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Description of document: Reports of the three most recent Ethics Program Reviews conducted at the Department of Labor (DOL), 2001 - 2008

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Office of Government Ethics
Suite 500
1201 New York Avenue, NW.
Washington, DC 20005-3917
Fax: 202-482-9237
Email: usoge@oge.gov
[FOIA request form](#) (that can be filled in, then printed,
signed and either mailed or Faxed to OGE)

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

March 2, 2011

Tracking No.: OGE FOIA FY 11/33

On September 6, 2010, you filed a Freedom of Information Act request with the Department of Labor for copies of the last three Ethics Program Review reports conducted at that agency. Because the documents you are seeking originated at the Office of Government Ethics (OGE), the Department of Labor referred your FOIA request to OGE and requested that we respond directly to you.

In response to your request, we are enclosing, in full, copies of the last three Ethics Program Review reports of the Department of Labor. These copies are being provided to you without charge.

Sincerely,

A handwritten signature in cursive script that reads "Elaine Newton".

Elaine Newton
OGE FOIA Officer

Enclosures



United States Office
Of Government Ethics

Report Number 08-004

Highlights

Model Practices

- DOL implements concrete leadership actions to demonstrate commitment to supporting the ethics program.
- DOL offers education and training that exceed requirements.

OGE Suggests

- DOL standardize the quality of technical review of financial disclosure forms by utilizing DOL's 278 Checklist and 450 Checklist.
- DOL include all relevant reviewer documents in employee financial disclosure report files.

Ethics Program Review Department of Labor

May 2008 Report

Executive Summary

The Office of Government Ethics (OGE) has completed its review of the ethics program at the Department of Labor's (DOL) Employment Standards Administration, Employment and Training Administration, Mine Safety and Health Administration, Occupational Safety and Health Administration, and Office of the Secretary. 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 DOL's program is effective.

OGE's review identified two model practices that DOL has implemented. The model practices include:

- concrete leadership actions that demonstrate commitment to supporting the ethics program, and
- education and training that exceed requirements.

OGE also identified some minor technical deficiencies in the financial disclosure systems. During the review, OGE suggested that DOL:

- standardize the quality of technical review of financial disclosure forms by utilizing DOL's 278 Checklist and 450 Checklist, and
- include all relevant reviewer documentation in employee financial disclosure report files.

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



United States Office
Of Government Ethics

Report Number 08-004

Ethics Program Review
Department of Labor

May 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 Department of Labor (DOL) focused on the below program elements.

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

OGE's review focused on the ethics programs at five DOL components: the Employment Standards Administration (ESA), Employment and Training Administration (ETA), Mine Safety and Health Administration (MSHA), Occupational Safety and Health Administration (OSHA), and Office of the Secretary (OSEC). The on-site portion of the review was conducted at the DOL Headquarters in Washington, DC, and at the MSHA office in Arlington, Virginia.

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. DOL leadership is committed to supporting the ethics program. The Secretary of Labor prepared a signed letter that was included in DOL's 2006 summary of the ethics rules entitled, "How to Keep Out of Trouble," and delivered a video introduction for annual ethics training. The appointment of the Solicitor—the third ranking official at DOL—as the Designated Agency Ethics Official (DAEO) reinforces the importance of the DAEO position, and allows the ethics program to be highly visible to all DOL leadership and senior staff. The Secretary has the Solicitor speak about ethics issues at DOL semiannual senior staff retreats and other meetings and places an emphasis on ensuring that new non-career employees receive ethics training within two weeks of arriving at the Department. Both the Secretary and the Solicitor encourage their fellow high-ranking non-career officials to go directly to career ethics officials for counseling on ethics matters. OGE considers these actions to be model practices.

PROGRAM STRUCTURE

The Solicitor of DOL serves as the DAEO. The Associate Solicitor for Legal Counsel serves as the Alternate DAEO (ADAEO). The ethics program is administered by the Office of Legal Counsel, which is housed within the Office of the Solicitor (SOL). At the time of OGE's review, SOL consisted of three employees: the ADAEO, the Counsel for Ethics, and a Management and Program Analyst. Since the completion of OGE's review, two employees have joined SOL to work in the ethics program. One is an entry level attorney and one is an Ethics Program Manager who oversees the Department's financial disclosure program. DOL ethics officials believe the added resources will streamline the workload and aid in the efficiency of the office.

While the ADAEO oversees and coordinates the ethics program Department-wide, the bulk of the day-to-day administration of the ethics program is conducted by the Counsel for Ethics with support from the Management and Program Analyst. Both are full-time ethics positions.

DOL's ethics program is decentralized, and for this reason ethics officials emphasize the importance of cooperating with all components Department-wide. Not only do components work closely together whenever possible, but ethics officials are proactive within their respective components and throughout the agency as a whole. Ethics officials are visible to all employees and encourage informal contact with DOL employees in order to foster a comfortable relationship.

Ethics Program Review: DOL

Each DOL component has an ethics contact responsible for duties including: maintaining lists of component-specific financial disclosure filers and providing the lists to SOL, administering the component's confidential financial disclosure system, and providing public filers with the appropriate forms and informing them of due dates.

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).

At the time of OGE's review, DOL's public and confidential financial disclosure systems both were decentralized, with SOL responsible for the general oversight of the financial disclosure systems. SOL distributed form letters and other standardized materials to individual components, and interceded to deal with a problem filer if needed. Individual components were responsible for maintaining and updating filer lists and providing them to SOL, providing forms to filers, and sending out notifications to file.

OGE's review of the public and confidential financial disclosure reports revealed minor inconsistencies among components. Some components did a more thorough technical review of the reports and kept more thorough documentation. OGE informed DOL ethics officials of the inconsistencies and since OGE's review the ethics officials have standardized the performance of all components.

To address the issue of the inconsistencies in the quality of the technical review of public financial disclosure reports, DOL ethics officials centralized the public financial disclosure system. Henceforth, all public financial disclosure reports will be reviewed, certified, and maintained by SOL. This procedural change is designed to produce uniformity in the review and documentation of the public reports. OGE's program review also cited inconsistencies in the review and documentation of the confidential financial disclosure reports. Following OGE's review, SOL decided to implement individual training on the review of the confidential reports for the ethics contact in each component. DOL ethics officials stated that the training initiative will help achieve greater consistency in review and certification practices throughout DOL.

Ethics Program Review: DOL

Detailed written procedures administrate the financial disclosure systems. DOL has both an "SF 278 Reviewer Quick Check" checklist (278 Checklist) and a "DOL Checklist for Review of OGE 450s" (450 Checklist) for use by reviewers.

Component-Specific Public Financial Disclosure Systems

As previously noted, OGE's review revealed minor inconsistencies among components related to the quality of the technical review of public financial disclosure reports and the maintenance of documentation. During the review, OGE made suggestions to help correct the inconsistencies. The recent centralization of the public system will address OGE's suggestions.

Office of the Solicitor/Office of the Secretary

SOL and OSEC are separate components of DOL, with SOL directly servicing OSEC for financial disclosure. At the time of OGE's review, SOL was also responsible for reviewing, certifying, and maintaining the public reports for Presidentially-appointed, Senate-confirmed (PAS), non-career Senior Executive Service (SES) and Schedule C employees of all components. There were 43 non-career staff employees listed on the OSEC master list of public filers from the following DOL components: OSEC, 21st Century Workforce, Faith-Based and Community Initiatives, Office of Public Liaison, Scheduling and Advance, Executive Secretariat, and the Office of the Deputy Secretary. Also included on the master list was the White House Liaison. In addition to the employees on the OSEC master list, SOL was responsible for a total of 26 employees from the components included in OGE's review because of the employees' PAS, non-career SES, or Schedule C status: 13 from ESA, 6 from ETA, 3 from MSHA, and 4 from OSHA.

To evaluate the filing, review, and certification of public reports at DOL, OGE examined 61 out of the 69 public reports required to be filed with SOL in 2005. As the review occurred immediately following the 2006 SF 278 annual filing cycle, 8 of the 2005 reports were not readily available for examination because they were being used by ethics officials in the review and certification process for 2006 reports. The 61 reports consisted of:

Type of Report

- 43 incumbent reports
- 18 new entrant reports

Ethics Program Review: DOL

Filing Timeliness

- 52 reports were filed timely.
- 3 reports were filed late.
- 6 reports were missing the employee's date of appointment and thus OGE was unable to determine whether they were filed timely.

61

Review/Certification Timeliness

- All 61 reports were reviewed and certified timely.

Quality of Review

Evidence of thorough review, including reviewer notes, e-mails, cautionary memoranda, and completed 278 Checklists was included with all reports.

Employment Standards Administration

Of 33 public reports required to be filed by ESA employees in 2005, 13 fell under the responsibility of SOL and were included in the total for SOL/OSEC. The remaining 20 public reports consisted of:

Type of Report

- 14 annual reports
- 6 new entrant reports

20

Filing Timeliness

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

20

Review/Certification Timeliness

- All 20 reports were reviewed and certified timely.

Ethics Program Review: DOL

Quality of Review

A few of the report files contained reviewer notes or a 278 Checklist, but for the most part there was no reviewer documentation included with the reports. In the interest of documenting all stages of the SF 278 review process, OGE suggested that in the future, ESA includes all relevant reviewer documentation in employee SF 278 files. In addition, reviewers did not use the appropriate boxes to mark the date reports were received by the agency or the date of the initial review. OGE suggested that ESA officials consistently utilize the 278 Checklist when reviewing public reports.

Employment and Training Administration

Of 21 public reports required to be filed by ETA employees in 2005, 6 fell under the responsibility of SOL and were included in the total for SOL/OSEC. The remaining 15 reports consisted of:

Type of Report

- 15 annual reports

Filing Timeliness

- All 15 reports were filed timely.

Review/Certification Timeliness

- All 15 reports were reviewed and certified timely.

Quality of Review

There was no reviewer documentation included in any of the files. OGE suggested that in the future, ETA includes all relevant reviewer documentation in employee SF 278 files.

Mine Safety and Health Administration

Of the 13 public reports required to be filed by MSHA employees, 3 fell under the responsibility of SOL and were included in the total for SOL/OSEC. The remaining 10 consisted of:

Type of Report

- 10 annual reports

Ethics Program Review: DOL

Filing Timeliness

- All 10 reports were filed timely.

Review/Certification Timeliness

- All 10 reports were initially reviewed timely.
- Some protracted final review and certification occurred due to ethics official requests for additional information from filers.

Quality of Review

Extensive reviewer documentation was included in each file, such as notes, e-mails, and 278 Checklists.

Occupational Safety and Health Administration

Of the 24 reports required to be filed by OSHA employees, 4 fell under the responsibility of SOL and were included in the total for SOL/OSEC. The remaining 20 reports consisted of:

Type of Report

- 20 annual reports

Filing Timeliness

- All 20 reports were filed timely.

Review/Certification Timeliness

- All 20 reports were certified timely.

Quality of Review

All 20 reports were certified incorrectly, as the certifying official mistakenly signed in the space reserved for the signature of the initial reviewer. OGE pointed out this mistake at the time of the review, and OSHA indicated that care would be taken in the future to avoid such mistakes. In addition, reviewers did not use the appropriate box to mark the date received by the agency. OGE suggested that OSHA officials utilize the 278 Checklist when reviewing public reports.

There was no reviewer documentation included with any of the reports. In the interest of documenting all stages of the SF 278 review process, OGE suggested that in the future OSHA includes all relevant reviewer documentation in employee SF 278 files.

Ethics Program Review: DOL

Component-Specific Confidential Financial Disclosure Systems

As previously noted, OGE's review revealed minor inconsistencies among components in the quality of the technical review of confidential financial disclosure reports and in the maintenance of documentation. As a result, OGE made suggestions to help correct the inconsistencies. The recent implementation of individualized training for reviewers should address the suggestion.

Office of the Solicitor/Office of the Secretary

SOL/OSEC does not have any confidential filers.

Employment Standards Administration

ESA had a total of 263 employees at DOL Headquarters and field offices who were required to file a confidential financial disclosure report in 2005. According to ESA officials, 262 of the reports were filed. OGE reviewed all 16 confidential reports required to be filed by employees located at DOL Headquarters. The 16 reports consisted of:

Type of Report

- 14 annual reports
- 2 new entrant reports

16

Filing Timeliness

- 14 reports were filed timely.
- 2 reports were filed late.

16

Review/Certification Timeliness

- All 16 reports were reviewed and certified in a timely manner.

Quality of Review

No reviewer documentation was included in the files. OGE suggested that in the future, ESA includes all relevant reviewer documentation in employee files.

Ethics Program Review: DOL

Employment and Training Administration

ETA had a total of 214 employees nationally who were required to file a confidential report in 2005. According to ETA officials, 213 of those reports were filed. OGE reviewed a sample of 35 confidential reports. The 35 reports consisted of:

Type of Report

- 35 annual reports

Filing Timeliness

- 20 were filed timely.
- 15 were filed late.

35

Review/Certification Timeliness

- All 35 reports were reviewed and certified timely.

Quality of Review

The date received by the agency was omitted from the reports. OGE suggested ETA officials utilize the 450 Checklist to avoid future similar omissions. Reviewer documentation was included with some of the reports. OGE suggested that in the future ETA includes relevant reviewer documentation in all files.

Mine Safety and Health Administration

MSHA had a total of 1,571 employees who were required to file a confidential financial disclosure report in 2005. According to MSHA officials, 1,567 of those reports were filed. OGE reviewed a sample of 119 of the confidential reports. The 119 reports consisted of:

Type of Report

- 114 annual reports
- 5 new entrant reports

119

Ethics Program Review: DOL

Filing Timeliness

- 116 reports were filed timely.
- 3 reports were filed late.

119

Review/Certification Timeliness

- All 119 reports were reviewed and certified timely.

Quality of Review

MSHA's confidential system should be considered a model for the other DOL components in terms of records management. All files OGE reviewed were consistently well-maintained, and included all previous reports from each filer as well as extensive and detailed reviewer documentation in the form of e-mails, notes, and cautionary memoranda. Reviewer documentation not only assists future reviewers by recording information, but also helps to ensure accountability in the ethics program as a whole. Additionally, the 450 Checklist was used during the review of each confidential report and was included in every file. MSHA also has detailed written procedures outlining the records management process for the confidential report files. MSHA's accomplishments in maintaining a consistent and accurate confidential system are especially noteworthy since MSHA is responsible for a significantly larger number of filers than any of the other components OGE reviewed.

Occupational Safety and Health Administration

OSHA had a total of 47 employees who were required to file a confidential financial disclosure report in 2005. According to OSHA officials, all 47 of those reports were filed. OGE reviewed a sample of 43 reports. The 43 reports consisted of:

Type of Report

- 40 annual reports
- 3 new entrant reports

43

Ethics Program Review: DOL

Filing Timeliness

- 37 reports were filed timely.
- 4 reports were filed late.
- 2 new entrant reports were missing the employee's date of appointment and thus OGE was unable to determine whether they were filed timely.

43

Review/Certification Timeliness

- All 43 reports were reviewed and certified timely.

Quality of Review

The initial reviewer's signature was omitted from all 43 of the reports. OGE suggested OSHA officials utilize the 450 Checklist to avoid future similar omissions. Reviewer documentation was not included with the reports. OGE suggested that in the future OSHA includes relevant reviewer documentation in employees' files.

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.

The education and training program at DOL headquarters is centralized and is administered by SOL. SOL is also responsible for tracking all DOL training. Regional offices do their own training, although SOL supplies them with training materials such as PowerPoint presentations and DVDs in an effort to standardize ethics training Department-wide. SOL schedules a mandatory training session for all DOL ethics officials annually during which SOL hands out ethics training materials, standardized ethics program-related documents, and the ethics training schedule for the upcoming calendar year. At this session, component ethics officials inform SOL of upcoming conferences or management meetings of DOL staff at which ethics training may be incorporated. Training topics in 2005 were selected based on the frequency of employee inquiries and included: travel gifts, speaking and writing activities, and participation in conferences. Training also included a review of the Principles of Ethical Conduct, and the ethics officials were provided with the 2005 version of OGE's informal ethics guide, "How to Keep Out of Trouble."

SOL provides ethics officials with copies of relevant statutes and regulations, as well as other guidance for use in preparing ethics briefings. Ethics officials are also provided with a copy of a sign-in sheet to be faxed to DOL headquarters for tracking purposes.

Ethics Program Review: DOL

Specialized training, such as component-specific training, is developed as needed. For example, in the years in which live training is required, MSHA and SOL film an ethics video to be used for annual training and distribute it, along with handouts, to MSHA offices nationwide. DOL places an emphasis on developing training for non-career employees, and regularly offers specialized training not required by regulation such as Department-wide retiring-employee seminars, Hatch Act and political activity training, and procurement integrity-issue training. DOL also encourages non-covered employees to attend annual ethics training, and according to ethics officials many non-covered employees do in fact choose to attend. Additionally, Assistant Secretaries attend the same ethics training classes as other employees, demonstrating the importance of ethics training as well as leadership support of the ethics program. SOL works hard to offer many sessions on ethics topics in order to keep the classes small and encourage participation and discussion. Ethics-related scenarios are used in the training session so employees are actively engaged in the learning process. Individual training is also available to all employees upon request. Ethics education and training information is provided on the DOL Intranet (Labor Net), which includes an ethics section with frequently asked questions and a training calendar. OGE considers DOL's efforts in education and training to be a model practice.

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 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 (IEO) requirement, within 90 days from the time an employee begins work at DOL, 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.

IEO is provided at DOL headquarters as part of new employee orientation sessions, and is tracked by SOL. Additionally, components may request specialized IEO for their employees. OGE's review of the IEO materials and other information provided revealed that all relevant requirements were met. The Counsel for Ethics confirmed that all current PAS employees appointed during 2005 received IEO.

Ethics Program Review: DOL

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 DOL annual ethics training courses:

- *2005 Annual Ethics Training*, which focused on all employees; and
- *How to Keep Out of Trouble*, which also focused on all employees.

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

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 provided to employees at DOL, OGE analyzed samples of memorialized ethics counseling. These samples were reviewed by OGE's DOL Desk Officer. The counseling consisted primarily of e-mails, memoranda, and letters provided by the DAEO, ADAEO, and the Counsel for Ethics.

Ethics Program Review: DOL

The counseling pertained to many aspects of the ethics program including: conflicts of interest; seeking and post employment; gifts from outside sources; teaching, speaking, and writing; and outside activities. The Desk Officer determined that the counseling was timely, consistent, and accurately addressed applicable laws and regulations.

DOL also makes a regular practice of disseminating information in the form of memoranda and informal ethics guides. Additional reference information can be found on Labor Net. Ethics officials indicated that the Secretary and the Solicitor have a very close relationship with the SOL ethics office and consistently ask for counseling related to gifts, speaking engagements, and attendance at events. Ethics officials indicated that both the Secretary and the Solicitor model a "should I do it" versus "can I do it" leadership style and are receptive to all counseling provided.

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 officials at DOL are meeting the requirements of 5 CFR § 2638.203(b)(11) and (12) through coordinating with DOL's Office of the Inspector General (OIG) on ethics-related matters. DOL's Counsel for Ethics indicated that there is a good reciprocal relationship between OIG and SOL. SOL officials indicated that OIG often consults with them on legal opinions. It appears that satisfactory procedures are in place for the effective exchange of ethics-related information between SOL and OIG officials to resolve enforcement issues.

There were six disciplinary actions taken in 2005 based wholly or in part upon violations of the Standards of Ethical Conduct for Employees of the Executive Branch provisions found at 5 CFR part 2635. All six disciplinary actions were taken at MSHA; no other reviewed component had any such actions. The six MSHA violations included misuse of a Government credit card and misuse of Government property. Disciplinary actions ranged from a written reprimand to suspensions of up to 30 days.

31 U.S.C. § 1353 TRAVEL PAYMENTS

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.

Ethics Program Review: DOL

Under authority of 31 U.S.C. § 1353, DOL 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. Based on OGE's review of the two semiannual travel reports filed for the period of April 1, 2005 through March 31, 2006, DOL consistently files with OGE timely semiannual reports of travel payments accepted from non-Federal sources of more than \$250 per event. No travel was reported from components under review for the period of April 1, 2005 through September 30, 2005. For the period of October 1, 2005 through March 31, 2006, two travel payments from OSHA were reported. An examination of relevant documentation indicated that the payments were approved and accepted in compliance with 31 U.S.C. § 1353.

DOL has detailed written policies and procedures that include: DOL's general guidance for acceptance of travel payments from non-Federal sources, specific conditions for acceptance of travel payments from non-Federal sources, and conflict of interest analysis information.

SUMMARY

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

OGE's review also identified several model practices that DOL has implemented. Model practices at DOL include: offering education and training that exceed requirements and engaging leadership involvement in supporting the ethics program. 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 DOL is extensive. Notably, DOL's Solicitor met with OGE's review team during the course of the review.

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
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

February 26, 2002

Eugene Scalia
Solicitor and
Designated Agency Ethics Official
Department of Labor
200 Constitution Avenue, NW.
Room S-2002
Washington, DC 20210

Dear Mr. Scalia:

The Office of Government Ethics (OGE) has completed a review of the ethics program at the Department of Labor's (Labor) Bureau of Labor Statistics (BLS).¹ Our objective was to determine the ethics program's effectiveness, measured by its compliance with applicable ethics laws and regulations. To achieve our objective, we examined the following program elements: the administration of the ethics program, the financial disclosure systems, the ethics education and training program, the ethics advice and counseling services, the prior approval of outside activities, the acceptance of travel payments from non-Federal sources, and coordination with the Office of Inspector General (OIG). The review was conducted during November and December 2001. The following is a summary of our findings, conclusions, and recommendation.

As our September 11, 1995 report of our last review revealed, BLS continues to have an excellent ethics program. BLS' ethics officials as well as the ethics counselors in the Office of the Solicitor (SOL) are to be commended for their commitment to the ethics program. However, our review also revealed one deficiency that must be remedied by Labor rather than BLS.

ETHICS PROGRAM ADMINISTRATION

Labor's ethics program is decentralized. Ethics counselors located in SOL provide overall assistance and direction to BLS. BLS' ethics program is centralized at headquarters. Labor's

¹BLS' national headquarters is located in Washington, DC. BLS also maintains six regional offices located in Atlanta, GA; Boston, MA; Chicago, IL; Dallas, TX; Philadelphia, PA; and San Francisco, CA.

primary contact at BLS is a Program Analyst located in the Office of Administration (Administration), Division of Management Systems. She is BLS' primary ethics official responsible for day-to-day activities of BLS' ethics program. Three other ethics officials in Administration provide her assistance.

FINANCIAL DISCLOSURE SYSTEMS

BLS' financial disclosure systems are managed effectively. The primary ethics official advised us that BLS employees' financial interests seldom pose conflicts of interest. BLS is concerned about employees releasing labor statistics prematurely outside BLS in violation of the provisions on the use of nonpublic information, at 5 C.F.R. § 2635.703 of the "Standards of Ethical Conduct for Employees of the Executive Branch" (standards). However, financial disclosure is not considered useful in identifying compliance with § 2635.703; instead employees are instructed not to release non-public information and to contact ethics officials when they have questions regarding such information.

BLS has adopted Labor's written procedures for collecting, reviewing, evaluating, and, where appropriate, making publicly available financial disclosure reports.

Public Financial Disclosure System

To determine the effectiveness of the public financial disclosure system, we examined the public reports required to be filed in 2001. Our examination disclosed that 26 public reports were required to be filed consisting of 23 annual, 1 termination, and 2 new entrant reports. We found that 22 of the 23 annual reports were filed, reviewed, and certified timely. The Commissioner's² annual report was filed timely but SOL's ethics counselors reviewed the report late, which caused it to be submitted to OGE late. Both BLS' primary ethics official and SOL's ethics counselor advised us that this was not a trend and was unlikely to happen again. The Commissioner's termination report was filed, reviewed, and forwarded to OGE timely. Regarding the new entrant reports, one report was filed timely and the other report was filed late. Ethics officials are in the process of collecting the employee's \$200 late filing fee.

²The Commissioner is BLS' only Presidential appointment which requires the advice and consent of the Senate.

Confidential Financial Disclosure System

Currently, BLS requires its special Government employees (SGE) to file confidential financial disclosure reports.³ However, according to the primary ethics official, the duties of these SGE positions make remote the possibility that the SGE will be involved in real or apparent conflicts of interest. BLS' SGEs work part-time or intermittently as researchers (hired under the Intergovernmental Personnel Act or the Student Volunteer Authority), or as members of the Federal Economic Statistics Advisory Committee (FESAC).⁴ We suggest BLS' ethics officials consider whether to exclude, pursuant to 5 C.F.R. § 2634.905(a), the SGEs from all or a portion of the confidential reporting requirements. If BLS decides to exclude all or a portion of the SGEs' reporting requirement, BLS must obtain a determination from Labor's DAEO.

To determine the effectiveness of the confidential financial disclosure system, we examined the confidential reports required to be filed in 2001. Our examination disclosed that 26 new entrant and follow-on new entrant reports were filed, reviewed, and certified timely.

ETHICS EDUCATION AND TRAINING PROGRAM

New employees at headquarters attend an Administrative Benefits session offered monthly. During each session, the primary ethics official conducts an ethics orientation briefing and provides employees with a copy of the standards along with ethics summaries developed by SOL's ethics counselors. Labor's supplemental regulation, at 5 C.F.R. part 5201, is not distributed because none of its provisions apply to BLS. New employees in the regions receive a copy of the standards and are advised to seek advice from Labor's regional solicitor.

BLS' covered employees received annual ethics training in 2001. We confirmed that all public filers, including the Commissioner, attended either the July 27, 2001 or November 2, 2001

³BLS has determined that none of its full-time employees meet the definition of a confidential filer, as defined under 5 C.F.R. § 2634.904.

⁴BLS has two advisory councils, the Business Research Advisory Council (BRAC) and the Labor Research Advisory Council (LRAC). The members on the BRAC and LRAC are representatives and not SGEs.

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ethics training session. An ethics counselor from SOL conducted both ethics training sessions. BLS' SGEs received either new employee ethics orientation or a written summary of the ethics laws and regulations entitled "How To Keep Out Of Trouble," which was tailored specifically for SGEs.

SOL's ethics counselors present additional ethics seminars when the need arises. For example, an ethics counselor presented a special ethics session for the FESAC members. Additionally, an ethics counselor developed ethics articles to be in the monthly "Spotlight" on Labor's intranet. For example, the "Spotlight" carried the restrictions on political activity by Federal employees, which included many questions and answers.

ADVICE AND COUNSELING SERVICES

Written ethics advice is provided using electronic mail, letters, and memorandums. The primary ethics official consults an ethics counselor from SOL when necessary. Our examination of BLS' recent written advice disclosed that it covered gifts, the Hatch Act, misuse of position, outside activities, post employment, speaking, teaching, travel, and writing. We found the written advice provided to BLS' employees was consistent with the ethics laws and regulations.

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

BLS has comprehensive written procedures for processing requests for travel reimbursements from non-Federal sources. These procedures cover BLS' acceptance of travel payments from foreign governments and organizations under 31 U.S.C. § 1353, as implemented by 41 C.F.R. parts 301-1 and 304-1. These procedures also cover BLS' employees' acceptance of travel payments from state and local governments and certain tax-exempt organizations under the Government Employees Training Act (GETA) at 5 U.S.C. § 4111, as implemented by 5 C.F.R. §§ 410.501-410.503.

We examined 13 requests for BLS' employees to participate at conferences and workshops in 2001. Our review disclosed that the requests, which consisted of 4 requests under 31 U.S.C. § 1353 and 9 requests under GETA, were properly approved.

Labor's semiannual reports to OGE of travel payments totaling more than \$250 per event under 31 U.S.C. § 1353 are submitted late. The report covering April 1, 2001 - September 30, 2001 has not yet been submitted to OGE. The report covering October 1, 2000

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March 31, 2001 was submitted on December 3, 2001. The report covering April 1, 2000 - September 30, 2000 was submitted on March 29, 2001. Under 41 C.F.R. § 304-1.9(a)(1), agency reports for periods ending September 30 are to be submitted to OGE by November 30 of each year, and agency reports for periods ending March 31 are to be submitted to OGE by May 31 of each year.

An SOL ethics counselor advised us that the lateness in the submission of the semiannual reports to OGE was due to a relatively high turnover of personnel in Labor's Office of the Assistant Secretary of Administration and Management (OASAM). Accordingly, an ethics counselor met with the OASAM staff in January 2002 to address the timely submission of semiannual reports to OGE. If applicable, BLS would be advised of the proper procedures for reporting information to Labor for compilation in the semiannual reports to OGE.

COORDINATION WITH THE OIG

BLS has had no allegations of criminal conflicts of interest referred to the Department of Justice for the period under review. Consequently, BLS' primary ethics official has not found it necessary to communicate directly with officials in Labor's OIG. However, as a result of a 1999 OIG audit, BLS generated an internal procedure and a computer training module regarding the confidentiality of BLS non-public information.

CONCLUSIONS AND RECOMMENDATION

Based on the results of our review, we conclude that BLS has an excellent ethics program that complies with the requirements of the ethics laws and regulations. The various aspects of the program continue to be effectively coordinated and managed by your able and experienced staff. The ethics education and training program continues to exceed the regulatory requirements. Additionally, the advice and counseling was again found to be comprehensive and consistent with applicable laws and regulations.

OGE commends the ethics counselor from SOL for being proactive, having already met with Labor's OASAM staff to address the timeliness of the semiannual travel payment reports. However, we recommend that you:

Submit to OGE timely the semiannual reports of travel payments from non-Federal sources totaling more than \$250 per event accepted under 31 U.S.C. § 1353.

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In closing, I thank you and your staff for your efforts on behalf of the ethics program. Please advise me within 60 days of the actions you have taken or plan to take on our recommendation. A brief follow-up review is normally scheduled within six months from the date of this report. In view of the corrective action authority vested with the OGE Director under subsection 202(b)(9) of the Ethics in Government Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that our recommendation be implemented in a timely manner. A copy of this report is being sent to the Inspector General. Please contact Jean Hoff at 202-208-8000, extension 1214, if we may be of further assistance.

Sincerely,

A handwritten signature in cursive script, reading "Jack Covalleski". The signature is written in dark ink and is positioned above the printed name and title.

Jack Covalleski
Deputy Director
Office of Agency Programs

Report Number 02- 004



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

March 19, 2001

Judith E. Kramer
Acting Solicitor of Labor and
Designated Agency Ethics Official
Department of Labor
200 Constitution Avenue, NW.
Washington, DC 20210

Dear Ms. Kramer:

The Office of Government ethics has completed a review of the ethics program at the Department of Labor (DOL). This review focused primarily on the Women's Bureau (WB), the Veterans' Employment and Training Service (VETS), and the Bureau of International Labor Affairs (ILAB). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objectives were to determine the ethics program's effectiveness and compliance with applicable laws and regulations. To meet our objectives, we examined the following program elements: the administration of the ethics program, the public and confidential financial disclosure systems, the ethics education and training program, ethics counseling and advice services, and coordination with the DOL Office of Inspector General. We also discussed procedures for accepting payments for travel from non-Federal sources. The review was conducted intermittently during September through November 2000.

We found DOL's WB, VETS, and ILAB all have a successful program, both in terms of fulfilling regulatory requirements and providing assigned personnel with appropriate ethics services. The DOL ethics staff provides advice that is consistent with ethics laws, and administers an ethics education and training program that is managed well.

ADMINISTRATION OF THE ETHICS PROGRAM

The ethics program at DOL is administered within the Office of the Solicitor (SOL). SOL ethics officials are primarily responsible for DOL's ethics program and provide oversight to ethics officials within each agency. The Solicitor of Labor is the Designated Agency Ethics Official (DAEO) and the Associate Solicitor for Legislation and Legal Counsel is the Alternate DAEO. The Counsel for Ethics oversees the day-to-day administration of the program; however, a

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staff attorney has been the key ethics official in managing DOL's ethics program. Most of the ethics issues and concerns are filtered through the staff attorney within SOL. The staff attorney demonstrated her continuous diligence and dedication in managing the ethics program and we would like to commend her for her efforts.

PUBLIC FINANCIAL DISCLOSURE SYSTEM

DOL has comprehensive written procedures for the public financial disclosure system. The public system is administered by the DOL's Office of the Assistant Secretary for Administration and Management (OASAM), Office of Executive Resources and Personnel Security. OASAM is responsible for processing public reports for the agencies it services, such as ILAB, WB, and VETS.

In the cases of new entrant and termination filers, OASAM will notify the respective agency ethics contact of the date of entry or termination for filers. OASAM is to provide each filer with a blank public report. The filer is to submit the completed public report to OASAM which, in turn, is to forward the public report to the respective agency for review and certification. The agency must then complete the "SF-278 Monthly New Entrant/Termination Survey." This form serves as a status report for tracking new entrant and termination reports. Each agency must complete the survey for submission to the Counsel for Ethics.

In the case of the incumbent filers, during early April, OASAM creates a master list of filers to submit to the various DOL agencies. The ethics contacts at ILAB, WB, and VETS are to verify their agency's master list for accuracy. OASAM is responsible for distributing blank public reports to all employees required to file, with a cover memorandum explaining when and to whom the reports must be returned. Each agency is responsible for the collection of their employees' public reports.

After collection of the reports, the ethics contacts for ILAB, WB, and VETS review and certify completed public reports. Once the public reports are certified, they are to be forwarded to OASAM for filing and retention. Ethics contacts are also responsible for sending reminder notices and notices of late fee assessment to late filers. The Counsel for Ethics is to be informed of assessments of late filing fees.

We examined 19 public reports filed within the 3 agencies reviewed at DOL (7 reports filed at ILAB, 5 filed at VETS, and 7 filed at WB). Our examination of the reports disclosed no substantive issues. We found that all reports were filed, reviewed,

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and certified in a timely manner. Ethics officials were thorough in their review of the information provided on each public report.

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

DOL has comprehensive written procedures for the confidential financial disclosure system. OASAM also administers the confidential system.

OASAM is responsible for processing new entrant confidential filers for the agencies which it services, such as ILAB, WB, and VETS. OASAM will notify the respective agency ethics contact of a new entrant filer's date of appointment and will also provide the agency with the filer's original confidential report for review.

In the case of the incumbent filers, during early September, OASAM creates a master list of filers to submit to its agencies. The ethics contacts at the agencies are to verify their agency's master list for accuracy. Ethics contacts are to reproduce (by photocopying or printing) copies of the camera-ready April 1999 version of the OGE Form 450 and provide each filer with a blank confidential form. Once the confidential reports are reviewed and certified, ethics contacts are to provide the Counsel for Ethics with the "OGE 450 Reviewer's Chart." The "OGE 450 Reviewer's Chart" allows the Counsel for Ethics to track the OGE Forms 450. The "OGE 450 Reviewer's Chart" contains the following information: the date of appointment, the date the report was received by the agency, the date of intermediate review, the date of certification, and the date on which the filer received ethics training. Certified confidential reports are to be sent to OASAM for retention. Lastly, the Counsel for Ethics is to be provided an updated list of employees who have not yet filed and an updated version of the "OGE 450 Reviewer's Chart."

We examined two confidential reports filed at VETS. ILAB and WB did not have any confidential filers. Of the two reports examined, both were filed, reviewed, and certified in a timely manner. Our examination of the reports disclosed no substantive issues.

EDUCATION AND TRAINING PROGRAM

DOL has established procedures to ensure that all new DOL employees receive Initial Ethics Orientation (IEO) within 90 days of their appointment date. Procedures have been established to ensure that all DOL employees required to receive annual ethics training are appropriately trained.

Initial Ethics Orientation

As required by 5 C.F.R. § 2638.703, all newly hired employees receive an IEO within 90 days of entering on duty. New employees in DOL's national office attend new employee orientation sessions when offered by OASAM's Office of Human Resources. There were at least four sessions conducted during calendar year 2000. In addition, agencies may request separate agency-specific new entrant training for their employees.

Annual Ethics Training

Annual ethics training, during calendar year 2000, for the public and confidential filers, was a one-hour live training session with a qualified instructor present. Approximately 3,065 employees needed to be trained, consisting of 327 public filers and 2,738 confidential filers. The topic for calendar year 2000 ethics training was "Avoiding Conflicts of Interest While Seeking Employment and Post-Government Employment Restrictions." These topics were chosen because of the anticipated transition due to the Presidential Election in November 2000. The written training materials prepared for these sessions included: a post-employment summary briefing outline along with post-employment problems and solutions handouts. Employees had the opportunity to view the OGE-released videotape "Know the Code" and reviewed the Principles of Ethical Conduct in Part I of Executive Order 12674, as modified. Handouts on the Standards of Ethical Conduct for Employees of the Executive Branch were also distributed. In addition, a videotape was distributed during October 2000 to agency ethics contacts and regional solicitors for training financial disclosure filers who were unable to attend live training classes. The videotape was also made available for all other employees upon request.

Training officials who conducted calendar year 2000 sessions were also given copies of relevant statutes and regulations and other guidance (18 U.S.C. §§ 203 and 207, the OGE guidance on the post-employment restrictions, and copies of procurement integrity materials) for their use in preparing for briefings, and a copy of a sign-in sheet suitable for faxing to the national office ethics training coordinator.

The previous DAEO and Alternate DAEO presented "Ethics Minutes" at the Secretary's Executive Staff meetings. These "Ethics Minutes" were held throughout the year for about 5 to 10 minutes. These presentations were conducted for the Secretary, Deputy Secretary, Assistant Secretaries, other officers who have been Presidentially appointed with the advice and consent of the Senate, and senior

staff from the Office of the Secretary and the Deputy Secretary's office. The topics were based on the annual training topics.

An ethics training session was incorporated in the Retirement Planning Seminars offered by OASAM to discuss seeking employment and post-employment restrictions. Individual counseling is available upon request.

COUNSELING AND ADVICE SERVICES

To determine that the counseling and advice services are consistent with the requirements at 5 C.F.R. § 2638.203(b)(7) and (8), we examined the written advice provided since March 2000. Ethics advice is provided on an as-needed basis and the records are kept in electronic mail files. In addition, departing senior level employees receive one-on-one post-employment counseling on an as-needed basis.

In our examination of the written determinations, we found that the advice was timely, comprehensive, and in compliance with the ethics laws. The topics covered a wide range of ethics issues such as outside employment, post employment, seeking employment, and gift acceptance. Our examination of written ethics determinations disclosed that the advice was responsive to the needs of DOL employees.

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

The General Service Administration's (GSA) Interim Rule 4 at 41 C.F.R. part 304-1, implementing 31 U.S.C. § 1353, authorizes Federal agencies to accept payments for travel, subsistence, and related expenses from non-Federal sources for employees' attendance at meetings or similar functions related to their official duties.

DOL has written procedures in place to approve the acceptance of travel payments, including the requirement for employees to seek approval in advance of the travel. We examined two payments reported on the two semiannual reports to OGE covering the period between April 1, 1999 through March 31, 2000 and the corresponding approvals for accepting payments. We determined that these payments were accepted in accordance with GSA's regulation. Both payments were for attendance at conferences.

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COORDINATION WITH THE OFFICE OF
INSPECTOR GENERAL

Pursuant to 5 C.F.R. § 2638.203(b)(12), ethics officials and the Inspector General (IG) representative have an effective working relationship. There have been no referrals to the Department of Justice regarding alleged violations of the criminal conflict-of-interest laws.

CONCLUSION

Based on the results of our review, we conclude that DOL's agencies ILAB, WB, and VETS have a highly effective ethics program. The management of the financial disclosure systems is to be commended. The ethics training program is laudable. The counseling and advice offered by the staff attorney was comprehensive and responsive to the needs of DOL employees. It was apparent that ILAB, WB, and VETS employees are furnished with an effective ethics program.

In closing, I wish to thank you and your staff for all of your efforts on behalf of the ethics program. Under normal circumstances, a short follow-up review is conducted to resolve any recommendations. However, as there were no findings that warranted a recommendation, a follow-up review will not be necessary. A copy of this report is being sent by transmittal letter to the IG. Please contact Peggy Harris at 202-208-8000, extension 1178, if we may be of further assistance.

Sincerely,

A handwritten signature in cursive script, reading "Jack Covalesski".

Jack Covalesski
Deputy Director
Office of Agency Programs