ethics training in 2004.<sup>5</sup> Training is computer-based and prepared by a qualified instructor. During the course of our review, USDA's Office of Ethics revised its guidance to alert public filers that a qualified instructor would be standing by to answer any questions that might arise during the training. Employees certify their completion of the training.

While the education and training program meets the basic requirements, we made several suggestions to enhance the program. For example, providing all employees with an ethics newsletter, similar to the ERB newsletter sent to supervisors and to which ethics officials already contribute, is an excellent means to increase employee awareness of the ethics program and its many facets, including the prior approval of outside employment process. We also encouraged REE Mission Area ethics officials to use the REE television station to broadcast ethics information. Lastly, we note that REE Mission Area ethics officials had considered a REE ethics program open house; we believe this is an excellent means to bring exposure to the ethics program and rules in general.

#### ADVICE AND COUNSELING

ERS provided a very small sample of substantive ethics advice and counseling for our review. The advice was dispensed primarily via e-mail. In three of the five pieces, the analysis and guidance provided were thorough and in compliance with applicable laws and regulations. In the remaining two, both regarding outside activities, while the questions posed and the general information provided were appropriate, there were not enough specific facts from the employee to assess the adequacy of the advice. Given the size of the sample, we are unable to draw any conclusions about the substantive quality of advice and counseling being provided at ERS.

We did, however, make several suggestions regarding ERS' advice and counseling program. First, we suggested that the common practice of keeping records, when appropriate, on advice rendered, in accordance with 5 C.F.R. § 2638.203(b)(8), be memorialized with a written policy. OGE considers this a "best practice." Second, REE Mission Area ethics officials' sharing of the records of advice dispensed promotes consistency in opinions rendered and also prevents abuse of the system. Third, we noted REE Mission Area ethics officials' planned use of a database and tracking system that links advice rendered to a particular covered filer, with his or

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<sup>5</sup> One public filer did not receive annual ethics training in 2004 as he left ERS before it could be completed.

her financial disclosure and ethics training records. This is an excellent opportunity for REE Mission Area ethics officials to tailor their ethics training program specifically to the needs of their employees, and in particular, covered filers.

## ENFORCEMENT

REE Mission Area ethics officials appear to have an effective working relationship with the Office of the Inspector General (OIG) representative to ERS, in accordance with 5 C.F.R. § 2638.203(b)(11) and (12). While there have been no violations of the Standards of Ethical Conduct for Employees of the Executive Branch or the criminal conflict of interest statutes since 2004, it appears likely that, should a violation occur, ERS' system of enforcement would result in consequences for an employee who engages in unethical conduct. Furthermore, although no referrals to the Department of Justice of alleged violations of the criminal conflict of interest statutes have been made, REE Mission Area ethics officials, USDA's Office of Ethics, and OIG are aware of the requirement to concurrently notify OGE of a referral, as required by 5 C.F.R. § 2638.603.

## TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

ERS accepts payments for travel, subsistence, and related expenses from non-Federal sources under 31 U.S.C. § 1353. We examined the two semiannual reports sent to OGE covering the period from April 1, 2004 through March 31, 2005. Both reports were negative reports; both were submitted in a timely manner to OGE. ERS' procedures require a conflict of interest analysis to be conducted by an Ethics Advisor or a Deputy Ethics Official before payments can be accepted. Additionally, REE Mission Area ethics officials review the semiannual report before it is submitted to OGE.

## RECOMMENDATION

To improve ERS' ethics program, we recommend that REE Mission Area ethics officials develop a written proposal advising us within 60 days of specific actions they have taken or plan to take to remedy the areas we identified as needing improvement, specifically the new entrant confidential financial disclosure system and the prior approval for outside employment process.

In preparing the proposal, REE Mission Area ethics officials may wish to explore the potential linkage between the location of the ethics program within ARS and the quality of services it provides. As our recommendation might be wholly or partly applicable to the other REE Mission Area agencies, it will be considered as we plan and schedule future reviews. Finally, OGE is committed to assisting REE Mission Area ethics officials in developing this

Mr. Ray Sheehan

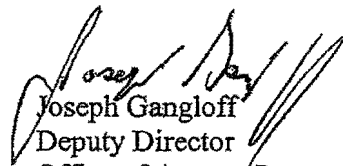
Page 8

proposal and in resolving these matters. We invite REE Mission Area ethics officials to contact OGE's Desk Officer for USDA, Cheryl Kane-Piasecki, at 202-482-9252.

A follow-up review will be scheduled approximately six months from the date of this report. In view of the corrective action authority vested with the Director of OGE under subsection 402(b)(9) of the Ethics Act as implemented in subpart D of 5 C.F.R. part 2638, it is important that ERS take action in a timely manner. A copy of this report is being forwarded to USDA's Inspector General.

In closing, I would like to thank REE Mission Area ethics officials and USDA's Office of Ethics for their efforts on behalf of the ethics program. We look forward to working with ERS. Please contact Ed Pratt at 202-482-9270, if we may be of further assistance.

Sincerely,

  
Joseph Gangloff  
Deputy Director  
Office of Agency Programs

Report Number 06- 002

cc: Patricia C. Zemple  
Associate Director, Program Services Division

Cheryl Kane-Piasecki  
Desk Officer, Program Services Division



United States Office  
Of Government Ethics

Report Number 07-001

Ethics Program Review  
**Federal Trade Commission**

February 2007 Report

**Introduction**

OGE MISSION

The Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance initiatives.

PURPOSE OF A REVIEW

The purpose of a review is to identify and report on the strengths and weaknesses of the program by: (1) measuring agency compliance with ethics requirements found in the relevant laws, regulations, and policies; and (2) evaluating ethics-related systems, processes, and procedures in place for administering the program.

REVIEW AUTHORITY AND SCOPE

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. This review of the Federal Trade Commission (FTC) focused on the financial disclosure systems, ethics education and training, ethics agreements, advice and counseling, outside employment, the enforcement of ethics laws and regulations, and travel payments from non-Federal sources. Title IV of the Ethics in Government Act of 1978, as amended and 5 C.F.R. part 2638.

While FTC has several regional offices, this review focused on the program at headquarters. The on-site portion of this review was conducted at FTC headquarters in September 2006.

## **Ethics Program Review: FTC**

# **Findings**

### **PROGRAM STRUCTURE**

FTC's ethics program is based within the Office of the General Counsel. The Deputy General Counsel for Legal Counsel serves as the Designated Agency Ethics Official (DAEO). An attorney serves as the Alternate DAEO. While the DAEO is responsible for the administration of the ethics program, much of the day-to-day duties are carried out by the Alternate DAEO, two additional attorneys, and an Ethics Program Assistant.

### **OGE's LAST REVIEW OF FTC**

OGE last conducted a review of FTC's ethics program in April 2001. The report on this review indicated that the ethics program was well managed and in compliance with applicable laws and regulations. In particular, the previous review praised FTC's ethics program for the strength of its financial disclosure systems. There were no recommendations or suggestions issued in the previous report, and therefore, in accordance with previous policy, OGE did not conduct a six-month follow-up review.

### **FINANCIAL DISCLOSURE SYSTEMS**

The current review found that the public and confidential financial disclosure systems are well managed. Master lists of financial disclosure report filers are used to track the filing of reports. While minor technical errors were found during our review of reports, we did not identify any substantive deficiencies.

The Ethics in Government Act requires that agencies document the process for collecting, reviewing, evaluating, and where appropriate, making publicly available financial disclosure reports. FTC ethics officials have effective written procedures in place, particularly for notifying filers of the requirement to file, providing guidance to filers, and tracking the submission of reports.

#### **Model Practices**

FTC ethics officials created checklists to aid in the review of financial disclosure reports. The checklists guide reviewers through each section to ensure that all information provided in the reports is analyzed to determine if there is a conflict of interest. Furthermore, the checklists help generate a cautionary letter that informs FTC employees of any potential conflicts of interest. The cautionary letter includes tailored information for each filer about potential issues regarding their holdings.

## **Ethics Program Review: FTC**

### Public Financial Disclosure System

OGE examined all 50 public financial disclosure reports required to be filed in 2006: there were 37 incumbent, 7 new entrant, 5 termination, and 1 incumbent/termination report. All 50 reports were filed by the appropriate deadline and all were reviewed and certified in a timely manner.<sup>1</sup> Documentation in the files, written comments on the reports, and the use of cautionary letters documented that there were questions from and annotations made by the reviewing officials, which indicated a thorough review of the reports.

FTC's Alternate DAEO conducts the initial review of the reports, contacts filers about technical reporting errors or omissions, and checks the financial entries reported against an FTC pending matters listing. After the review, individual memoranda are forwarded to the DAEO, which include a checklist citing findings and highlighting pending FTC matters. As the final report reviewer, the DAEO certifies the reports and issues cautionary letters to filers, as appropriate.

### Confidential Financial Disclosure System

While almost all duties associated with administering the confidential system are carried out by FTC ethics officials, the review of confidential reports is bifurcated between ethics officials and filers' first-line supervisors. FTC's ethics officials review and certify approximately 40 reports filed by employees in the Office of General Counsel for Legal Counsel. The remaining 480 reports are reviewed and certified by filers' first-line supervisors and then forwarded to FTC's ethics office for retention. This split in the review function allows those who are most knowledgeable about work assignments, and therefore potential conflicts, to review filers' reports.

OGE examined a sample of 100 of the approximately 520 confidential reports required to be filed in 2005. All were annual reports. As with the public disclosure system, OGE was impressed with the thorough manner in which confidential reports were examined. However, we noticed that none of these reports indicated dates of receipt.<sup>2</sup> Therefore, we based filing timeliness on the filers' signature dates. Using this method, there were no reports that were filed more than 30 days late. OGE suggests that ethics officials ask the appropriate Administrative Assistants to date stamp the reports that they receive. Additionally, first-line supervisors repeatedly signed their names on the line indicated for the intermediate reviewer. This error may give the impression that the reports did not receive a final certification. OGE suggests that ethics officials remind reviewing first-line supervisors to sign on the appropriate final certification line. Other than this, we identified no substantive deficiencies.

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<sup>1</sup> Nineteen of the 50 public financial disclosure report filers were granted a filing extension.

<sup>2</sup> For purposes of this review, "date of receipt" is defined as the date when a completed financial disclosure report is received by the agency.

## **Ethics Program Review: FTC**

### Special Government Employees

In lieu of using the OGE Form 450, there is another method of confidential disclosure in use at FTC. A small group of special Government employees, who serve as short-term agency experts/consultants, certify that they have no conflicts of interest by using a form entitled "Confidential Conflict of Interest Statement" (Certification).<sup>3</sup> FTC ethics officials routinely review these Certifications after the DAEO examines and approves the documentation associated with hiring an agency expert/consultant. However, the blank Certification itself is provided to the potential agency expert/consultant through administrative officer channels during the hiring process. OGE examined all 23 Certifications filed by experts/consultants in 2005 and all 14 Certifications in 2006, and found that the alternative confidential system is operating as intended.

### **ETHICS EDUCATION AND TRAINING**

FTC's education and training program complies with the provisions of 5 C.F.R. part 2638. Indeed, FTC exceeds mere compliance by using model practices. FTC routinely documents and describes the topics to be covered in the upcoming year and the method by which FTC intends to carry out the current plan.

#### Initial Ethics Orientation

The initial ethics orientation program exceeds the basic requirements of the training regulation. As part of FTC's in-processing, all FTC employees are given required written materials and receive an in-person ethics briefing. The written materials were provided within 90 days of the dates the employees started work. We attended an initial ethics orientation session on September 18, 2006. We were impressed with the manner by which FTC's ethics officials covered the key ethics rules and regulations. The ethics officials not only imparted general ethics-related information, but also covered matters of particular interest to FTC, such as the requirement that employees seek approval before pursuing outside employment.

#### Annual Ethics Training

Annual ethics training plans were in place for 2005 and 2006, in accordance with 5 C.F.R. § 2638.706. All covered employees received annual ethics training in 2005.<sup>4</sup> In 2005, the annual training for Presidentially-appointed, Senate-confirmed (PAS) and other covered

<sup>3</sup>On October 19, 1999, OGE approved the use of this alternative confidential disclosure procedure, under the authority of 5 C.F.R. § 2634.905(c), based on FTC's September 20, 1999 request (which replaced a letter of June 14, 1999).

<sup>4</sup>Confidential financial disclosure report filers are required to receive verbal ethics training at least once every three years and to receive written ethics training in the intervening years. 5 C.F.R. § 2638.705.

## **Ethics Program Review: FTC**

employees consisted of a game called "Ethics Apprentice." Employees sign-in upon entering the class; these signatures are used to track completion of annual ethics training.

On September 20, 2006 we observed 17 non-PAS employees receive their annual training in the form of "Ethics Apprentice." Two teams competed for points by completing assignments that the Alternate DAEO provided. Each team chose a corporation name and a Project Manager. The seven individual assignments dealt with gift acceptance, seeking employment, post-employment/clearance, Government travel, misuse of official position, misuse of Government property, outside employment, and impartiality. Each assignment had a maximum point value that the team could win depending on how well they completed the assignment. Each team had several minutes to work together to discuss and complete the assignment, after which, the teams presented their answers aloud for an open forum discussion involving questions and comments from both teams.

In 2006, annual training for Senior Executive Service (SES) and PAS employees will involve an ethics training game called the "Ethics Da Vinci Code." The "Ethics Da Vinci Code" is a game where two teams compete to break the code first. To break the code, the players need to collect all words from their "encryption bags" and put these words together to spell out a secret code phrase, which is one of the 14 ethics principles. To win words from their "encryption bags," players must correctly answer a series of questions from the following topics: gift acceptance, seeking employment, post-employment/clearance, misuse of official position, outside employment, and impartiality. The team that correctly identifies the secret code phrase first, wins.

For employees not required to attend face-to-face training in 2006, written training has been provided in the form of an "Ethics Quiz" sent to employees via e-mail.

### Model Practices

OGE was very impressed with the amount of creativity shown during the annual ethics training sessions. We commend the efforts of FTC's ethics officials in creating a lively forum that kept all participants actively engaged. We were also impressed by the depth of ethics-related knowledge displayed by the ethics staff.

Ethics resources are provided on FTC's ethics Web page which employees access via the FTC Intranet. The resources include, among other things, the ethics staff's contact information, a link to fillable financial disclosure forms, in-processing materials, ethics information papers, recent ethics news, information on post-Government employment, and FTC's clearance policy.

OGE applauds FTC for making ethics information so easily accessible to its employees. Furthermore, the Alternate DAEO expressed interest in highlighting leadership initiatives by means of a message from FTC's Chairman on the ethics Web page. The message would emphasize the importance of ethics in the workplace.



## **Ethics Program Review: FTC**

New employees at FTC, filers and non-filers alike, receive written ethics-related materials and attend an in-person ethics briefing by FTC ethics officials. The ethics officials' goal for the initial ethics orientation is to introduce the ethics program by offering a face with a name and encouraging open dialogue between employees and ethics officials.

### **ETHICS AGREEMENTS**

There were two written ethics agreements entered into by PAS employees in 2005. The agreements, requiring the employees to execute recusals, were carried out in accordance with applicable regulations and the terms of the agreements.

#### Model Practice

FTC employees who enter into an ethics agreement identify parties or entities that would present a conflict of interest via a memorandum addressed to relevant individuals.<sup>5</sup> This memorandum is a model practice that ensures employees are protected from inadvertent participation in matters that may result in a violation of ethics laws and regulations. An FTC internal practice requires all documents to include a footnote on the first page denoting all parties involved in a particular issue. This model practice further protects an individual from running afoul of the ethics rules.

### **ETHICS ADVICE AND COUNSELING**

Ethics-related advice and counseling are provided to FTC employees primarily by the Alternate DAEO or one of FTC's attorneys. To evaluate the advice and counseling provided, a sample of approximately 90 written determinations rendered during the period covered by the review was examined. Generally, the advice was in the areas of outside employment, gifts (including gifts of travel), and post-Government employment.

According to the Alternate DAEO, there are several ways to track the volume of ethics advice rendered. First, all written advice is kept in one of two chronological files, the "Ethics Chron" or the "[DAEO's] Chron" depending on who delivers the written advice. All waivers and written advice are contained in these files and are kept by year. Second, much of FTC's advice is rendered by e-mail and then archived. Lastly, FTC frequently dispenses oral advice and documents the oral that is of particular note.

The Alternate DAEO advised OGE that about half of the advice dispensed in the agency is oral. This can be attributed to both the small size of the agency as well as the ethics officials' familiar relationship with FTC employees. In DAEOgram DO-05-019, dated November 17,

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<sup>5</sup>For purposes of this review, "*relevant individuals*" is defined as Attorney-Advisors, Administrative Assistants, or any support staff that reviews, receives, or presents information to an individual who entered into an ethics agreement.

## **Ethics Program Review: FTC**

2005, OGE shared some concerns and observations about when and how ethics officials should document ethics advice and provided guidance to help implement agencies' advice and counseling services successfully. Though OGE understands that it is not possible to document all oral advice, ideally ethics officials should maintain written documentation in circumstances where it is most likely questions could arise concerning the conduct at issue.

Overall, the advice rendered was appropriate, correct and timely; the advice appeared to be responsive to employees' needs.

## **OUTSIDE EMPLOYMENT**

According to the Supplemental Standards of Ethical Conduct for Employees of the Federal Trade Commission, 5 C.F.R. part 5701, an FTC employee generally must obtain prior written approval from their supervisor and from the DAEO before engaging in any outside employment, whether or not for pay. The supplemental regulation excepts activities that (1) are unpaid, (2) do not involve "professional services," and (3) are performed to benefit certain types of non-profit organizations. In regards to pro-bono activity, FTC attorneys are encouraged, where their workloads permit, to render voluntary legal assistance to the poor and for the public good.

FTC's ethics Web page includes a section on outside employment. An FTC employee can read the text of the supplemental regulation and find a sample memorandum to request approval to engage in outside employment. The sample memorandum details the necessary information an employee must submit to request approval. The information requested includes: (1) the name of the person, group, or organization for whom the work is to be performed; (2) the proposed hours of work and approximate dates of employment; (3) the proposed duties; and (4) certification that the employee will not misuse Government property, time, or his or her title.

To evaluate FTC's compliance with the supplemental regulation, we noted any outside employment activities reported on the public and confidential financial disclosure reports we examined. We reviewed a sample of 13 requests from the 28 filers who reported outside employment activities. Overall, the outside employment requests met the requirements of the supplemental regulation. However, 5 of the 13 requests we examined did not mention approximate dates of employment as the supplemental regulation requires. OGE suggests that ethics officials contact those employees who fail to indicate the approximate dates of employment in their requests and amend the requests, as appropriate. Moreover, the sample memorandum provided as a guide for employees to follow does not include any space for the date of signature by an approving official. OGE suggests that ethics officials modify the sample memorandum on outside employment to include the date where approving officials sign.

## **Ethics Program Review: FTC**

### **ENFORCEMENT**

There were no conflict of interest violations referred to the Department of Justice from 2005 through September 2006, according to the Inspector General. In 2005 there was a single incident violating the Standards of Ethical Conduct for Employees of the Executive Branch. FTC took the appropriate actions, but the employee resigned while proposed disciplinary actions were pending.

Ethics officials meet the requirements of 5 C.F.R. § 2638.203(b)(12) pertaining to coordination with FTC's Office of the Inspector General (OIG) on ethics-related matters. Ethics and OIG officials stated that they continue to have an effective working relationship, and that they, as necessary, coordinate on employee misconduct cases and other ethics-related matters.

### **TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES**

FTC accepts travel payments from non-Federal sources for travel, subsistence, and related expenses incurred by agency employees on official travel for attendance at a meeting or similar function. 31 U.S.C. § 1353. The procedures for requesting and receiving authorization for acceptance of travel expenses from a non-Federal source are found in the "Travel Reimbursement" section of FTC's ethics Web page. In July 2006, FTC changed the process for obtaining advance approval for non-Federal source travel reimbursement. The advance approval is now documented by the signature of an ethics official on the "Reimbursement Approval Memorandum," rather than on the travel order. Employees are instructed to complete the "Reimbursement Approval Memorandum" at least one week prior to the anticipated date of travel.

FTC's Office of Budget and Finance provides travel information to the Ethics Program Assistant who compiles, and ultimately submits the semiannual reports to OGE. We reviewed three semiannual reports sent to OGE covering the period from October 1, 2004 through March 31, 2006. All three semiannual reports were sent to OGE in a timely manner using the appropriate SF 326 Form.

As part of this review, we examined a sample of the supporting documentation for the reported 206 acceptances. Of the 50 acceptances we examined, we found that all were completed and approved prior to the occurrence of travel. It appeared that the travel payments accepted under § 1353 were properly authorized. Conflict of interest analyses were conducted as part of the approval process for each acceptance.

## **Ethics Program Review: FTC**

### **FTC's SELF-ASSESSMENT SURVEY**

In an effort to assess the effectiveness of FTC's ethics program and to ensure that the program is meeting FTC's needs, the ethics officials conducted a self-assessment survey from April through June of 2006. The self-assessment consisted of conducting an anonymous survey of a judgmental sampling of FTC staff members on a number of key ethics issues.

The ethics officials designed the survey to ensure that it would be both informative for evaluative purposes and also user-friendly for the respondents. The survey consisted of 10 "Yes" or "No" questions with additional room for comments. The questions focused on determining the respondents' knowledge of key agency ethics personnel and key criminal ethics statutes, as well as determining if the respondents were satisfied with the training and advice supplied by the ethics officials. The survey was sent to a random sampling of 150 out of 1020 FTC employees; the sample represented each bureau and key offices in the agency as well as regional offices. The employees surveyed included staff from different GS levels and also the SES level. OGE commends FTC for undertaking this self-assessment survey.

This survey indicated that the ethics program at FTC is operating very successfully in accomplishing its goals of educating FTC staff regarding ethics rules and regulations, assisting staff with their specific questions, and raising awareness about important areas of concern.



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## **Highlights**

### **Model Practices**

- FRTIB requires annual ethics training for all agency employees.
- FRTIB provides ethics training to contractors.

### **OGE Suggests**

- FRTIB revise its outdated written procedures to reflect current changes in dates and procedures.
- FRTIB destroy any financial disclosure reports of more than six years old as required by 5 CFR § 2634.603(g)(1).
- FRTIB partake in OGE training courses to learn about reviewing financial disclosure reports as well as administering an agency ethics program.

If you have comments or would like to discuss the report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224.

# **Ethics Program Review Federal Retirement Thrift Investment Board**

September 2009 Report

## **Executive Summary**

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Federal Retirement Thrift Investment Board (FRTIB). The purpose of a review is to identify and report on the strengths and weaknesses of a program by evaluating: (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

OGE's review identified two model practices that FRTIB has implemented. The model practices include:

- requiring annual ethics training for all employees and
- providing ethics training for contractors.

While no formal recommendations were made, OGE made several suggestions during the on-site fieldwork. OGE suggested that FRTIB:

- revise its outdated written procedures to reflect current changes in dates and procedures,
- destroy any financial disclosure reports of more than six years old as required by 5 CFR § 2634.603(g)(1), and
- partake in OGE training courses to learn about reviewing financial disclosure reports as well as administering an agency ethics program.

This report has been forwarded to the FRTIB Designated Agency Ethics Official.



United States Office  
Of Government Ethics

Report Number 09-020

## Ethics Program Review

# Federal Retirement Thrift Investment Board

September 2009 Report

### Introduction

#### OGE MISSION

The United States Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance.

#### PURPOSE OF A REVIEW

The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating: (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

#### REVIEW AUTHORITY AND SCOPE

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the Federal Retirement Thrift Investment Board (FRTIB), focused on the elements listed below.

- Program structure
- Leadership
- Financial disclosure systems
- Outside employment
- Advisory committees
- Ethics training
- Ethics counseling
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

On-site fieldwork for OGE's review of FRTIB was conducted in May 2009.

## **Ethics Program Review: FRTIB**

### **Program Elements**

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

#### **PROGRAM STRUCTURE**

At FRTIB, the ethics function resides organizationally within the Office of General Counsel and is overseen by the Associate General Counsel, who serves as the Designated Agency Ethics Official (DAEO). At the time of OGE's on-site fieldwork, the day-to-day operation of the ethics program was carried out by the Deputy General Counsel, who served as the Alternate DAEO. Since the completion of the on-site fieldwork, the Assistant General Counsel has since been designated as Alternate DAEO. Additionally, an Attorney has been designed as an agency Ethics Contact.

#### **LEADERSHIP**

Commitment and action by agency leadership is the keystone for ensuring the integrity of an agency's ethical culture and for fostering public confidence in the decision-making processes of Government. The OGE review team met with the Executive Director of FRTIB to discuss the scope of the OGE review and the importance of agency leadership involvement in an ethics program, in accordance with 5 CFR § 2638.202(a). The Executive Director indicated his willingness to incorporate ethical leadership strategies into the day-to-day management of the ethics program. Currently, the Executive Director sends an e-mail message to all FRTIB employees reminding them of the importance of attending annual ethics training. Beginning in 2009, annual ethics training is mandatory for all FRTIB employees.

#### **FINANCIAL DISCLOSURE SYSTEMS**

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (SF 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions, to facilitate internal agency conflict of interest review (OGE Form 450).

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs in providing counseling to employees. See 5 CFR § 2634.104(b).

#### **Written Procedures**

Written procedures ensure consistency in the collection, review, and certification of financial disclosure reports. Moreover, written procedures are essential for a good succession

## **Ethics Program Review: FRTIB**

plan and effective internal controls. During its review, OGE suggested that FRTIB revise their outdated written procedures to reflect current changes in dates and procedures.

### Retention of Reports

During OGE's on-site fieldwork, the review team determined that FRTIB was not destroying financial disclosure reports more than six years old as required by 5 CFR § 2634.603(g)(1). OGE suggested that FRTIB destroy any outdated reports.

### Public Financial Disclosure System (SF 278)

To evaluate the public system at FRTIB, OGE examined the 8 public financial disclosure reports that were required to be filed, reviewed, and certified in 2008. The following is a summary of OGE's examination.

#### Type of Report

- 8 annual reports

#### Filing Timeliness

- All 8 reports were filed timely.

#### Review Timeliness

- All 8 reports were reviewed timely.

#### Certification Timeliness

- All 8 reports were certified timely.

#### Quality of Review

OGE noticed recurring technical errors during its examination of the public reports; overreporting and incomplete reports were the most common errors. OGE conveyed the importance of conducting a thorough technical review of the reports in addition to conducting the conflict of interest analysis. The OGE review team suggested various training courses offered by OGE to help the ethics staff at FRTIB learn more about reviewing financial disclosure reports as well as administering the ethics program.

### Confidential Financial Disclosure System (OGE Form 450) for Regular Employees

To evaluate the confidential system for regular employees at FRTIB, OGE examined all 11 regular employee confidential financial disclosure reports that were required to be filed, reviewed, and certified in 2009. The following is a summary of OGE's examination.



## **Ethics Program Review: FRTIB**

### Type of Report

- 11 annual reports

### Filing Timeliness

- All 11 reports were filed timely.

### Review Timeliness

- 10 reports were reviewed timely.
- 1 report was not reviewed.

11 total

### Certification Timeliness

- 10 reports were certified timely.
- 1 report was not certified.

11 total

### Quality of Review

Ten reports appeared to have been thoroughly reviewed for compliance with reporting requirements. However, one report had not been reviewed or certified at the time of OGE's on-site fieldwork. At the time of the review, according to the Alternate DAEO, the report has since been reviewed and certified.

### Confidential Financial Disclosure System (OGE Form 450) for Special Government Employees

To evaluate the confidential system for special Government employees (SGEs) at FRTIB, OGE examined all 5 SGE confidential financial disclosure reports that were required to be filed, reviewed, and certified in 2009. The following is a summary of OGE's examination.

### Type of Report

- 5 new entrant reports

### Filing Timeliness

- All 5 reports were filed timely.

## **Ethics Program Review: FRTIB**

### Review Timeliness

- All 5 reports were reviewed timely.

### Certification Timeliness

- All 5 reports were certified timely.

### Quality of Review

All 5 reports appeared to have been thoroughly reviewed for compliance with reporting requirements.

## **OUTSIDE EMPLOYMENT**

In accordance with 5 CFR part 8601, before engaging in outside employment, with or without compensation, other than SGEs, FRTIB employees must obtain written prior approval from his or her office director.

OGE examined the two outside employment positions reported on the financial disclosure reports that required prior approval under FRTIB's supplemental standards of conduct regulation. OGE found appropriate files for each outside employment position and found evidence that the employees had received prior approval before engaging in the outside employment.

## **ADVISORY COMMITTEE**

FRTIB has one advisory committee, the Employee Thrift Advisory Council. This committee consists of 15 members who advise FRTIB on matters relating to investment and administration of the Thrift Savings Plan. All 15 members have been designated as representatives by FRTIB. The OGE review team determined that FRTIB appropriately designated the committee members as representatives.

## **ETHICS TRAINING**

An ethics training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees.

OGE found established processes in place at FRTIB to ensure that initial ethics orientation and annual training requirements are met, in accordance with the education-related provisions of subpart G of 5 CFR part 2638. Beginning in 2009, FRTIB requires that all employees receive annual ethics training. OGE considers the training of all employees to be a model practice.

## **Ethics Program Review: FRTIB**

### **Initial Ethics Orientation**

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee an initial ethics orientation. An initial ethics orientation must include:

- the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. *See 5 CFR § 2638.703.*

OGE found FRTIB to be in compliance with the initial ethics orientation requirements. FRTIB provides initial ethics orientation to all new employees as required.

### **Annual Ethics Training**

Public financial disclosure filers are required to receive verbal annual ethics training. *See 5 CFR § 2638.704(a).* Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See 5 CFR § 2638.704(c)(2).* Other covered employees (e.g., confidential filers) are required to receive verbal ethics training at least once every three years and may receive written training in the intervening years. *See 5 CFR § 2638.705(c).* The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct,
- the Standards,
- any agency supplemental standards,
- the Federal conflict of interest statutes, and
- the names, titles, office addresses, and phone numbers of the DAEO and Alternate DAEO. *See 5 CFR § 2638.704(b).*

OGE found FRTIB to be providing verbal annual ethics training to public financial disclosure filers and other covered employees.

In light of the importance of ethics training in preventing employees from committing ethics violations, OGE notes that FRTIB requires all employees to complete annual ethics training, which is made available to employees twice a year or as needed. Additionally, FRTIB provides Privacy Act and ethics training for the agency's contractors.

### **Ethics Training for SGEs**

OGE found FRTIB provides its SGEs with an initial ethics orientation on the conflict of interest laws and ethics regulations that apply to them when they first come on board, and annually thereafter via in-person training.

## **Ethics Program Review: FRTIB**

### **ETHICS COUNSELING**

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. *See* 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 CFR § 2638.204.

OGE's assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of advice to assess whether processes and written procedures are effective.

To evaluate the counseling services provided by FRTIB, OGE examined a sample of written ethics-related counseling. The majority of the counseling concerned gifts from outside sources. The ethics officials memorialize counseling and maintain the documents in chronological order. Generally, each piece of written counseling includes the question, background information, and a discussion of the applicable rules. OGE found the counseling to be in compliance with the requirements of 5 CFR § 2638.203 (b)(7) and (8). The counseling reviewed was generally consistent, timely, and cohered with applicable laws, regulations, and interpretive guidance.

### **ENFORCEMENT**

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).

OGE found FRTIB to be aware of the requirements contained in 5 CFR § 2638.203(b)(11) and (12).

Prior to OGE's on-site fieldwork, an anonymous letter was sent to OGE alleging unethical behavior by an FRTIB employee. Since FRTIB does not have an Office of the Inspector General, OGE's Director suggested FRTIB use the Department of the Interior's Office of the Inspector General (DOI-OIG) to investigate the allegation. The investigation was completed by the DOI-OIG and a report was issued in late March 2009. The investigation did not find any evidence to support the allegation.

### **ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES**

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically

## **Ethics Program Review: FRTIB**

authorized to do so by the agency. Agencies must submit semiannual reports of travel payments from non-Federal sources in excess of \$250 to OGE. *See* 31 U.S.C. § 1353.

OGE determined that seven travel payments from non-Federal sources were accepted by FRTIB during the semiannual periods covering April 1, 2007 through September 30, 2008. Based on OGE's examination of written authorizations and other supporting documentation, OGE found that whenever payments of travel from non-Federal sources were offered to FRTIB employees, FRTIB ethics officials performed a conflict-of-interest analysis. Additionally, OGE found that all payments were reported to OGE using the appropriate General Services Administration Standard Form 326.

### **Summary**

OGE's review identified two model practices that FRTIB has implemented:

- requiring annual ethics training for all employees and
- providing ethics training for contractors.

While no formal recommendations were made, OGE made several suggestions during the on-site fieldwork. OGE suggested that FRTIB:

- revise its outdated written procedures to reflect current changes in dates and procedures,
- destroy any financial disclosure reports of more than six years old as required by 5 CFR § 2634.603(g)(1), and
- partake in OGE training courses to learn about reviewing financial disclosure reports as well as administering an agency ethics program.

If you have comments or would like to discuss the report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224.