



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

January 13, 2003

Steven J. Morello
General Counsel and
Designated Agency Ethics Official
Department of the Army
104 Army Pentagon
Washington, DC 20310-0104

Dear Mr. Morello:

The Office of Government Ethics (OGE) recently completed its review of the ethics program administered by the Department of the Army (Army) Standards of Conduct Office (DA SOCO).¹ This 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 effectiveness and compliance with applicable laws and regulations. The review was conducted during October and November 2002. The following is a summary of our findings and conclusions.

HIGHLIGHTS

OGE commends DA SOCO for its effective role within Army's ethics program. The staff is highly dedicated and the Chief, DA SOCO, has demonstrated the Army's commitment to ethics by lobbying successfully for increased resources. Furthermore, we were impressed with DA SOCO's ethics education and training program, which went far beyond the basic requirements.

¹Overall, our review focused on the ethics program at the Army's Office of the Secretary (OS), Criminal Investigation Command (CID), and Corps of Engineers (USACE). However, there is some overlap in ethics program responsibilities at these organizations among DA SOCO, the Ethics and Fiscal Law Section of the Army's Office of General Counsel, and the ethics counselors at CID and USACE. Therefore this report will cover only those portions of the program that are managed by DA SOCO. Separate reports have been prepared for the Ethics and Fiscal Law Section of the Army's Office of General Counsel, CID, and USACE.

ADMINISTRATION

DA SOCO, which resides in Army's Office of the Judge Advocate General (JAG), is managed by the Chief, DA SOCO, and has dual responsibility for professional responsibility and standards of conduct. At the time of our review, the standards of conduct side of the office was managed by the Chief, Standards of Conduct Branch, who recently left DA SOCO.²

The Chief, DA SOCO has implemented a number of initiatives aimed at increasing the efficiency and effectiveness of DA SOCO. He is currently trying to upgrade the GS level of his supporting attorneys to at least GS-15; currently they are GS-13s or GS-14s, which can pose problems in that some of the ethics counselors assigned to Army's major commands (MACOMs) are GS-15s, yet must defer to the legal advice rendered by DA SOCO attorneys.

He is also in the process of hiring additional support staff who will be primarily responsible for the review of the financial disclosure reports, thereby freeing up the attorneys to administer those aspects of the ethics program that require their legal expertise, such as conducting training and providing counseling.

FINANCIAL DISCLOSURE SYSTEMS

The financial disclosure systems are generally in compliance with 5 C.F.R. part 2634. We examined all nine public financial disclosure reports required to be filed directly with DA SOCO in 2002, excluding reports filed by Presidential appointees requiring Senate confirmation and certain other covered employees whose reports are filed directly with and reviewed and certified by the Army Office of General Counsel. We also examined public reports required to be filed in 2002 by CID and USACE employees, that are forwarded to DA SOCO for final review, certification, and retention. These consisted of the 1 public report required to be filed at CID, by the Commanding General, the 11 reports required to be filed by military personnel at USACE headquarters, and a sample of 29 of the 42 reports required to be filed by civilians located

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at various USACE divisions and laboratories. The reports were generally filed, reviewed, and certified timely and contained no technical or substantive deficiencies.³

The only confidential financial disclosure report required to be reviewed by DA SOCO in 2001, from a DA headquarters employee, was filed late due to an administrative oversight (which appears to have been rectified as the 2002 report was submitted on time), but was reviewed and certified timely and contained no substantive or technical deficiencies.

ETHICS EDUCATION AND TRAINING

DA SOCO officials manage an effective and proactive ethics program. In addition to conducting the requisite initial ethics orientation and annual ethics training, DA SOCO offers a number of other ethics-related courses and materials for a variety of Army personnel.

Initial Ethics Orientation

New civilian Army headquarters employees for whom DA SOCO officials serve as primary ethics counselors are provided with initial ethics orientation materials upon entering on duty. These materials consist of a copy of the 14 principles of ethical conduct contained in Executive Order 12674 and a summary of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). The materials also provide an Internet address where employees can view the Standards and the Department of Defense (DOD) Joint Ethics Regulation (JER) in their entirety. Finally, new employees are provided with DA SOCO's office address, e-mail address, phone number, and fax number so they may contact their ethics counselors with any questions they may have.

Annual Ethics Briefings

To meet the 2001 annual training requirement, DA SOCO officials provided live annual ethics briefings for all but one of the Army headquarters public and confidential financial disclosure

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filers.⁴ According to the Chief, DA SOCO, general officers' staffs are often invited to attend these live annual ethics briefings so that they too will be aware of potential ethical issues that may present themselves to the officers.⁵

Additional Ethics Training

In June 2001 a DA SOCO ethics counselor provided ethics training for all Army Staff enlisted personnel. This training, which was provided to over 260 soldiers in all, covered such topics as use of Government resources, fund-raising, and gifts between employees.

DA SOCO also provides departing employees post-employment counseling upon request. However, according to the Chief, Standards of Conduct Branch, requests for this type of counseling have decreased since DA SOCO moved to its current Rosslyn, VA location from the Pentagon, where it used to receive five or six walk-in requests a week. When DA SOCO officials return to the Pentagon as planned, they suspect the number of post-employment requests will again increase. They are also attempting to attract terminating employees to attend post-employment briefings by sending them congratulatory letters which remind them of the availability of such briefings.

In addition, DA SOCO officials participate in conducting the "Basics for Ethics Counselors Workshop" for new Army ethics counselors at the JAG school in Charlottesville, VA. As a complement to the live training, new ethics counselors are provided a copy of the "Ethics Counselor Deskbook." The Deskbook is a comprehensive reference guide to assist ethics counselors in carrying out their day-to-day ethics-related duties.

To further educate ethics counselors (and JAG officials in general), ethics-related articles are routinely published in the Army JAG school's monthly publication, "The Army Lawyer." For example, the August edition contained an article regarding the potential misuse by general officers of their aides (e.g, assigning aides "unofficial" duties).

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⁵DA SOCO is also considering inviting all general officers' spouses to participate in ethics training sessions.

Training Initiatives

A number of new training initiatives are also being implemented. This year the Chief, DA SOCO and the Chief, SOCO Branch began traveling to the MACOMs throughout the world. During these visits, the Chief, DA SOCO meets with the MACOM commanding generals personally to impress upon them their responsibility for the ethics program within their command and to encourage their personal support and involvement in the program. Meanwhile, the Chief, DA SOCO Branch reviews the MACOM ethics program, examining a sample of financial disclosure reports and a sample of the ethics-related advice provided. The two also conduct training sessions: one for all attorneys, and one just for ethics counselors. In addition, they meet with IG officials as well as officials in procurement, protocol, public affairs, and information management offices to discuss their roles in the ethics program.

Three-day ethics sessions, similar to those provided new ethics counselors at the Army JAG school, were conducted this year for ethics counselors assigned to Army posts in Germany and Italy. These sessions will soon be expanded to posts in the Far East and hopefully to regional locations in the United States.

Finally, DA SOCO is working to develop their own Web site which will contain, among other things, an interactive training module. This site is being developed to further assist ethics counselors in the field in carrying out their ethics duties.

COUNSELING AND ADVICE

We provided the OGE Desk Officer to whom Army is assigned a sample of ethics-related advice and counseling rendered by DA SOCO officials from 2000 to the present. In addition to responses to Army employees' requests for advice, the sample also included various policy-type memorandums and "information papers" summarizing certain ethics-related processes and requirements. Based on her examination of these written determinations, she concluded that all complied with applicable ethics laws and regulations.

TRAVEL PAYMENTS FROM
NON-FEDERAL SOURCES

We examined four travel payments accepted by Army headquarters employees on behalf of the Army under 31 U.S.C. § 1353 and the implementing General Services Administration regulation at 41 C.F.R. part 304-1. The four payments represented all such payments accepted from October 1, 2001 through March 31, 2002 for which DA SOCO was required to conduct the conflict of interest

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analysis in accordance with 41 U.S.C. § 304-1.5. All of the payments were approved and included in Army's semiannual report to OGE of payments of more than \$250 per event for the period, in accordance with the statute and regulation.

Nevertheless, DA SOCO officials admitted that past and current staffing levels at DA SOCO, combined with high turnover in the field, have hindered the development of an effective system for semiannual reporting of payments of more than \$250 to OGE. Within each MACOM there are points of contact (POC) who are to compile reports of such payments and forward them to DA SOCO for reporting to OGE. However, the POCs change on a periodic basis making it difficult to ensure that they are aware of this responsibility.

To better ensure that such payments are appropriately accepted and reported under 31 U.S.C. § 1353 and the GSA regulation, the procedures for accepting and reporting such payments are included in the "Basics for Ethics Counselors Workshop." Additionally, a discussion of the procedures was included as part of the Army's 2002 annual ethics training. DA SOCO also plans to include the procedures on its Web site which is currently under development. Finally, the annual Staff Judge Advocate/Deputy Staff Judge Advocate courses will include a block of instruction on the proper acceptance and reporting of travel payments, as will the Worldwide Continuing Legal Education courses held each October.

RELATIONSHIP WITH THE IG

According to the Chief, DA SOCO, his office (and the JAG office as a whole) maintains an ongoing relationship with the Army IG's office. JAG attorneys are assigned to assist IG investigators during their investigations, including advising them on cases regarding employee misconduct and conflicts of interest. The Chief also makes a point of meeting with local IG officials when he visits MACOMs and discussing with them their relationship with local ethics counselors.

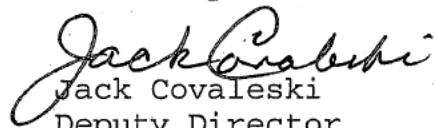
CONCLUSIONS

Based on our review, we conclude that DA SOCO effectively carries out its responsibilities for Army's ethics program. We were particularly impressed with not only the extant ethics training being provided, but also with the training initiatives currently underway to further ensure that Army leaders, ethics counselors, and Army personnel as a whole, are aware of the ethics rules and appreciate their importance. We also commend the Chief, DA SOCO for taking aggressive steps to provide DA SOCO with sufficient staff at a level capable of carrying out their duties and ensuring that resources are utilized in the most efficient manner possible.

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In closing, I would like to thank you and your staff for your efforts on behalf of the ethics program. A brief follow-up review is typically scheduled within six months from the date of this report. However, as this report contains no formal recommendations to improve the program, no such follow-up will be necessary. A copy of this report is being forwarded to Army's Inspector General via transmittal letter. Please contact Dale Christopher at 202-208-8000, extension 1130, if we may be of further assistance.

Sincerely,


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Report Number 03- 001

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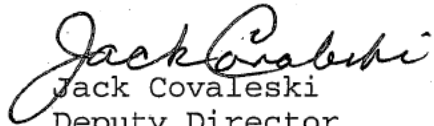
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HIGHLIGHTS

OGE commends the ethics counselors at OGC's Ethics and Fiscal Law Section for their commitment to preventing violations of ethics laws and regulations. They succeed in this endeavor largely by providing extensive ethics training which exceeds the regulatory requirements. We were also impressed with their thorough review of financial disclosure reports and dispensation of well-reasoned advice.

¹Overall, our review focused on the ethics program at the Army's Office of the Secretary (OS), Criminal Investigation Command (CID), and Corps of Engineers (USACE). However, there is some overlap in ethics program responsibilities at these organizations among the Ethics and Fiscal Law Section, the Army Standards of Conduct Office (DA SOCO), and the ethics counselors at CID and USACE. Therefore, this report will cover only those portions of the program that are managed by the Ethics and Fiscal Law Section. Separate reports have been prepared for DA SOCO, CID, and USACE.

ADMINISTRATION

OGC's Ethics and Fiscal Law Section is managed by the Deputy General Counsel (Ethics and Fiscal), who is assisted by three ethics counselors. In addition to overseeing the Army's overall ethics program, the Ethics and Fiscal Law Section is specifically responsible for collecting, reviewing, and certifying the public and confidential financial disclosure reports filed by OGC personnel, all Army Presidential appointees requiring Senate confirmation (PAS), and certain high-level OS employees. The Ethics and Fiscal Law Section is also responsible for providing ethics training and counseling for employees from whom it collects financial disclosure reports.

FINANCIAL DISCLOSURE SYSTEMS

The financial disclosure systems generally complied with 5 C.F.R. part 2634. All 17 non-PAS public financial disclosure reports (12 annual, 4 new entrant, and 1 combined annual/termination) required to be filed with the Ethics and Fiscal Law Section in 2002 were filed, reviewed, and certified timely and contained no substantive and very few technical deficiencies. Moreover, review notes and follow-up correspondence indicated a thorough review process. All five PAS public reports (four annual and one termination) required to be filed in 2002 were filed and reviewed timely and the four annual reports were forwarded to OGE timely. The termination report was forwarded to OGE late.²

All six of the annual confidential financial disclosure reports required to be filed with the Ethics and Fiscal Law Section in 2001 were filed timely. However, the two new entrant reports filed in 2001 were filed late. Ethics counselors explained that the two late filers came on board during a time of considerable employee turnover in OGC and were therefore simply overlooked. The counselors were confident that this oversight would not occur in the future. All eight reports were reviewed and certified timely and contained no substantive and very few technical deficiencies.

ETHICS EDUCATION AND TRAINING

The Ethics and Fiscal Law Section provides initial ethics orientations and annual ethics training for all covered OGC employees, all PAS employees, and certain high-level OS employees.

²A copy of the termination report was received at OGE approximately six months after being reviewed at Army.

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This training complied with, and in some instances exceeded, the requirements at 5 C.F.R. §§ 2638.703, 2638.704, and 2638.705.

Initial Ethics Orientation

Ethics and Fiscal Law Section officials provide live in-person initial ethics orientations for all employees for whom they serve as primary ethics counselors. In addition to providing new employees with an orientation when they enter on duty, Ethics and Fiscal Law Section officials routinely provide an ethics briefing during general Army orientation sessions held for new employees, such as the Army's SES Orientation Course.

Annual Ethics Briefings

In 2001, Ethics and Fiscal Law Section officials provided live ethics briefings for all public financial disclosure filers. Staff members are invited to attend these briefings so that they too will be aware of potential ethical issues that may present themselves to the senior officials. In addition to receiving the live briefing, all attendees are provided a copy of the "Ethics Handbook for Army Leaders." This handbook, developed by the Ethics and Fiscal Law Section, is a comprehensive summary of the ethics rules applicable to them as senior members of the Army.

Also in 2001, all confidential filers completed one of the online training modules developed by the Department of Defense's Standards of Conduct Office. After finishing the training, confidential filers were required to certify in writing their completion of the module. To meet the 2002 annual ethics training requirement, all confidential filers will receive live in-person ethics briefings from DA SOCO.

COUNSELING AND ADVICE

We provided the OGE Desk Officer to whom Army is assigned a sample of ethics-related advice and counseling rendered by Ethics and Fiscal Law Section officials from 2000 to the present. In addition to responses to Army employees' requests for advice, the sample also included various policy-type memorandums and "information papers" summarizing certain ethics-related processes and requirements. Based on her examination, the Desk Officer concluded that the advice provided complied with applicable ethics laws and regulations.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

According to the Deputy General Counsel (Ethics and Fiscal), employees for whom Ethics and Fiscal Law Section officials serve as primary ethics counselors seldom accept travel payments from non-

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Federal sources under the authority of 31 U.S.C. § 1353 and the implementing General Services Administration regulation at 41 C.F.R. part 304-1. He expressed his conviction that considering the Army's substantial budget, employee attendance at events that would benefit the Army should be paid for by the Army.

CONCLUSIONS

The Ethics and Fiscal Law Section staff administer an effective ethics program. We commend their dedicated and conscientious approach to ensuring that program requirements are fulfilled, and sometimes exceeded. We were particularly impressed with their efforts in providing ethics training, especially the practice of inviting the respective staffs of senior Army officials to attend the annual ethics briefings. We consider this an excellent way to further shield senior officials from ethical missteps and intend to recommend the practice to other ethics officials during the course of our ethics program reviews.

In closing, I would like to thank you and your staff for your efforts on behalf of the ethics program. A brief follow-up review is typically scheduled within six months from the date of this report. However, as this report contains no formal recommendations to improve the program, no such follow-up will be necessary. A copy of this report is being forwarded to Army's Inspector General via transmittal letter. Please contact Dale Christopher at 202-208-8000, extension 1130, if we may be of further assistance.

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HIGHLIGHTS

CID has a generally strong ethics program. Ethics officials are committed to the difficult job of serving CID employees located throughout the world. OGE commends the Deputy Ethics Counselor (DEC) for her efforts to educate non-covered personnel on the ethics rules and provide tailored training for others.

ADMINISTRATION

CID's ethics program is administered by its Staff Judge Advocate, who serves as the DEC. At CID headquarters, the DEC is assisted in the review of financial disclosure reports, the provision of training, and the dissemination of advice by one attorney-advisor. The DEC also maintains almost daily contact with CID's geographically-dispersed Group Legal Advisors and Group Judge Advocates, who serve as ethics counselors for their respective areas of operation.¹

¹The Army Crime Records Center and the Army Criminal Investigation Laboratory do not have their own ethics counselors, but utilize those at headquarters instead. Group Legal Advisors are civilians, while Group Judge Advocates are military personnel. For ease of reference, the term Group ethics counselors will be used throughout this report to refer to both Group Legal Advisors and Group Judge Advocates.

Mr Steven J. Morello

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FINANCIAL DISCLOSURE SYSTEMS

CID manages effective public and confidential financial disclosure systems, which generally comply with 5 C F.R. part 2634. We examined the one CID public report filed in 2002 (by the Commanding General), which is forwarded to the Army's Standards of Conduct Office (DA SOCO) for review and certification. This report was filed, reviewed, and certified timely and the review by DA SOCO appeared to be thorough, as we identified no technical or substantive deficiencies in our examination of the report.

We also examined a sample of the 149 CID confidential reports required to be filed in 2001.² These consisted of all 25 reports filed at headquarters and 26 of the reports filed with the Group ethics counselors. The confidential reports were generally filed, reviewed, and certified in a timely manner.³ Additionally, the review of the reports appears to have been thorough as we identified few technical and no substantive deficiencies.

Notwithstanding the apparent quality of the review of the reports, two of the six new entrant reports examined were reviewed over six months late. The attorney-advisor surmised that the delay in the review of the new entrant reports may be due to the filers' distant assignments as part of the 701st Major Procurement Fraud Unit. These reports are initially filed during the hiring process, which is conducted by the headquarters Civilian Personnel Office. If the filer is hired, the report is sent to the new employee's supervisor in the field who reviews the report and then forwards it to the 701st Group ethics counselor, who is located at 701st Group headquarters.

ETHICS EDUCATION AND TRAINING

The initial ethics orientation meets the requirements in subpart G of 5 C F.R. part 2638, while annual ethics training did not meet the requirements. In addition, CID provides education and training not required by subpart G.

²Recently, CID significantly decreased the number of positions requiring the filing of a confidential report, the requirement has been eliminated for most investigative positions, with the exception of those in the Procurement Fraud Unit.

³Accuracy in making this determination was difficult due to the failure of ethics counselors to record the date reports were received, as required by 5 C F R § 2634.605(a). Therefore we used the dates on which filers signed their reports to determine filing timeliness. We reminded headquarters ethics counselors of the requirement to record the dates on which reports are received from filers.

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According to the DEC, initial ethics orientation is provided to all new employees by their respective Group ethics counselors. The attorney-advisor provides the training materials, including *The Employees' Guide to Standards of Conduct* (developed by the Department of Defense (DOD) Standards of Conduct Office), as well as handouts on the DOD supplemental standards of conduct and topics such as use of Government equipment.

Based on discussions with headquarters ethics counselors and an examination of supporting documentation, annual ethics training was provided to CID's 1 public filer and approximately 150 confidential filers in 2001. The DEC provided the training to the public filer (the Commanding General), while confidential filers were provided training by their respective Group ethics counselors.

Finally, CID provides education and training in addition to initial ethics orientation and annual ethics training. The DEC occasionally publishes ethics-related articles in CID's Command Newsletter. Moreover, a section of the annual Special Agent in Charge Conference is dedicated to ethics. For example, at the 2001 conference, officials discussed gifts from outside sources and financial interests in business organizations under investigation. Attendees were given the *Employees' Guide to Standards of Conduct* as a reference.

COUNSELING AND ADVICE

We provided the OGE Desk Officer to whom Army is assigned a sample of ethics-related advice and counseling rendered by CID headquarters ethics officials from 2000 to the present. Based on her examination of this written advice, she concluded that all advice complied with applicable ethics laws and regulations.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

According to the attorney-advisor, employees wishing to accept payments under 31 U.S.C. § 1353 must consult with an ethics counselor. After receiving his or her approval, employees present the appropriate information to their supervisor, who either approves or denies the travel. The attorney-advisor at headquarters is responsible for compiling a report semiannually of all 31 U.S.C. § 1353 gift acceptances of more than \$250 per event for submission to DA SOCO.

CID reported no acceptances from April 2000 through September 2001, and only one acceptance from October through March 2001. This was for an employee at headquarters and the DEC attested that the employee had consulted with her prior to receiving approval from the Commanding General.

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CONCLUSIONS

CID's ethics program is in compliance with applicable laws and regulations. We commend the headquarters ethics staff and Group ethics counselors for administering an ethics program for numerous personnel located throughout the world. We recognize the challenges inherent in managing a program for such a geographically dispersed population and laud CID's ethics officials for their proactive and cooperative efforts

In closing, I wish to thank the headquarters ethics staff for their cooperation during the course of our review. A copy of this report is being forwarded to Army's Inspector General via transmittal letter. Please contact Dale Christopher at 202-208-8000, extension 1130, if we can be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs

Report Number 03-004



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

January 22, 2003

Steven J Morello
General Counsel and
Designated Agency Ethics Official
Department of the Army
104 Army Pentagon
Washington, DC 20310-0104

Dear Mr. Morello:

The Office of Government Ethics (OGE) recently completed its review of the ethics program at the United States Army Corps of Engineers (USACE). This 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 effectiveness and compliance with applicable laws and regulations. The review was conducted during October and November 2002. The following is a summary of our findings, conclusions, and recommendation.

HIGHLIGHTS

OGE commends USACE for its commitment to maintaining the integrity of its employees, as demonstrated by the effectiveness of its training. Because of concerns about the accuracy and completeness of the advice and counseling being provided, USACE has begun clearing its advice and counseling with the Department of the Army (Army) Office of General Counsel prior to issuance. The ethics program will improve even more with additional attention to advisory committees

ADMINISTRATION

USACE's ethics program is decentralized. USACE headquarters' (HQ USACE) ethics counselor, in addition to managing the ethics program for headquarters employees, oversees the aspects of the ethics program administered by other ethics counselors at each of USACE's 8 divisions, 41 districts, and 8 research and development laboratories (hereafter referred to as USACE components). This oversight includes obtaining information for the various reports required by OGE, ensuring that ethics counselors receive proper training, and disseminating ethics-related policies and directives.

FINANCIAL DISCLOSURE SYSTEMS

In 2002, 11 military and 42 civilian USACE employees were required to file public financial disclosure reports. We examined all 11 of the reports filed by military personnel and a sample of 29 of the 42 reports filed by civilians, these consisted of all the reports filed by HQ USACE civilian employees and a sample of those filed by civilian employees located within USACE components. The reports were generally filed, reviewed, and certified in a timely manner.¹ Moreover, ethics counselors at USACE and the Army Standards of Conduct Office (DA SOCO), where reports are forwarded for final review, certification, and retention, appear to have conducted a thorough review of the reports, as evidenced by the few technical deficiencies and no substantive deficiencies contained therein.

We also examined 56 of the 113 confidential reports required from and filed by regular HQ USACE employees in 2001.² Of these, four were new entrants and the remainder were annual reports, all of which were filed using the OGE Form 450.³ While all annual reports we examined were filed, reviewed, and certified timely, two new entrant reports were filed late, and the filing timeliness for another could not be determined due to a failure to record the filer's date of appointment to the covered position.⁴ The HQ USACE ethics counselor stated he was aware of the new entrant filing timeliness issue, but was confident that the current system by which

¹One combined annual and termination report was filed around the annual filing deadline, but more than thirty days after termination; the late fee was waived. Another report was filed almost two months late; however a note stated that it had initially been submitted timely, but on an obsolete form. Therefore, it was resubmitted on a current form.

²Within the last year USACE ethics counselors have made a concerted effort to reduce the number of confidential filers. The HQ USACE ethics counselor stated that they had succeeded in reducing the number of filers USACE-wide from over 10,000 to approximately 7,000 in 2002. At HQ USACE the number of filers has declined almost as dramatically; from 113 to only 83

³The HQ USACE ethics counselor explained that while he does not prohibit the use of the OGE Optional Form 450-A, he does not encourage it, and consequently, does not attach an electronic copy of the optional form to the notification e-mail he issues.

⁴In addition, the ethics counselors failed to record the date on which they received each report. Therefore, we relied on the dates filers signed their reports to determine filing timeliness. We reminded the HQ USACE ethics counselor of the requirement to record the dates on which he or component ethics counselors receive reports.

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he receives semimonthly reports of new employees from the Office of Human Resources will remedy the problem. The review of the reports appeared to be thorough as we found only minor technical and no substantive deficiencies in reports we examined.

USACE has three Federal advisory committees. These committees consist of the Mississippi River Commission with seven current members; The U.S. Army Coastal Engineering Research Board with seven current members, and The Chief of Engineers Environmental Advisory Board with nine current members. We examined all available reports required from special Government employee committee members in 2001, the majority of which were appropriately filed, reviewed, and certified. However, two incumbent members have not filed financial disclosure reports since filing their new entrant SF 278s upon nomination several years ago⁵

EDUCATION AND TRAINING PROGRAM

HQ USACE provides initial ethics orientations and annual ethics training for all covered HQ USACE employees and encourages non-covered personnel to complete training as well. This training complied with the requirements in subpart G of 5 C.F.R. part 2638

The number of USACE employees has been declining in recent years, so ethics counselors rarely need to conduct initial ethics orientations. Despite the virtual hiring freeze at USACE, the HQ USACE ethics counselor did provide an initial ethics orientation in 2002 for approximately 40 new attorneys hired under an honors program.

The HQ USACE ethics counselor personally provided verbal annual ethics briefings for all public filers at headquarters in 2001. At the USACE components, ethics counselors also conducted verbal training for all public filers, basing it on training materials developed by the Department of Defense Standards of Conduct Office (DOD SOCO)

Likewise, all confidential filers received their 2001 annual ethics briefings. The HQ USACE ethics counselor sent an e-mail notification to all headquarters employees reminding them of the annual training requirement and directing them to DOD SOCO's Web site, where they could access and complete online interactive ethics

⁵We were advised by the HQ USACE ethics counselor that several years ago advisory committee members switched from filing SF 278s to filing OGE Form 450s. The need for these two members to file a financial disclosure form was apparently overlooked in the transition process and not discovered until our review.

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training⁶ A feature of USACE's e-mail system allowed the HQ USACE ethics counselor to determine whether recipients actually opened the message⁷

In 2001, members of the Mississippi River Commission were provided live ethics training by a divisional ethics counselor. Members of the Chief of Engineers Environmental Advisory Board and the U.S Army Coastal Engineering Research Board were provided written ethics training materials.

ADVICE AND COUNSELING SERVICES

Although advice and counseling services have been developed and conducted in accordance with 5 C.F.R § 2638.203(b)(7) and (8), we were concerned about the accuracy and completeness of the advice and counseling, particularly with respect to advice provided on seeking and post employment. As a result, the documents were provided to the Army's Deputy General Counsel (Ethics and Fiscal) for review and analysis. Based on his examination, the Deputy General Counsel (Ethics and Fiscal) decided that, effective immediately, any advisory memoranda prepared by the HQ USACE ethics counselor would be cleared through his office prior to issuance to ensure the accuracy and completeness of the guidance provided.

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

USACE accepts payments of travel and related expenses from non-Federal sources in accordance with 31 U.S.C. § 1353 and 41 C.F.R. part 304-1. However, this authority is rarely utilized at headquarters, but more frequently used on behalf of scientists at the eight USACE laboratories. No payments were accepted from April 2001 through March 2002.

COORDINATION WITH INVESTIGATIVE ORGANIZATIONS

Based on our discussions with the HQ USACE ethics counselor and an examination of relevant documents, USACE appears to comply with the requirements of 5 C.F.R. §§ 2638.203(b)(11) and (12) and 2638.603. Allegations of ethical wrongdoing are usually investigated first by an internal investigating officer. These investigating officers are supported by counsel and follow the procedures for conducting investigations contained in Army

⁶Although training is only required for financial disclosure report filers, the HQ USACE ethics counselor urges all headquarters personnel to take the training.

⁷In 2002, the HQ USACE ethics counselor required all covered employees to send him a reply e-mail acknowledging that they had completed the training.

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Regulation 15-6 This investigation determines whether any misconduct has occurred, and if so, whether it is a violation of rule or law Rule infractions are usually handled internally through administrative disciplinary actions while most cases involving potential criminal conflict of interest violations are referred directly to the Criminal Investigative Command (CID) However, any allegation made against a member of the Senior Executive Service (SES) or a General Officer is investigated first by the Army's Office of Inspector General (OIG), which turns it over to CID if the allegations are substantiated

The HQ USACE ethics counselor informed us that there is currently one ongoing investigation of a USACE SES employee by OIG. This case was appropriated by OIG after an initial internal investigation of allegations of mismanagement also uncovered a possible violation of 18 U S C § 208.

CONCLUSIONS AND RECOMMENDATION

USACE's ethics program is reasonably sound but requires improvement. The ethics training provided is an especially strong element of the overall program. Implementing the following recommendation (as well as coordinating the issuance of any ethics-related advice with the Army's Deputy General Counsel (Ethics and Fiscal)) will bring the program into compliance with ethics laws and regulations

Ensure the HQ USACE ethics counselor collects OGE Form 450s from the two Mississippi River Commission members who have not filed since nomination.

In closing, I wish to thank the HQ USACE ethics counselor for his cooperation during this review and his 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 will be scheduled within six months from the date of this report. In view of the corrective action authority vested with the OGE Director 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 our recommendation be implemented in a timely manner A copy of this report is being forwarded by transmittal letter to Army's Inspector General. Please contact Dale Christopher at 202-208-8000, extension 1130, if we may be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs

File



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

January 29, 2003

The Honorable Alberto R. Gonzales
Counsel to the President
The White House
Washington, DC 20500-0002

Dear Judge Gonzales:

The Office of Government Ethics (OGE) recently completed a review of the ethics program at the White House Office (WHO). Our objectives were to assess the ethics program's effectiveness and the quality of its management. This review was conducted during December 2002. The following is a summary of our findings and conclusions.

ADMINISTRATION

As WHO's Designated Agency Ethics Official (DAEO), you have overall responsibility for managing its ethics program. However, the day-to-day functions of the program are overseen by an Associate Counsel, who serves as the Alternate DAEO. The Alternate DAEO is currently assisted by three ethics counselors who have been detailed to WHO to aid in administering its ethics program.

HIGHLIGHTS

WHO has a well-managed ethics program. During her relatively brief tenure, the Alternate DAEO has formalized, in writing and in practice, the administration of virtually every program element, resulting in an organized and efficient program. Not only does this systematic approach enhance the extant program, but will help to ensure its success under the guidance of future ethics officials.

FINANCIAL DISCLOSURE SYSTEMS

The Alternate DAEO has developed comprehensive written procedures for administering the public financial disclosure system. To evaluate the effectiveness of these procedures, we examined 30 of the 45 annual and termination public financial disclosure reports required to be filed in 2002 and forwarded to OGE in accordance with 5 C F R. § 2634.602(c)(1)(v). All of the reports we examined were filed, reviewed, and forwarded to OGE in a timely manner.

We also examined 48 of the 77 public reports filed in 2002 which were not required to be forwarded to OGE. All were filed

timely and all but two were reviewed and certified timely.¹ Moreover, the review of these reports by WHO ethics officials appeared thorough, as our examination revealed no substantive deficiencies.

Six of the public filers were issued 18 U.S.C. § 208(b)(1) waivers, about which, according to the waiver documents, OGE had been consulted. Also, copies of all the waivers were forwarded to OGE as required.

WHO also has detailed written procedures for administering its confidential financial disclosure system. To assess this system, we examined 25 of the 26 confidential reports required to be filed by regular WHO employees in 2002.² Twenty-four of the 25 reports were filed timely and all were reviewed and certified timely. As with the public reports, we did not identify any substantive deficiencies during our examination.

WHO is only responsible for one Federal advisory committee, the President's Homeland Security Advisory Council (Council), the members of which are special Government employees (SGE) appointed by the President. All 16 of the OGE Form 450s filed by current members of the Council were filed, reviewed, and certified in a timely manner and did not contain any substantive deficiencies.

Thirteen of the 16 Council members were issued 18 U.S.C. § 208(b)(3) waivers. As with the (b)(1) waivers, the waiver documents stated that OGE had been consulted in each case and copies of all the waivers were forwarded to OGE.

EDUCATION AND TRAINING PROGRAM

To meet the initial ethics orientation requirement, the Office of White House Personnel provides all incoming employees with a copy of the Standards of Ethical Conduct for Employees of the Executive Branch. Employees must certify that they have received this booklet and will review it, attend required training sessions, and complete a financial disclosure form, if applicable.

In addition, upon entering on duty in the spring of 2002, the Alternate DAEO met individually with WHO Assistants and Deputy Assistants to the President in order to avail them of her services and to foster a cooperative relationship. She has also instituted a practice whereby all newly-appointed Commissioned Officers (employees holding a commission of appointment from the President) meet with her individually and are provided a one-on-one initial orientation.

¹An additional seven reports had been recently filed and were still under review at the time of our examination.

²The remaining filer received a filing extension and thus his report had not yet been filed at the time of our review.

Pursuant to 5 C F.R § 2638 705, all employees of the Executive Office of the President are required to receive annual ethics training To meet this requirement for WHO, the Alternate DAEO personally provides numerous training courses, at least monthly, for a variety of employees. Each course is specifically tailored to the needs of the particular audience. She also provides live briefings throughout the year for other non-covered WHO personnel, such as White House Interns and Fellows According to a WHO ethics counselor, all covered WHO employees received an annual ethics briefing in 2002

In addition to the initial orientations and annual briefings, outgoing employees are required to meet with the Alternate DAEO as part of the check-out process. During the meeting, the Alternate DAEO briefs departing employees on the post-employment restrictions and provides them written summaries of these restrictions Until the check-out process is complete, employees cannot receive their final paycheck.

ADVICE AND COUNSELING SERVICES

The OGE Desk Officer assigned to WHO examined a sample of the written advice and counseling rendered by WHO ethics officials in 2002. The advice covered a wide range of subjects including providing letters of recommendation, conflicts of interest, co-sponsorship of events, gift acceptances, speaking, and fund-raising. The Desk Officer found the advice to be thorough and accurate.

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

WHO has written procedures for accepting travel payments from non-Federal sources under 31 U S.C. § 1353 and the implementing General Services Administration regulation at 41 C F R. part 304-1. To evaluate these procedures we examined a sample of the 140 payments in excess of \$250 per event accepted by WHO from the period beginning October 1, 2001 and ending September 30, 2002. All the payments included in our sample appeared to be appropriately accepted and reported to OGE in compliance with the law and regulation.

CONCLUSIONS

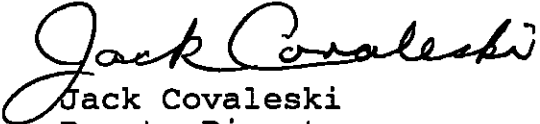
We again commend WHO for its well-functioning ethics program. In particular, we laud the efforts of the Alternate DAEO to ensure the program's efficient administration, both now and in the future. We were also particularly impressed with her ongoing practice of providing tailored, useful ethics training to a variety of audiences.

In closing, I wish to thank you, the Alternate DAEO, and the rest of the WHO staff for your efforts on behalf of the ethics

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program. Please contact me at 202-208-8000, extension 1120, or have a member of your staff contact Dale Christopher at extension 1130, if we may be of further assistance

Sincerely,


Jack Covalesski
Deputy Director
Office of Agency Programs

cc: Nanette Everson
Associate Counsel to the President
The White House

Report Number 03- 006



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

February 4, 2003

Martha B. Schneider
Deputy General Counsel and
Designated Agency Ethics Official
Merit Systems Protection Board
1615 M Street, NW.
Washington, DC 20419-0002

Dear Ms. Schneider:

The Office of Government Ethics (OGE) has completed its review of the Merit Systems Protection Board's (MSPB) ethics program. This 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 effectiveness, measured by its compliance with applicable laws and regulations.

HIGHLIGHTS

Our review revealed that MSPB has an excellent ethics program which is in compliance with applicable laws and regulations, even exceeding the minimal requirements in many areas. We found that MSPB's centralized ethics program is well-managed and adequately staffed with experienced, dedicated ethics officials.

ETHICS PROGRAM ADMINISTRATION

As MSPB's Deputy General Counsel, you serve as the Designated Agency Ethics Official (DAEO) for the approximately 240 employees dispersed among the headquarters in Washington, DC and in 10 regional/field offices. The primary ethics official responsible for the day-to-day management of MSPB's ethics program is the Alternate DAEO, an attorney within the Office of General Counsel

The Board is composed of three Presidential appointees requiring advice and consent of the Senate (PAS); the Chairman, Vice Chairman, and a Member. MSPB also has a three-member Special Panel which would meet only in the event that a final resolution of an issue between the Board and the Equal Employment Opportunity Commission is needed. The Special Panel has one PAS member, the Chairman

Ms Martha B. Schneider
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PUBLIC FINANCIAL DISCLOSURE SYSTEM

MSPB's public financial disclosure system is generally in compliance with applicable laws and regulations, with sufficient written procedures covering new entrant, incumbent, and termination filers. The written procedures were updated to reflect OGE's recent policy changes concerning the granting of filing extensions and \$200 late filing fee waivers for public filers. Since the Alternate DAEO has been informally delegated authority to certify your report, we suggested that this delegation be added to the written procedures or otherwise documented.

We examined all 22 non-PAS public reports required to be filed in 2002 (11 annual, 5 new entrant, 3 combined annual/termination, and 3 termination reports). All the reports were generally filed timely, all but six were reviewed and certified timely, and we found no substantive deficiencies, only some minor technical issues. We also examined all four PAS public reports required to be filed in 2002 (one annual, two new entrant--including the Special Panel Chairman who actually files a confidential report, and one combined annual/termination). All the reports were filed timely, all but one were reviewed timely, and copies of all of the reports were forwarded to OGE timely. The Alternate DAEO appears to conduct thorough reviews of the reports, following up with filers to obtain additional or clarifying information where necessary.

As discussed with you during our review, to determine whether reviews of public reports are timely, the date of receipt should be entered in the "Agency Use Only" block on the first page of the SF 278 or stamped on the report. The date the review commenced should also be annotated on the report or in the report file, particularly where additional or clarifying information is being provided by the filer. This would demonstrate that a review was timely even though the report was certified after 60 days from the date of receipt. Lastly, termination reports should be signed and dated by filers no earlier than the last day of service and signed and filed no later than 30 days after terminating from a covered position.

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

MSPB's confidential financial disclosure system is also in compliance with applicable laws and regulations, with sufficient written procedures covering new entrant and incumbent filers. We examined all five confidential reports required to be filed in 2001 (three annual reports, two Optional Form 450-As, and excluding the Special Panel Chairman's report). The reports were filed, reviewed, and certified timely and there were no substantive deficiencies nor technical issues. We noted that the Alternate DAEO promptly informed annual confidential filers of the recent

Ms Martha B. Schneider
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change in the reporting threshold for gifts and travel reimbursements, which became effective on October 1, 2001 for reports due October 31, 2002. As discussed with you during our review, future confidential report-related correspondence should make reference to the "OGE Form 450" rather than the obsolete "SF 450 "

EDUCATION AND TRAINING

In the area of ethics education and training, MSPB is meeting, and in some cases exceeding, the minimal requirements for initial ethics orientation and annual ethics training.

Initial Ethics Orientation

Approximately 10 new employees began working for MSPB and timely received initial ethics orientation during 2001. As part of in-processing, Human Resources Management provides new employees with a copy of the Standards of Ethical Conduct for Employees of the Executive Branch and OGE's informational handbook, "Do It Right." Once notified by Human Resources Management of the arrival of a new employee, the Alternate DAEO promptly sends an e-mail message to the employee explaining the initial ethics orientation requirement, instructing the employee on accessing one of the interactive training modules developed by the U.S. Department of Agriculture (USDA), requesting that the requirement be completed within two weeks, and advising the employee to contact you or the Alternate DAEO with any outside employment or general ethics questions. New employees are required to confirm by e-mail to the Alternate DAEO their completion of the initial ethics orientation.

The Alternate DAEO provides one-on-one, in-person training to MSPB's new Board members and their staff. The training includes the showing of OGE's video "Integrity in Public Service: Earning the Public's Trust." To guide her in-person training presentation, the Alternate DAEO developed an outline for new employee orientation which covers travel payments from non-Federal sources under 31 U.S.C. § 1353, proper use of Federal property, outside activities, and a discussion of the training video to be shown during that session. We encourage MSPB to continue providing separate training for the Board members as they occupy highly visible positions within the agency.

Additional efforts related to initial ethics orientation are planned. We commend you for initiating the development of a comprehensive handbook for new employees which includes ethics information and which new employees will be required to read and certify in writing to having done so. The Alternate DAEO plans to enclose the appropriate financial disclosure form in the package of materials for new employees entering a covered position.

Annual Ethics Training

In 2001, all covered MSPB employees received annual ethics training. Like the initial ethics orientation requirement, annual ethics training for 2001 consisted of interactive training modules developed by USDA. The Alternate DAEO sent an e-mail message to each covered employee explaining the annual ethics training requirement, instructing the employee on accessing the interactive training modules, requesting that the training be completed by mid-December, and reminding the employee to contact you or the Alternate DAEO with outside employment or general ethics questions. Employees were required to complete several training modules, including gifts from outside sources, outside employment, participating in outside organizations, and using Government property and time. To confirm their completion of the training, employees e-mailed the Alternate DAEO. Board members receive the same annual ethics training as non-PAS employees.

Additional efforts related to ethics training have been accomplished or are planned. At MSPB's management conference in June 2002, a training video entitled, "VA Ethics Court," was shown to both covered and non-covered employees and contained built-in pauses to facilitate discussion. Copies of relevant ethics statutes and regulations were also disseminated. The Alternate DAEO has solicited ideas for future annual ethics training topics via e-mail from senior staff members at headquarters and in the field, and has developed hypothetical scenarios for use in conducting annual ethics training. Moreover, she has developed an "ethics training outline" to be used for in-person annual ethics training, which covers fiduciary responsibilities of employees, questions relating specifically to the Board, and the integrity of the Board's adjudication process. Lastly, she plans to request the support of office heads in encouraging non-covered employees to complete the interactive training modules.

COUNSELING AND ADVICE

MSPB has established counseling and advice services that meet the requirements of 5 C.F.R. § 2638 203(b)(7) and (8). The written counseling and advice that we examined were complete, accurate, and consistent with applicable statutes and regulations. The Alternate DAEO attempts to reply within three business days to employees' ethics questions and maintains a log of the questions received. Travel, misuse of position, impartiality, and outside employment concerns are the most common subjects raised by MSPB employees.

With regard to outside employment, employees are advised by their supervisors to seek advice from the Alternate DAEO before engaging in outside employment (e.g., administrative law judges desiring to act as mediators for states/counties or to teach courses at a local university). MSPB is currently drafting a supplemental standards of conduct regulation concerning outside

Ms Martha B. Schneider
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employment that it plans to forward to OGE for concurrence and joint issuance in accordance with 5 C F.R § 2635 105.

Board members and their staff receive a tailored post-employment counseling session from the Alternate DAEO before they leave their positions MSPB's General Counsel left the agency in November, at the time of our review, the Alternate DAEO had already provided her with a termination packet containing post-employment information and an SF-278.

We commend the Alternate DAEO for her active involvement in the ethics community including, on occasion, attending Interagency Ethics Council meetings and OGE's annual ethics conference, regularly utilizing the services of OGE's Desk Officer, and subscribing to OGE's ethics news and information e-mail list service Such proactive measures keep the Alternate DAEO well-informed and knowledgeable of the current ethics rules which undoubtedly allow her to better serve MSPB employees in her capacity as their ethics official

INSPECTOR GENERAL

MSPB appears to be complying with 5 C F R. § 2638 203(b)(11) and (12) in utilizing the services of USDA's Office of Inspector General (OIG), including its hotline. A USDA regulation establishes the policy and procedures for providing investigative services to MSPB According to an OIG official, matters received on the hotline concerning MSPB employees are immediately referred to MSPB's Office of General Counsel. The Alternate DAEO also reminds employees during annual ethics training of the availability of the USDA OIG hotline and its purpose In 2001, only one disciplinary action was taken against an MSPB employee for misuse of position, which did not require an investigation.

We could not assess MSPB's compliance with 5 C.F.R. § 2638.603 because, according to MSPB's Legislative Counsel, there have been no referrals to the Department of Justice of alleged criminal conflict of interest violations in the past two years. However, she was not aware of the § 2638.603 requirement to concurrently notify OGE of any such referrals and their outcome After explaining the requirement, we determined that the Legislative Counsel would be the individual responsible for notifying OGE

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

During the period October 1, 2001 through March 31, 2002, MSPB approved nine payments of travel from non-Federal sources under 31 U.S.C § 1353 and the implementing regulation at 41 C F R. part 304-1 Besides the guidance contained in the statute and regulation, MSPB's Financial and Administrative Management Division

Ms Martha B. Schneider
Page 6

has assembled a travel manual that stipulates the required procedures for requesting and accepting travel payments from non-Federal sources. All nine payments were approved, and reported timely in the semiannual report to OGE of payments of more than \$250 per event, in accordance with the statute, regulation, and manual. In particular, the Alternate DAEO thoroughly tracks requests for travel payments by viewing the Lotus Notes calendar as an additional cross-check and conducting comprehensive conflict of interest analyses as required by 41 C F R § 304-1 5.

CONCLUSIONS

Our review demonstrated that you and the Alternate DAEO have successfully incorporated ethics into the culture of MSPB and have built a strong, effective ethics program. We were pleased to find that MSPB included in its FY 2002 Business Plan a portion on ethics, including overall goals of the ethics program and a month-by-month implementation plan outlining the required program elements and their status.

We wish to thank you, the Alternate DAEO, and all other MSPB personnel involved in this review for your efforts on behalf of MSPB's ethics program. Normally, a brief 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 MSPB's Legislative Counsel. Please contact Jan E Davis at 202-208-8000, extension 1176, if we can be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs

Report Number 03- 007



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

February 28, 2003

Yvonne Bonner
Chief
Office of Internal Affairs
U.S. Marshals Service
600 Army Navy Drive
Arlington, VA 22202

Dear Ms. Bonner:

As part of our Agency monitoring activities, we have completed a review of the ethics program at the U.S. Marshals Service (USMS). This 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 effectiveness, measured largely by its compliance with applicable laws and regulations.

I have enclosed a copy of the report for your information. We found that USMS' ethics program complies with applicable laws and regulations. It is clear that ethics officials take their duties and responsibilities seriously and that they are dedicated to providing high quality services to agency employees in an effort to prevent ethical violations. Please contact Ilene Cranisky at 202-208-8000, extension 1218, if you wish to discuss this report.

Sincerely,

A handwritten signature in cursive script that reads "Jack Covaleski".

Jack Covaleski
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 28, 2003

The Honorable Glen A. Fine
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, NW.
(b) (6)
Washington, DC 20530-0001

Dear Mr. Fine:

As part of our Agency monitoring activities, we have completed a review of the ethics program at the U.S. Marshals Service (USMS). This 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 effectiveness, measured largely by its compliance with applicable laws and regulations.

I have enclosed a copy of the report for your information. We found that USMS' ethics program complies with applicable laws and regulations. It is clear that ethics officials take their duties and responsibilities seriously and that they are dedicated to providing high quality services to agency employees in an effort to prevent ethical violations. Please contact Ilene Cranisky at 202-208-8000, extension 1218, if you wish to discuss this report.

Sincerely,

A handwritten signature in cursive script that reads "Jack Covaleski".

Jack Covaleski
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 28, 2003

Paul R. Corts
Assistant Attorney General
for Administration
Department of Justice
(b) (6)
950 Pennsylvania Avenue, NW.
Washington, DC 20530

Dear Mr. Corts:

The Office of Government Ethics (OGE) has recently completed its review of the ethics program at the U.S. Marshals Service (USMS), a bureau of the Department of Justice (DOJ). 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 effectiveness of the ethics program, largely measured by its compliance with applicable statutes and regulations. The review was conducted intermittently between November 2002 and January 2003.

HIGHLIGHTS

We found that USMS has a well-managed ethics program. It was apparent that ethics officials take their duties and responsibilities seriously and that they are dedicated to providing high quality services to agency employees in an effort to prevent ethical violations. This is especially evident in the areas of providing ethics training and advice. We commend the Ethics Officer's enthusiastic and skillful approach to managing the day-to-day aspects of the program and the recent hiring of another staff member to allow the Ethics Officer more time to focus on the substantive program aspects.

ADMINISTRATION OF THE PROGRAM

For the approximately 4,250 USMS employees who are located in headquarters in Arlington, VA and in 95 district offices, the agency's ethics program is centrally administered by the USMS' General Counsel, who serves as the Deputy Designated Agency Ethics Official (DDAEO) under your general direction. An acting General Counsel has been serving in the DDAEO position since the departure of his predecessor in August 2001.

The day-to-day operation of the ethics program primarily rests with one Associate General Counsel (AGC), who is commonly known as the Ethics Officer and who has served in this capacity for about four years. In addition to being in charge of daily ethics tasks, he also has other legal office responsibilities. One other AGC also handles some ethics program duties, including reviewing financial disclosure reports and providing ethics training and advice. The "ethics team" had consisted of three additional attorneys, who provided some limited ethics program assistance but who left the agency in the past year.

RELATIONSHIP WITH THE OFFICE OF INTERNAL AFFAIRS AND OFFICE OF INSPECTOR GENERAL

Ethics officials appear to be complying with 5 C.F.R. § 2638.203(b)(12) concerning ethics officials' interactions with USMS' Office of Internal Affairs and DOJ's Office of Inspector General (OIG). We were not able to assess USMS' compliance with § 2638.603 as no referrals for prosecution have been made to DOJ involving a USMS employee's alleged violation of the criminal conflict of interest statutes. However, an OIG investigator is currently consulting with DOJ's Public Integrity Section concerning a senior USMS official's possible violation of the statutes. As you know, § 2638.603 requires that agencies notify OGE of any referrals to DOJ, declinations by DOJ, and certain other related matters. The receipt of this information is an important means by which OGE can monitor USMS' system of enforcement, including whether disciplinary action is considered when DOJ declines to prosecute.

EDUCATION AND TRAINING

We found that USMS has an active ethics training program in place which exceeds OGE ethics training regulation requirements. We commend the efforts taken by ethics officials to make employees aware of rules and regulations in an effort to prevent potential ethical conflicts.

On an annual basis, as required by our regulation, ethics officials have been documenting how annual training will be conducted. We reminded them, however, that 5 C.F.R. § 2638.706 requires that the written plan contain estimates of the number of employees who will receive verbal or written training.

Initial Ethics Orientation

USMS' initial ethics orientation process ensures coverage of the basic requirements of the training regulation. As part of their in-processing, all employees are given required written materials (which are also available on the agency's ethics Web site) and they are required to certify that they have received this information. Beginning in 2003, new employees will be required to complete a Web-based interactive ethics training module as part of their orientation.

The orientation process for U.S. Marshals includes giving them a detailed binder of written ethics materials and in-person ethics orientation from ethics officials. According to the Ethics Officer, he provided several ethics briefings to the USMS Director, who is a Presidentially-appointed, Senate-confirmed (PAS) employee, shortly after his appointment in 2001.

Annual Ethics Training

We confirmed that almost all covered employees received annual ethics training in 2001 and 2002. By the close of our review in January, records showed that almost all public filers had received verbal ethics training in 2002. However, ethics training completion certifications were still being collected from other covered employees. When we last met, the Ethics Officer stated that about 80 percent of other covered employees had certified that they had completed computer-based training or his records supported that they had attended an in-person annual ethics training session. He was continuing to collect training confirmations from the remaining covered employees.

In 2002, training requirements were satisfied either by in-person training or by using OGE's training module entitled "Misuse of Position." Above and beyond providing annual ethics training to covered employees, ethics officials also maintained an active in-person ethics training schedule for non-covered employees. During 2002, 18 ethics training sessions were given to various employees groups as part of other ongoing employee training. According to records we examined, over 600 non-covered employees attended one of these sessions.

We attended one of the two annual ethics training classes offered to headquarters employees in December and observed that participants were fully engaged and it appeared that they were benefitting from in-person training based on the discussions that took place. Training consisted of providing a brief overview of the

ethics rules and use of a unique USMS training game entitled "How to Become a Millionaire on a Government Salary." Both the Director and Deputy Director participated in this training session.

Again, above and beyond the requirements of our training regulations, every January, USMS requires that all employees acknowledge that they have received and read the Standards of Conduct, DOJ's supplemental standards of conduct (5 C.F.R. part 3801), and USMS' Code of Professional Responsibility. Employees' written certification of compliance with this acknowledgment requirement is reported to the Ethics Officer.

COUNSELING AND ADVICE

We were impressed with the advice dispensed by ethics officials. Besides meeting the minimum requirements of 5 C.F.R. § 2638.203(b)(7) and (8), it was evident to us that ethics officials market their counseling services in an effort to prevent ethical violations. We also commend officials for recently launching an ethics Web site which contains a host of useful information.

Advice given to employees is most often provided orally. As appropriate, however, it is also dispensed in written form, most frequently via e-mail. Of the approximately 35 written determinations that we examined, covering 2001 to the present, we found that the advice rendered was accurate, complete, and timely.

In an effort to ensure an understanding of the post-employment rules, while a variety of information is available on the agency's ethics Web site, covered employees are given ethics-related post-employment information when they attend a retirement briefing where post-employment matters are discussed. According to the Ethics Officer, he often provides U.S. Marshals with either an individual briefing or written materials.

OUTSIDE EMPLOYMENT AND ACTIVITIES

Through our review of the financial disclosure reports and the written counseling and advice, we believe that USMS is complying with the provisions of § 3801.106 of the supplemental standards of conduct concerning prohibited outside employment and, for certain types of outside employment, the requirement to obtain written prior approval. The Ethics Officer stated that he often counsels employees and supervisors on proposed outside activities which do not require prior approval, according to USMS Policy Directive No. 01-68.

PUBLIC AND CONFIDENTIAL FINANCIAL
DISCLOSURE SYSTEMS

The public and confidential financial disclosure systems at USMS were well-managed except for the delay in transmitting to OGE for review copies of public reports filed by senior-level (SL) U.S. Marshals.¹ USMS' use of cautionary notices to confidential filers is a good management technique to increase filers' awareness of potential conflicts of interest. As another good management technique, we suggested that ethics officials consolidate agency internal documents, supplementing DOJ's procedures established under section 402(d)(1) of the Ethics Act, which they agreed to do.

At the time of our fieldwork, all but a few of the reports filed by SL U.S. Marshals in 2002 had been certified. For the few reports not yet certified, ethics officials had outstanding questions remaining that required responses from filers. For those annual and termination reports that had been certified earlier in the year, we found that most were not forwarded to OGE until November 2002. We reminded officials that reports requiring little or no follow-up should be transmitted to OGE as soon as they are certified. They told us that they would forward the few remaining reports immediately after they are certified.

ACCEPTANCE OF TRAVEL PAYMENTS

For the period covering April 2001 through December 2002, approximately 15 travel payments were accepted under the General Services Administration's Interim Rule 4 at 41 C.F.R. part 304-1, implementing 31 U.S.C. § 1353. All were analyzed for conflicts of interest, in accordance with § 304.1-5.

While the Ethics Officer told us that the process for accepting travel payments from non-Federal sources is often a topic covered during ethics training and therefore employees are generally aware of the procedures, we suggested that the system be

¹Ninety-four of 95 U.S. Marshals are PAS employees (the U.S. Marshal from Guam/Northern Mariana Islands is appointed by the Attorney General). Although copies of all PAS U.S. Marshals' nominee public reports are forwarded for review to OGE under 5 C.F.R. § 2634.602(c)(1)(vi), only 27 (of 94 PAS U.S. Marshals) are SL whose positions require the filing of subsequent annual and termination public reports for which copies are forwarded to OGE. Non-SL U.S. Marshals file annual confidential financial disclosure reports.

Mr. Paul R. Corts
Page 6

documented to help educate employees about not only the process, but the need to avoid potential conflicts. Ethics officials told us that they would do this and that they would post the procedures on the agency ethics Web site. We supplied sample procedures from other agencies to assist in this effort.

CONCLUSIONS

We are pleased to report that the ethics program at USMS complies with applicable ethics laws and regulations and that the various program elements are well-managed by capable and experienced staff. We believe that the ethics training and advisory services offered by ethics officials help employees to avoid ethical conflicts.

Our report provides some clarifications and suggestions for ethics officials. We believe that the recent hiring of a staff member to assist with administrative program tasks will enhance overall program operations. Since we are not making any formal recommendations for improving the ethics program at USMS at this time, no six-month follow-up is necessary.

In closing, I wish to thank you for all of your efforts on behalf of the ethics program. We are sending a copy of this report to the Office of Internal Affairs and to the Inspector General. Please contact Ilene Cranisky at 202-208-8000, extension 1218, if we can be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs



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

February 28, 2003

Rosalind A. Knapp
Deputy General Counsel and
Designated Agency Ethics Official
Department of Transportation
400 Seventh Street SW.
(b) (6)
Washington, DC 20590

Dear Ms. Knapp:

The Office of Government Ethics (OGE) has completed its review of the ethics program of the Department of Transportation's (DOT) Federal Aviation Administration (FAA). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Ethics Act).

HIGHLIGHTS

The FAA ethics program is managed by knowledgeable and enthusiastic ethics officials and there appears to be some improvement in the program since we last reviewed it in 1997. Following that review, FAA eliminated the backlog of thousands of unreviewed financial disclosure reports. However, problems persist in the program, primarily with the financial disclosure systems. Moreover, last year FAA found approximately 1000 employees who had not been filing public financial disclosure reports who should have been required to file.

PROGRAM ADMINISTRATION

Pursuant to 5 C.F.R. § 2635.102(b), the Supplemental Standards of Ethical Conduct for Employees of the Department of Transportation (the supplemental standards) (5 C.F.R. part 6001), and FAA Order 3750.7 (the Order), the Designated Agency Ethics Official (DAEO) has designated the FAA Chief Counsel as a Deputy Ethics Official (DEO) charged with coordinating and managing the ethics program at FAA.¹ The DEO has further delegated these duties to the Deputy Chief Counsel and to the Associate Chief Counsel for

¹ The Order also describes the procedures for administering the financial disclosure systems.

Ms. Rosalind A. Knapp
Page 2

Ethics (ACCE), who has been designated by the DEO as a Deputy Ethics Counselor (DEC). As the DEC, the ACCE carries out the day-to-day ethics functions at FAA headquarters. The ACCE is assisted in the daily management of the FAA headquarters ethics program by a Senior Attorney for Ethics (SAE) and a Program Analyst (PA). In addition, an Assistant Chief Counsel in each region has been designated the DEC for the region. Ethics Program Coordinators (EPC) in various organizations serve as liaison officers to ethics officials in administering the ethics program. Finally, the ACCE is responsible for ensuring that DECs, EPCs, and any other FAA employees serving in ethics-related capacities are appropriately trained.

SUPPLEMENTAL STANDARDS

Section 6001.104(b) of the supplemental standards prohibits an FAA employee, or spouse or minor child of an employee, from holding stock or having any other securities interest in an airline or aircraft manufacturing company, or in a supplier of components or parts to an airline or aircraft manufacturing company. However, at § 6001.104(c) there is an exception to the prohibition for interests in certain publicly traded or available investment funds and at § 6001.104(d) there is a provision for a waiver of the prohibition under certain conditions. The supplemental standards do not have an outside employment/activities prior approval requirement.

PUBLIC FINANCIAL DISCLOSURE SYSTEM

The only problem we found with the public financial disclosure system was that 14 reports required to be filed in 2002 had still not been filed. Among the public reports required to be filed were approximately 1000 from employees who had not previously been filing reports but who should have been required to file. All reports filed, including some that were filed late, were reviewed timely and thoroughly and, in fact, FAA ethics officials have exceeded minimal requirements through their use of divestiture and cautionary letters to address problems identified on the reports. Nevertheless, missing or late public (as well as confidential) reports impedes an agency's ability to provide timely and specific conflict of interest advice and, ultimately, its ability to prevent ethics violations. Finally, FAA has only one Presidentially-appointed, Senate-confirmed employee (PAS), the Administrator,² whose public report was filed and reviewed timely and a copy transmitted to OGE timely.

²Currently, the Deputy Administrator is not a PAS employee.

As for the approximately 1000 employees who previously had not been filing public reports, most had been filing confidential financial disclosure reports and all, based on their salaries, should have been filing public reports. Most of these employees are in air traffic controller positions. Because they were in pay bands, FAA did not find out automatically that they had reached or exceeded the salary at which they should have been filing public financial disclosure reports. Most of these additional public filers submitted their new entrant reports as part of the 2002 annual filing cycle.

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

We also found some problems with the confidential financial disclosure system. Many confidential reports were filed late, especially by new entrant filers, based on our examination of a sample of 103 of 2052 reports required to be filed in 2001. Moreover, we noted in regard to a number of OGE Optional Form 450-As that the "Position/Title" entered was different from the "Position/Title" entered on the previously-filed OGE Form 450. As 5 C.F.R. § 2634.905(d) allows filers to submit the optional form if they can certify to not having changed jobs since filing their previous report, it was unclear whether these OGE Optional Form 450-As had been filed properly.

All 103 reports were reviewed timely. They also appeared to be reviewed thoroughly based on the many reports resulting in letters directing divestiture and cautionary letters.

EDUCATION AND TRAINING

Initial ethics orientation exceeds the requirements in subpart G of 5 C.F.R. part 2638, while annual ethics training has been conducted in accordance with subpart G. However, FAA tracks attendance at neither initial ethics orientation nor annual ethics training sessions. OGE strongly suggests that the FAA establish tracking systems for initial ethics orientation and annual ethics training.

Initial ethics orientation is managed generally by supervisors, who provide new employees with the required one hour to review the Order and its attachments, which include a copy of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), a copy of the supplemental standards, and the names and contact information for the Deputy Chief Counsel and the ACCE. Additionally, during new employee orientation conducted by the Office of Human Resources (OHR), employees watch a CD-ROM which was made by ethics officials in collaboration with OHR a few years ago. The SAE claimed initial ethics orientation was being provided to all new FAA employees. DOT ethics officials provide initial

Ms. Rosalind A. Knapp
Page 4

ethics orientation for DOT PAS employees, including the FAA Administrator.

The ACCE and the SAE claimed that all 12,059 FAA employees in covered positions received annual ethics training in 2001. At the 2002 annual ethics training sessions held during September 16-20, 801 of the approximately 1000 new public filers were trained via teleconferencing. Seven more teleconferencing sessions were scheduled for October. The ACCE stated that the 2002 training heavily emphasized gifts, conflicts of interest, the basic obligations of a Federal employee, and FAA's policies on the use of e-mail and the Internet. Employees in the field were told to contact their Regional Counsel with any questions or concerns, but were also provided with contact information for the Deputy Chief Counsel, the ACCE, and the SAE.

COUNSELING AND ADVICE

FAA has a counseling and advice program for agency employees, wherein records are kept, when appropriate, that appears to meet the requirements at 5 C.F.R. § 2638.203(b)(7) and (8). The ACCE estimated he answered approximately 500 queries and the SAE approximately 1000 queries from January 2001 to the time of our review. The most common topics were the widely attended gatherings exception to the gift prohibition at 5 C.F.R. § 2635.204(g) of the Standards, the post-employment restrictions, and outside employment. According to the ACCE, approximately half of the counseling and advice is rendered orally and half is rendered in writing. Notwithstanding the apparent paucity of written counseling and advice for 2002, the ACCE advised us that much of it was erased when the Office of the Chief Counsel switched to Lotus Notes in the early part of 2002. We examined a sample of the written counseling and advice, which we found to be responsive to employees' needs in terms of being complete, accurate, and timely.

Although ethics officials provide post-employment counseling and advice, they do so only in response to requests from employees. The ACCE advised us that he is working with OHR to have the Office of the Chief Counsel included in the "check-out" process for departing employees to enable ethics officials to better provide post-employment counseling and advice to employees.

FEDERAL ADVISORY COMMITTEES/COUNCILS

The ethics program for advisory committee/council members appeared to meet all requirements except for the late filing of some of the public financial disclosure reports. FAA has one advisory council, the Federal Aviation Advisory Council (the Council), whose five-member subcommittee, the Air Traffic Services Subcommittee (ATSS), has members who are considered employees.

According to the Air Traffic Management System Performance Improvement Act of 1996, under which the Council was established, ATSS members are to be treated as public filers without regard to whether they work in excess of 60 days in a calendar year as otherwise required by § 101(d) of the Ethics Act. Accordingly, all ATSS members file public reports even though they may not work in excess of 60 days. Also, certain ethics restrictions are levied on ATSS members, including not allowing them to own stock in or bonds of an aviation or aeronautical enterprise (unless the financial interest is in a "diversified mutual fund" or exempted by 18 U.S.C. § 208). Other members of the Council are considered representatives of industry except for two members appointed by the Secretaries of Transportation and Defense.

We examined the most recent public reports filed by the five ATSS members, consisting of three new entrant and two annual reports. The reports did not indicate the date received by FAA; accordingly, using the dates signed by the filers, we found that the three new entrant reports were filed timely and the two annual reports were filed late.³ The reports were reviewed timely, based on the dates the filers signed the reports, and were reviewed thoroughly. The new entrant filers received initial ethics orientation and the annual filers received annual ethics training, as required. The two members of the Council appointed by the Secretaries of Transportation and Defense, the Deputy Secretary of Transportation and the Department of Defense Liaison for Civil Aviation, are public filers whose service on the Council is considered when their reports are reviewed.

In addition to the Council, FAA has seven advisory committees, each chartered under an FAA order.⁴ Based on an examination of the pertinent orders, all of which contained current charters, and discussions with ethics officials, we were satisfied with FAA's determination that all FAA advisory committee members are representatives of private industry or state or local governments. Making the proper determination as to whether members are representatives or special Government employees (SGE) is vital as SGEs, not representatives, are subject to financial disclosure, the

³One annual filer dated his report August 19, 2002 and the other annual filer dated her report September 3, 2002.

⁴The advisory committees consist of Air Traffic Procedures Advisory Committee, the Research, Engineering, and Development Advisory Committee, the Aviation Security Advisory Committee, the Aviation Rulemaking Advisory Committee, the Commercial Space Transportation Advisory Committee, and the Aging Transport Systems Rulemaking Advisory Committee. The seventh, RTCA, Inc., is utilized as an advisory committee.

Ms. Rosalind A. Knapp
Page 6

standards of conduct, and all or some of the provisions in four criminal conflict of interest statutes (18 U.S.C. §§ 203, 205, 207, and 208).

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

Travel payments accepted by agency employees on behalf of FAA had been properly approved in accordance with 31 U.S.C. § 1353 and the implementing regulation at 41 C.F.R. part 304-1 (although underlying records for a few acceptances were missing). However, at the time of our fieldwork FAA had not forwarded to DOT FAA's most recent report of such travel payments of more than \$250 per event, nor had it included all payments in an earlier report to DOT, for compilation in DOT's semiannual reports to OGE required by 41 C.F.R. § 304-1.9.

DOT's semiannual report submitted to OGE for the period April 1, 2001 - September 30, 2001 revealed 28 acceptances of travel reimbursements by FAA employees. The underlying records for four acceptances were missing, while we were provided underlying records for another four acceptances during this period that had not been reported to OGE. However, we found that all of the acceptances for which there were records had been properly approved, including having been analyzed for conflicts of interest in accordance with 41 C.F.R. § 304-1.5. Finally, FAA had not forwarded to DOT its report of payments for compilation by DOT in its semiannual report to OGE for the period October 1, 2001 - March 31, 2002. FAA ethics officials advised us that the failure to forward the report to DOT was due to staffing problems and that the report would be forwarded as soon as possible.

OTHER MATTERS

Neither the ACCE, an FAA Office of Internal Security (OIS) representative, nor a DOT Office of the Inspector General (OIG) special agent was aware of any referrals for prosecution to the Department of Justice, since January 2001 to the time of our review, of any alleged violations of the criminal conflict of interests statutes by FAA employees. Accordingly, we were unable to assess current compliance with the requirement at 5 C.F.R. § 2638.603 for agencies to notify OGE of such referrals. FAA ethics officials appear to be complying with 5 C.F.R. § 2638.203(b)(12), which requires the DAEO to ensure that the services of the agency's OIG, or organization performing similar functions, are utilized when appropriate, including the referral of matters to and the acceptance of matters from the OIG or other organization. According to the ACCE, all matters requiring investigation, including alleged violations of the criminal conflict of interest statutes, are referred to OIS. He has also made a few referrals to OIS concerning non-criminal, ethics-related

matters. The OIS representative advised us that only alleged criminal violations are referred for investigation to OIG.

The ACCE advised us that he generally follows up on referrals to OIS to determine whether FAA management takes disciplinary action, although he has frequently been dissatisfied with the action taken or that action has not been taken. He generally does not follow up on referrals to OIG although, on occasion, OIG has contacted him regarding referred matters.

CONCLUSIONS AND RECOMMENDATIONS

The FAA has all the elements of an effective ethics program managed by knowledgeable and enthusiastic ethics officials. The strong points in the program include the counseling and advice program and the use of cautionary letters in the financial disclosure program. Accordingly, there appears to be some improvement in the program since we last reviewed it in 1997. Following that review, FAA eliminated the backlog of thousands of unreviewed financial disclosure reports. However, problems persist in the program, primarily with the financial disclosure systems. Moreover, last year FAA found approximately 1000 employees who had not been filing public financial disclosure reports who should have been doing so. During our discussions with the ethics officials we learned that they believe additional staffing would help the program. Further, our review revealed evidence of the need for additional resources in the program.

We should note that based on discussions with FAA ethics officials, subsequent to completion of the formal field work, progress had been made in the financial disclosure programs. They advised that a majority of the 90 outstanding confidential disclosure reports had been cleared and that only 2 of the 14 missing public disclosure reports were still pending.

Accordingly, we recommend that you ensure that FAA:

1. Has public filers whose reports were delinquent in 2002 file their reports as required and, pursuant to amended 5 C.F.R. § 2634.704 (67 Fed. Reg. 49857 (Aug. 1, 2002)), assesses the \$200 late filing fee or, as appropriate, waives the fee.
2. Establishes procedures for the timely filing of new entrant confidential reports.
3. Has confidential filers submit their OGE Optional Form 450-As in accordance with 5 C.F.R. § 2634.905(d), especially the requirement for the form to be submitted only if the filer has not changed jobs.

Ms. Rosalind A. Knapp
Page 8

4. Submits to DOT timely and complete reports of travel payments of more than \$250 per event under 31 U.S.C. § 1353 for compilation in DOT's semiannual reports to OGE.

In closing, I wish to thank the FAA ethics officials for their efforts on behalf of the ethics program. 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. In view of the corrective action authority vested in 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 the FAA implement actions to correct these deficiencies in a timely manner. We are sending a copy of this report to the FAA DCC and the DOT IG. If you have any questions please contact Charles R. Kraus at 202-208-8000, extension 1154.

Sincerely,



Jack Covalesski
Deputy Director
Office of Agency Programs

Report Number 03-009



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

March 10, 2003

Randi E. DuFresne
General Counsel and
Designated Agency Ethics Official
National Security Agency
9800 Savage Road, (b) (6)
Fort George G. Meade, MD 20755-6205

Dear Ms. DuFresne:

The Office of Government Ethics (OGE) has completed its review of the National Security Agency's (NSA) ethics program. This 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 effectiveness, measured by its compliance with applicable laws and regulations. The review was conducted during December 2002.

HIGHLIGHTS

We found that NSA has an exemplary ethics program supported by an abundance of written policies and procedures and useful resources for employees, including the Standards of Conduct Office's (SOCO) sophisticated Web site. You and your ethics staff provide informative ethics training, quality advice and counseling services, and thorough reviews of financial disclosure reports. In particular, we commend the Ethics Program Manager (PM) for her commitment to NSA's ethics program and all of the SOCO for successfully incorporating ethics into NSA's culture.

ETHICS PROGRAM ADMINISTRATION

The NSA SOCO, within the Office of General Counsel, administers the agency's ethics program, whereby you serve as the Designated Agency Ethics Official (DAEO), devoting 100 percent of your time to ethics. You are assisted by the Alternate DAEO, another ethics counselor, an administrative assistant, and a paralegal who, as NSA's PM, is also responsible for the day-to-day management of the program.

EDUCATION AND TRAINING

In the area of ethics education and training, we were pleased to find that NSA is exceeding OGE's minimal requirements for both initial ethics orientation and annual ethics training. The SOCO has established creative, informative ethics education initiatives and has designed many practical, user-friendly documents, booklets,

and brochures, which are available to employees in both hard copy and on its Web site. Besides providing annual ethics training to financial disclosure filers, the SOCO provides ethics training to other NSA employees, including Contracting Officers Representatives, credit card users, new senior cryptologic executives, and employees from NSA organizations requesting "special situation" ethics training.

Initial Ethics Orientation

The SOCO provides one-hour PowerPoint ethics briefings to all new NSA employees, including full-time and part-time employees, summer hires, and interns, on their first day of duty. The briefing covers gifts, conflicts of interest, outside activities, use of Government resources, political activities, an overview of the SOCO, and contact information for you and the other NSA ethics officials. Employees are given detailed summaries of the ethics rules to keep. In 2002, 25 briefings were provided to over 800 new employees.

Annual Ethics Training

NSA provided public filers annual ethics training during the months of June through November 2002. There were 10 one-hour PowerPoint ethics briefings covering interactions with non-Federal entities (outside activities). Public filers in the field fulfilled their training requirement by taking the Department of Defense (DOD) SOCO's online ethics training, available on NSA SOCO's Web site. NSA ethics officials are always available to answer questions related to the training. The PM diligently tracks each employee's completion of the required training using sign-in sheets and completion certificates. She also annotates the master list of public filers to note when training was completed and what type. At the time of our review, all but 22 employees had completed the 2002 annual ethics training; the PM assured us that these employees would complete the training before the end of the calendar year.

In 2002, all the required written training materials were distributed to confidential filers. In addition, the online ethics training described above was also available to confidential filers. Members of NSA's Advisory Board (NSAAB), all of whom are special Government employees (SGE), completed their annual ethics training by reviewing written materials covering conflicts of interest and signing a completion certificate. Prior to coming on board, NSAAB members receive a package containing a blank OGE Form 450, a disqualification statement, the ethics training materials, and the completion certificate. This practice ensures that members complete their financial disclosure report and review the training materials well in advance of their first meeting.

COUNSELING AND ADVICE

NSA has established counseling and advice services that meet the requirements of 5 C.F.R. § 2638.203(b)(7) and (8). The samples of written counseling and advice that we examined were complete, accurate, and consistent with applicable statutes and regulations.

The practicality and value of your ethics advice appears to result not only from the responses your office provides to individual NSA employees, but from the organization and accessibility of the ethics advice on the SOCO Web site your office has established on NSA's intranet. Responses to employees' inquiries, whether they were received via e-mail, telephone, or in-person, are entered and tracked in a database. The SOCO Web site offers legal guidance on conflicts of interest, financial disclosure, gifts and travel benefits, outside activities, post-Government employment, and use of Government resources. Ethics bulletins, booklets, and regulations are available, as well as a "feedback" page on which employees can enter a question and automatically send an e-mail to a SOCO attorney. The entire Web site is an extremely valuable resource for NSA employees and we commend you for investing the time in creating and maintaining it.

To complement the SOCO's organized tracking of ethics advice, we noted that the ethics office appears to be well-advertised and utilized. In addition to the information available on the SOCO Web site, television monitors located within the agency often run advertisements for employees to contact the SOCO if, for example, they are retiring or if a questionable gift was received. Lastly, the occasional ethics guidance (e.g., holiday reminders of the gift rules) that your office circulates to NSA employees are also effective advertisements for the SOCO.

FINANCIAL DISCLOSURE SYSTEMS

NSA's public and confidential financial disclosure systems are in compliance with applicable laws and regulations, with extensive written procedures governing who is responsible for each task and detailed instructions for financial disclosure report filers and reviewers. Electronically-fillable reports and a variety of useful documents (e.g., frequently asked questions regarding the confidential financial disclosure process) are available on the SOCO Web site. The PM plays an essential role in the timely dissemination of relevant memorandums, forms, and reminder notices related to the public and confidential systems. Her dedication to following up with filers, from their initial notification through the final certification of reports, communicates to employees the important role of financial disclosure in NSA's ethics program.

Lastly, the three-level review process, whereby the PM conducts a thorough review of all financial disclosure reports after the filer's direct supervisor's review and before your final

review and certification, appears to be an effective mechanism for identifying potential conflicts of interest.

Public Financial Disclosure System

In 2002, 416 of the required 421 public financial disclosure reports were filed (the filing of 5 termination reports was pending at the time of our review). We examined a sample of 76 reports, all of which were filed, reviewed, and certified timely. We found no substantive deficiencies and only a few minor technical issues.

Confidential Financial Disclosure System

In 2001, all 1,801 of the confidential financial disclosure reports for NSA's non-SGEs were filed as required. Of these, we examined a sample of 101 reports, consisting of 77 annual and 24 new entrant reports, and found that while most of the annual reports were filed timely, 16 of the 24 new entrant reports were filed late. After discussing possible remedies to this issue with the PM, we determined that you have already tried instituting several policies, including requiring supervisors to make a determination as to whether their employees are entering covered positions and subsequently ensure reports are filed where necessary. We concluded that the SOCO's existing new entrant procedures are adequate and, notwithstanding the proportion of late new entrant reports, the current procedures represent the most successful effort to meet this requirement. All the confidential reports in this sample were reviewed and certified timely and contained no substantive deficiencies.

In addition to the aforementioned confidential reports, all 48 SGEs on the NSAAB required to file confidential reports in 2002 did so. We examined all 48 reports and found that they were all filed, reviewed, and certified timely and contained no substantive deficiencies.

INSPECTOR GENERAL

NSA appears to be complying with 5 C.F.R. § 2638.203(b)(11) and (12) in utilizing the services of its Office of the Inspector General (OIG). As you know, agencies are required by 5 C.F.R. § 2638.603 to concurrently notify OGE of any referrals made to the Department of Justice (DOJ) of potential violations of the criminal conflict of interest statutes. However, our discussion with cognizant officials revealed that the responsibility to notify OGE had been inadvertently overlooked in the recent past. In April 2002, NSA referred a case involving an alleged 18 U.S.C. § 205 violation to DOJ which is currently under investigation by DOJ's Public Integrity Section. We reminded OIG officials of the concurrent notification requirement and advised them to designate one individual to be responsible for notifying OGE in the future. Information regarding the § 205 referral was subsequently sent to our office.

According to OIG officials, a positive working relationship exists between the OIG and the SOCO and information is regularly shared between the two offices. Investigators often call you to seek advice and the IG has requested that you give various ethics-related presentations.

ACCEPTANCE OF TRAVEL PAYMENTS
FROM NON-FEDERAL SOURCES

During the period October 1, 2001 through September 30, 2002, NSA approved 33 payments of travel from non-Federal sources under 31 U.S.C. § 1353, the implementing regulation at 41 C.F.R. part 304-1, and its own written guidance. The guidance, provided to all employees, includes a requirement for a traveling employee's supervisor and a SOCO attorney to approve the travel prior to acceptance. All 33 travel payments were approved in accordance with the statute, regulation, and SOCO written guidance and payments of more than \$250 per event were reported semiannually to OGE in accordance with 41 C.F.R. part 304-1.9.

CONCLUSIONS

Our review demonstrated that NSA has an outstanding ethics program that generally meets or exceeds OGE's minimal regulatory requirements. You and your ethics staff have established a strong ethics program reflective of your collective dedication. The PM's organized, thorough execution of policies undoubtedly enhances the program's effectiveness. Further, we concur with the DOD General Counsel's 1999 independent review of NSA's ethics program, in which it was noted that the NSA ethics program operates "with remarkable efficiency."

We wish to thank you and all other NSA personnel involved in this review for your efforts on behalf of NSA's ethics program. A follow-up review will not be necessary. Copies of this report are being sent to NSA's Director and Inspector General. Please contact Jan E. Davis at 202-208-8000, extension 1176, if we can be of further assistance.

Sincerely,



Jack Covalesski
Deputy Director
Office of Agency Programs



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

May 2, 2003

Bruce W. Baird
General Counsel and
Designated Agency Ethics Official
Defense Logistics Agency
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Dear Mr. Baird:

The Office of Government Ethics (OGE) has recently completed its fifth review of the Defense Logistics Agency's (DLA) 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 ethics program's effectiveness, as measured by its compliance with applicable ethics laws and regulations. Our current review focused primarily on the ethics program at corporate headquarters (HQ)¹ and was conducted intermittently in November and December of 2002. The following is a summary of our findings, conclusions, and recommendation.

HIGHLIGHTS

Though we found the DLA ethics program to have many strong program elements that effectively ensure the public's confidence in an ethical Government, this report discusses some suggestions for improving program operations overall. Mostly, however, we are concerned about the system for accepting travel payments from non-Federal sources under 31 U.S.C. § 1353. We believe when this issue

¹ DLA corporate headquarters is comprised of the Office of the Director, Support Services, Human Resources (HR), Logistics Operations, Information Operations, Financial Operations, the Joint Reserve Forces, the Office of General Counsel, the Equal Employment Opportunity Office, the Office of Small and Disadvantaged Business Utilization, and the DLA Criminal Investigations Activity. This review did not include any fieldwork at DLA's nine Field Activities or the HQ Detachments of Europe and Pacific.

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is addressed the essential ethics program requirements will be met.

ADMINISTRATION OF THE PROGRAM

As the General Counsel, you currently serve as the agency's Designated Agency Ethics Official (DAEO) and have oversight responsibility for the ethics program. The Deputy General Counsel serves as the Alternate DAEO and is assisted in the day-to-day administration of the ethics program by an Associate General Counsel, Labor Relations/IT/Support Services, and an Associate Counsel, Personnel/EEO/Ethics, who both serve as ethics counselors within the Ethics Office.

Additionally, Counsels within each of the nine DLA Field Activities and the HQ Detachments of Europe and Pacific support the ethics program as Deputy DAEOs. These Deputy DAEOs are responsible for notifying confidential financial disclosure filers and for the collection and final review of the reports (OGE Form 450s); administrative support and coordination for ethics training; dispensing of ethics advice; and other related matters. In most cases, Deputy DAEOs are assisted by their Assistant Counsels. Direction is provided to Deputy DAEOs throughout the reporting and training cycles by the Ethics Office.

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

DLA 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's (GSA) Interim Rule 4 at 41 C.F.R. part 304-1, implementing 31 U.S.C. § 1353. The procedures for accepting these payments are specified in Chapter 4 of the Joint Ethics Regulation (JER). However, DLA is not fully complying with part 304-1, particularly § 304-1.5 which calls for conflict of interest analyses to be performed as part of the process of approving acceptances; nor is it fully complying with Chapter 4. Therefore, we recommend that DLA fully comply with part 304-1 and Chapter 4. Additionally, we suggest that DLA develop its own prior approval procedures, including a request form, for approving such payments.

Our concerns developed during our examination of the travel acceptances reported on DLA's last two semiannual travel reports, covering the periods from October 1, 2001 through September 30, 2002, whereby we found no written authorizations or other documentation to support whether the acceptances were approved by travel approving authorities and/or properly analyzed for conflicts

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by ethics officials. Our examination of the most recent semiannual report submitted to OGE for the period of April 1, 2002 through September 30, 2002, reported 20 acceptances, of which 19 were accepted by the Defense Supply Center (DSC)-Columbus, a DLA Field Activity, with the remaining one accepted by HQ. We found no evidence to suggest that the 20 DCS-Columbus acceptances were analyzed for conflicts, as required by 41 C.F.R § 304-1.5, although we were advised that the HQ acceptance was "approved verbally" by the Ethics Office.

Additionally, during our review of the 19 DSC-Columbus acceptances, we noticed that DSC-Columbus used a reporting form to prepare its semiannual report for inclusion in DLA's overall semiannual report to OGE that lacked all the relevant information required to be reported. More specifically, the report did not, as required by 41 C.F.R. § 304-1.9, include the traveler's title; the event's description/sponsor/location and dates; the travel dates; and the source of payment. As we discussed with the ADAEO, although there is no required form for reporting these payments, GSA and OGE developed the Standard Form 326 that agencies can use in reporting this information. Hence, the ADAEO was advised that DSC-Columbus should discontinue its use of their current reporting form until they have added the information required by part 304-1.

Similarly, our examination of the one acceptance by the Defense Human Resources Activity (DHRA), another DLA Field Activity, reported during the period from October 1, 2001 through March 31, 2002, found no supporting travel documentation. However, we were provided with a DHRA e-mail reply from the Ethics Office's inquiry regarding information needed to prepare DLA's overall semiannual report. Although its contents contained pertinent information needed for reporting, there was no evidence to suggest that the acceptances had been properly analyzed for conflicts.

OUTSIDE EMPLOYMENT

We found one instance where DLA did not comply with the outside employment prior approval requirement at 5 C.F.R. § 3601.107 in DOD's supplemental standards of conduct regulation. Section 3601.107 of DOD's supplemental standards of conduct regulation requires financial disclosure filers to obtain written approval from an agency designee prior to engaging in a business activity or compensated outside employment with a prohibited source.

We suggest that you fully comply with this requirement. Moreover, as discussed during the review, you might want to

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consider developing more formalized procedures, including a request form, to ensure compliance with the requirement.

ADVICE AND COUNSELING SERVICES

DLA has complied with 5 C.F.R. § 2638.203 (b) (7) and (8) by developing and conducting a counseling program for employees concerning all ethics matters, including post employment, with records being kept, when appropriate, on the advice rendered. Moreover, the advice completely and accurately applied the ethics statutes and regulations and was timely.

We examined the advice dispensed electronically and manually for the 11-month period preceding the commencement of our fieldwork. The majority of the advice pertained to issues involving the receipt of gifts, including the application of the widely-attended-gatherings exception to employees assigned to participate as speakers at conferences or other events. Other issues addressed included use of Government resources, endorsements, and service with non-Federal entities. The Ethics Office generally responded promptly to issues posed, which was facilitated by the ethics officials' effective use of e-mail messages to discuss pending issues among themselves.

Post-employment counseling is provided to all departing HQ employees in the form of OGE's summary of 18 U.S.C. § 207, a manual copy of a DLA PowerPoint presentation on job hunting and the post-employment rules, and OGE's Understanding the Revolving Door trifold. Employees are also provided with separate DLA summaries of the post-employment rules affecting civilian personnel, military personnel generally, and General and Flag Officers.

EDUCATION AND TRAINING

We were pleased to find the education and training program to exceed the minimal training requirements found at subpart G of 5 C.F.R. part 2638, as evidenced by the commitment to provide annual ethics training to non-filers. In addition to conducting the requisite initial ethics orientation and annual ethics training, we were also impressed with the host of discretionary training that is provided throughout the year to help keep employees knowledgeable of the ethics laws and regulations.

Initial Ethics Orientation

Initial ethics orientations are accomplished at DLA with the assistance of HR, ensuring that, during HR's bimonthly new employee

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orientation sessions, all new employees are provided with the Ethics Office's initial ethics orientation material. The material instructs employees to log onto both the OGE and DOD Web sites to review both the Standards of Conduct and the DOD supplemental regulation. As an alternative to reviewing these regulations, employees are advised that they have the option of reviewing an abbreviated version by logging onto DOD's Web site and reviewing the Employee's Guide to the Standards of Conduct. Employees are instructed to send an e-mail message to their Ethics Counselor to certify completion of the review.

According to the Associate Counsel, when a new Director and/or Vice-Director enters on duty, a personal one-on-one ethics orientation briefing is provided by the Ethics Office. These briefings include an overview of the 14 general principles and discuss the applicability of OGE regulations and the JER to agency operations. Additionally, they highlight the Director's responsibilities for the agency ethics program, identify recurring ethical issues pertaining to his/her position, explain how they were handled in the past, and answer any questions.

On a quarterly basis, in addition to the initial ethics orientation training, the Associate Counsel provides an introductory ethics briefing to new employees regarding the DLA ethics program and the resources found on DLA's Today and Tomorrow Intranet ethics program Web site.

Annual Ethics Training

DLA's public and confidential filers, as well as those employees designated for training by their supervisor, are required to participate in annual ethics training. To help satisfy the annual training requirement, DLA uses the DOD Standards of Conduct Office's (SOCO) interactive computer-based training (CBT) modules. In 2002, the SOCO-developed training addressed "Non-Federal entities." Upon the completion of training, employees are instructed to send an e-mail or fax message to the Ethics Office to certify that they have completed the training. Based on our discussions with the Associate Counsel, we were assured that all covered employees completed annual ethics training in 2002.

We were advised that in addition to receiving CBT training, public filers are also provided with in-person training at least once every three years, and with ad hoc discussions on particular ethics issues, which occur more frequently. Although both the Director and Vice-Director are required to complete annual CBT, we encourage you to also consider providing, on an annual basis,

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personalized in-person ethics training because they occupy highly visible public trust positions and are held to high standards of ethical conduct.

Additional DLA Ethics Training Efforts

We found your Intranet Web site to be an outstanding resource and comprehensive ethics tool for providing periodic updates and announcements on various ethics topics to all DLA employees. Our examination of the Web site's contents found the ethics coverage to be very useful and informative as it featured links to DOD's interactive CBT; points of contact information for ethics officials; and immediate access to both OGE regulations and the JER along with general guidance on areas governing ethics in Government.

Throughout the year, by request, the Associate Counsel provides ethics briefings to senior-level management and executive officers and other DLA groups, the most recent being at an annual DLA Criminal Investigations Activity (DCIA) conference. We were particularly impressed with the ways in which these briefings were presented as a number of them were in interactive game formats which resulted in increased employee enthusiasm over the training material. Positive comments were received regarding the training during our discussion with the DCIA Director.

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

DLA administers a decentralized confidential financial disclosure system which is managed primarily by the Associate General Counsel for HQ filers and by the Deputy DAEOs for filers located within the Field Activities. Our review revealed that improvements are needed within areas of the confidential system to enable DLA to more fully comply with ethics regulatory requirements, particularly improvements relating to the timely identification of new entrant filers and review of reports by the Deputy DAEOs. As discussed with the ADAEO, although we only examined the confidential reports at HQ, we suggest you also begin to monitor the activities in the field to determine whether similar improvements are needed. We remind you that consistent monitoring is essential in administering an effective decentralized confidential system to enable the Ethics Office to assess on a continual basis the system's operation and, when necessary, make adjustments to address any weaknesses.

Annual Reports

According to your completed 2001 Agency Ethics Program Questionnaire submitted to OGE, 4,926 DLA employees were required to file a confidential report. To evaluate the administration of the confidential system, we examined 164 of the 820 confidential reports that were required to be filed at HQ in 2001. Of these 164 reports, we examined 12 new entrant and 118 annual OGE Form 450s and 34 OGE Optional Form 450-As (Form 450-A).

The majority of the 152 annual OGE Form 450s and Form 450-As were filed timely. However, we noticed a number of annual reports that appeared to be filed timely, according to both the filer's signature date and the date of initial supervisory review, but had been date stamped after the JER's November 30th filing due date. Upon discussing the matter with the Associate General Counsel, we learned that the date stamp reflected the dates the reports were received by the Ethics Office for final review rather than when they were first received by the filer's supervisor for the initial supervisory review. As was discussed, the date of receipt should be annotated on each report when first received by DLA, 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 suggest this responsibility be added to all future guidance provided to supervisors to stress the importance of having them date stamp the reports.

Additionally, we found 25 annual OGE Form 450s and 14 Form 450-As that were filed after the JER's established November 30th filing due date. Although we were advised that the majority of these filers were provided verbal extensions, there were no written annotations on their reports. As we discussed with the Associate General Counsel, pursuant to subsection 7-303(c) of the JER, requests for filing extensions must be submitted in writing by the filer to the DAEO or designee and the granting of any extensions must be annotated on the report and include the reason for the extension. We were assured that this would become common practice during next year's annual filing cycle. All examined annual reports were certified soon after review.

New Entrant Reports

Of the 12 new entrant reports examined, we found 8 reports that were filed late, with the longest being filed 9 months late. Once received, however, all reports were reviewed timely. As we discussed with the ADAEO, we are concerned that new entrant

confidential filers are not being identified in a timely manner.

We found the current system, used to timely identify new employees entering and those transferring into covered positions, to be a great first step to a very challenging requirement. New employees are to take an affirmative step by checking with either their supervisor or ethics official to determine whether or not they should file a new entrant report.² Although we believe this approach is extremely useful and value-added, it lacks the proper coordination needed to ensure filing timeliness. Thus, to ensure that new employees are making certain of their filing status and doing so timely, proper coordination needs to occur between the Ethics Office, HR, and the new employees' supervisors. We believe this can be accomplished with the agency's development of more comprehensive procedures that would address HR and the supervisors' responsibilities in ensuring that all employees entering and those transferring into covered positions are identified in a timely manner, instructing employees to complete a confidential report, and requiring concurrent notification by HR to the Ethics Office and the employees' supervisors of all new employees entering and those transferring into covered positions.

PUBLIC FINANCIAL DISCLOSURE SYSTEM

The public financial disclosure system is centrally administered and managed by the Associate General Counsel in accordance with the procedures contained in Chapter 7 of the JER.

To evaluate the public system, we examined 7 new entrant, 32 annual, and 2 termination public reports that were required to be filed in 2002. Additionally, we reviewed your annual report for timeliness of filing, review, and forwarding to OGE. Although we found your report to have been filed and reviewed timely, we noticed it was forwarded to OGE three months after the date of its certification. As we discussed with the ADAEO, annual public reports for Presidentially appointed and Senate-confirmed (PAS) officials and DAEOs that require little or no follow-up should be submitted to OGE as soon as approved by the agency but generally no later than August 1st of each year. In instances where a report cannot be approved and submitted by August 1st, due to an extension, pending resolution of a conflict of interest, or the need for

² This requirement is disclosed on both the written guidance provided to new employees during HR's new employee orientation sessions and on the certification sheet used to acknowledge the employees' receipt of initial orientation training.

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additional information or clarification, the report should be submitted, at the latest, by September 15th. We remind you that timely forwarding to OGE will help to ensure that it begins its review process sooner, with the goal being to review and certify the majority of these reports within 60 days of receipt.

Although our examination identified no technical issues we discussed several procedural issues used to administer the system. The issues addressed:

First, the vast majority of the 32 annual public reports we examined were not provided an initial supervisory review by the filers' immediate supervisors, as required by subsection 7-206 of the JER. Although our last review of DLA noted that public reports were initially reviewed by a supervisor, our current examination found only four reports that received this review. Despite it being unclear why initial supervisory reviews were no longer being performed, we were advised that the Ethics Office provided this review because, in many instances, the DLA Director served as the filers' immediate supervisor and time constraints would not permit his involvement in the report review process.

We deemed this practice appropriate, as it relates to the Ethics Office providing the initial review in lieu of the Director on reports that he would otherwise be responsible for reviewing. We do not believe this practice is appropriate, however, for compliance with the JER's initial review requirement for all other public filers whose immediate supervisor is not the Director. We believe all public reports not subject to the Director's review must receive the initial supervisory review from the filers' immediate supervisor, as required. As we reminded ethics officials, the JER requires this because supervisors are in the best position to assist DOD Ethics Offices in evaluating the information reported on the public reports with the filer's duties to help in determining current and/or future conflicts.³ After discussing the matter with the Associate General Counsel, we are confident that initial supervisory reviews will be implemented during next year's annual filing cycle. We strongly suggest that you add these new reviewing responsibilities and the procedures for collecting and reviewing public reports to all future guidance provided to supervisors.

³ As a reminder, an initial supervisory review is not required for termination reports or reports filed by PAS officials, in accordance with the JER.

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Although we understand the concerns regarding the Director's time constraints, we believe his involvement in the report review process would serve as an excellent training tool as well as provide high visibility to the ethics program. One way to involve the Director would be to meet personally with him to discuss the findings from each report subject to his review after the Ethics Office has provided its initial review.

Second, we noticed that all annual public reports that we examined were certified on the same day. Although the majority of these reports were reviewed within 60 days of the May 15th filing due date, there were 9 reports that were reviewed untimely. We remind you that delayed reviews will diminish the agency's ability to provide timely and specific conflict of interest advice to employees, which is essential to an ethics program. Public reports which do not require additional information or remedial action should be certified within 60 days of each report's receipt date.

Lastly, our examination of the reports and files found a limited number of annotations and/or other documentation associated with DLA's review. Although the Associate General Counsel was able to respond to our questions without such documentation, we believe that it is important to maintain adequate documentation to help carry out an effective and substantive public financial disclosure review. As a good management practice, we encourage you to maintain adequate documentation when reviewing public reports, including keeping notes on discussions involving questionable holdings and their resolution.

After discussing these matters in great detail during the review, we feel confident that these procedural issues will be resolved prior to next year's annual filing cycle.

COORDINATION WITH THE OFFICE
OF INSPECTOR GENERAL

DLA appears to be complying with 5 C.F.R. § 2638.203(b)(12), wherein the Ethics Office utilizes the services of the Office of the Inspector General in the form of the DCIA. This has included the referral of matters to and the acceptance of matters from DCIA. We were unable to assess DLA's compliance with § 2638.603, wherein DLA is to concurrently notify OGE of any referrals for prosecution to the Department of Justice of alleged violations of the criminal conflict of interest statutes, as there have been no recent referrals.

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CONCLUSIONS AND RECOMMENDATION

Our review revealed that DLA has many effective elements in its ethics program; however, as was discussed in detail within this report, some improvements are needed. Overall, we believe the ethics program is well served by a dedicated ethics staff that is committed to ensuring the highest standards of integrity for DLA and its employees.

To further enhance the program, we recommend that you:

1. Ensure that the system for accepting travel payments from non-Federal sources under 31 U.S.C. § 1353 complies with 41 C.F.R. part 304-1 and the implementing procedures at Chapter 4 of the JER.

In closing, I wish to thank you and your staff for all of your efforts on behalf of the ethics program. Please advise me within 60 days of the specific actions your agency 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. Copies of this report are being forwarded to the DLA Director and the Director, Criminal Investigation Activity. Please contact David A. Meyers at 202-208-8000, extension 1207, if we can be of further assistance.

Sincerely,



Jack Covalesski
Deputy Director
Office of Agency Programs

Report number 03-011



United States
Office of Government Ethics
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May 9, 2003

Erin McDonnell
Associate Special Counsel for
Legal Counsel and Policy
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Dear Ms. McDonnell:

The Office of Government Ethics (OGE) has completed its review of the U.S. Office of Special Counsel's (OSC) ethics program. The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Ethics Act). Our objective was to determine the effectiveness of the ethics program, largely measured by its compliance with applicable statutes and regulations. This review was conducted in March and April 2003.

HIGHLIGHTS

Although our review found some troubling ethics program aspects, overall we consider OSC's program sound and appropriately geared to your agency's mission and employees. Most importantly, we believe that the ethics program is aimed at preventing employee ethical violations by providing useful ethics training and advisory services. In addition, we found an agency enforcement process designed to promptly and effectively remedy employee ethical breaches.

We continue to be concerned about the limited time and staff resources devoted to administering the ethics program, but consider the recent staffing changes to be a step in the right direction. Past staff resource limitations, we believe, to some extent contributed to several program deficiencies we found, including (1) failing to adhere to our regulatory guidance when you waived an employee's disqualifying financial interest; (2) continuing the practice of requiring employees to seek prior approval before engaging in outside employment without authorization of the practice by our Office; and (3) delaying your certification of public financial disclosure reports. Now that another attorney on your staff will be assisting you by devoting more of her work time to ethics program matters, including reviewing financial disclosure

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reports and providing advice, we believe past problems will be addressed and further issues will be avoided.

ADMINISTRATION OF THE PROGRAM

As the Associate Special Counsel for Legal Counsel and Policy, you have long-served as the Designated Agency Ethics Official (DAEO) for the approximately 100 OSC employees who are located at headquarters in Washington, DC and two field offices. As you explained to us, for many years you, mostly alone, have handled all ethics duties, in addition to a large and growing workload of other OSC programmatic legal matters. However, in the recent past, you have been able to shift some workload to two attorneys on your staff. You told us that you intend to further assign some of your ethics-related duties to one of the attorneys on your staff, which we believe will enhance program operations.

Some limited ethics duties are also conducted by field office staff members, who on occasion dispense advice to the few employees in their respective offices. While OSC has had a long-serving Alternate DAEO, who is the Associate Special Counsel for Investigation and Prosecution, you indicated that he devotes very limited time to ethics matters and primarily serves as a collector of financial disclosure reports in your absence

18 U.S.C. § 208(b)(1) WAIVER

On OSC's annual Agency Questionnaire for 2001, you reported the issuance of an 18 U.S.C. § 208(b)(1) waiver to an employee. However, at the start of our review, you were unable to locate this waiver. In addition, our Office had never received a copy nor had it been consulted. (5 C.F.R. § 2640.303).

After reviewing various waiver-related documents that you provided to us, in addition to our discussions, we concluded that when you first made your determination to waive the affected employee's disqualifying financial interest, you did not adhere to our regulatory guidance at 5 C.F.R. § 2640.301. This includes not fully describing the disqualifying financial interest, the particular matters to which it applies, and the employee's role in the matters. This failure placed the employee at risk of inadvertently violating 18 U.S.C. § 208. To remedy this problem, by the close of our review, you re-documented the waiver to comply with the regulatory requirements and consulted with OGE. Most importantly, now that the waiver is fully documented, we believe that the affected employee is protected.

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ENFORCEMENT

You, along with other management officials, are involved in administering OSC's system of enforcement. For the only two ethics violations from 2001 to the present, OSC suspended two employees for misusing their Government-furnished travel charge cards and subsequently failing to satisfy their just financial obligations. (5 C.F.R. § 2635.809). In both cases, approximately five months elapsed from the time of the last violation until management's Notice of Decision on the disciplinary action to be taken. We believe that you are ensuring that prompt and effective action is being considered to remedy ethics violations, in accordance with 5 C.F.R. § 2638.203(b)(9), and are also ensuring that consequences are imposed on employees who engage in unethical conduct.

We were unable to assess OSC's compliance with 5 C.F.R. § 2638.603, wherein OGE is to be notified by agencies concerning referrals to the Department of Justice of alleged criminal conflict of interest violations and of related matters, as there have been no referrals. Nevertheless, OSC appears to have a system in place for notifying OGE should a referral be made.

COUNSELING AND ADVICE

Your ethics counseling and advice services meet the requirements of 5 C.F.R. § 2638.203(b)(7) and (8). While you often provide general ethics advice orally, as necessary you also dispense it in written form, usually by e-mail. We examined approximately 15 written determinations that you provided to employees from 2001 to the present and found that they were accurate, consistent with applicable laws and regulations, and appeared to meet employees' needs. The advice covered outside activities, gift acceptance, fund raising activities, and potential conflicting interests.

On occasion, you provide general ethics-related information to employees through memorandums or e-mail, which we advocate as a good method to heighten their awareness of the rules and regulations. We encourage that you continue to distribute information on topical ethics matters, which you told us you intend to do. You also told us that, as necessary, when employees leave the agency for the private sector, you give them relevant post-employment information. In addition, you stated that since you attend agency senior staff meetings, as appropriate, you keep managers informed of newsworthy ethics matters.

OUTSIDE ACTIVITY AND EMPLOYMENT

During the course of our review, we were able to clear up a misunderstanding concerning OSC's long-standing requirement that employees obtain prior approval before pursuing outside activities and employment related to their work duties. This practice had continued subsequent to the issuance of our Standards of Conduct in 1992. But, as we explained in several DAEOgrams to agencies, continuing a practice such as this was not permitted, except for a limited time under "grandfather" provisions.

We discussed with you that the authority to require prior approval of outside activity and employment must reside in an agency supplemental regulation agreed to by and jointly issued with OGE pursuant to 5 C.F.R. § 2635.105. In addition, we informed you that your OGE Desk Officer is available to assist should you choose to issue a supplemental regulation. Until the issuance of such a regulation, OSC needs to suspend the prior approval practice, which you agreed to do. In the interim, you may encourage employees to seek advice when they plan to undertake certain types of outside activities and employment.

EDUCATION AND TRAINING

We found that OGE's ethics education and training requirements are being met at OSC, including annually documenting the ethics training plan.¹ We believe that your ethics Intranet site is one useful tool for ensuring that employees have easy access to educational materials.

Initial Ethics Orientation

The initial ethics orientation requirement is routinely satisfied for all new employees, including a new Special Counsel.² You told us that in addition to providing the Special Counsel required written materials, your practice is to provide a one-on-one ethics briefing, which is a practice we encourage you to continue. Another practice of yours that we support is the holding

¹Though the ethics training plan was not documented at the start of our review in March, you did document your training approach shortly after we reminded you of this annual requirement.

²The Special Counsel is the only Presidentially-appointed Senate-confirmed (PAS) position at OSC.

of periodic in-person briefings when there is a large enough group of new employees to train.

In addition to in-person ethics orientation briefings, initial ethics orientation is immediately satisfied for new employees when they in-process and are given written ethics materials. These include an OSC Directive on initial ethics orientation, a memorandum signed by the Special Counsel, and an acknowledgment form. Employees are required to sign this form which certifies that they, among other things, are required to comply with the Standards of Conduct. This is another practice that we believe helps to ensure employees' understanding of the rules. According to the Director of Human Resources, inspection of new employees' official personnel files found that eight of the nine employees who entered on duty in approximately the past year had completed and returned the acknowledgment form. She intended to collect the form from the remaining employee.

Annual Ethics Training

You told us that you routinely provide in-person annual ethics training to covered employees every year and confirmed that all received it in 2002. Last year's training consisted of attendees viewing a videotape of the Department of the Interior's 2002 satellite ethics training, receiving a draft copy of OSC's newly updated Directive chapter entitled "Ethics Responsibilities and Program Procedures," and participating in a question and answer segment. You stated that the Special Counsel has attended one of the annual training sessions each year of her five-year tenure. We remind you, however, that OGE encourages giving all PAS employees one-on-one annual ethics training in order to personalize it for their specific needs.

PUBLIC AND CONFIDENTIAL SYSTEMS

We found that OSC's public and confidential financial disclosure systems are in general compliance with the laws and regulations. Notwithstanding the fact that financial conflicts are highly remote for most OSC employees, we encourage adherence to the procedural and reporting requirements of 5 C.F.R part 2634.

Eleven public and two confidential reports were required to be filed in 2002. Our examination of all reports, excluding the public reports filed by you and the Special Counsel, found that all were filed and initially reviewed timely. However, concerning the thoroughness of the review, at the time of our examination, you had

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not yet certified two of the public reports filed by one employee, pending the receipt of additional information.

The reports filed by the Special Counsel and you, which are required to be transmitted to OGE pursuant to 5 C.F.R § 2634.602, were only examined for timeliness of filing, review, and transmittal to OGE. We found that one was forwarded timely and the other was delayed. We reminded you of the requirement to transmit reports to our Office as soon as they are certified.

Though your initial review of public financial disclosure reports was timely, certification of almost all was protracted (at least six months after your initial review). Delays were generally not due to needing additional information from filers; rather, certification was held up due to the demands of your other work.

For the two reports not yet certified, you told us that you had initially reviewed this one filer's annual and termination reports shortly after they were submitted in July and August 2002, respectively. But, mostly due to the demands of your other work, you had not followed-up with the filer to obtain additional information. In the course of our review, when we questioned the reports' status, you contacted the filer and told us that you expect to obtain the required brokerage information soon.

We believe that such long delays will be eliminated by having another reviewing official on your staff. In addition, she will help to ensure that the administrative and substantive aspects of the financial disclosure process are accomplished each filing season.

ACCEPTANCE OF TRAVEL PAYMENTS

OSC accepted nine payments from non-Federal sources for travel, subsistence, and related expenses incurred by agency employees on official travel from October 1, 2001 to September 30, 2002. The semiannual reports were forwarded to OGE timely. Based upon the information contained in these reports and an examination of other related OSC documents, we found these payments were accepted in accordance with the General Services Administration's Interim Rule 4 at 41 C.F.R. part 304-1, implementing 31 U.S.C. § 1353.

CONCLUSIONS AND RECOMMENDATIONS

It is clear that you have placed priority on keeping OSC employees aware of the requirements for ethical conduct and that

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the agency takes prompt and effective action when employees violate ethics rules. These are essential elements for a well-run ethics program.

We expect that you will consider the various program suggestions we made during discussions with you, in addition to taking action on the matters addressed in this report. You agreed to suspend OSC's practice of requiring employees to obtain approval before undertaking certain outside activities and employment and told us that you will be considering issuing an agency supplement to the Standards of Conduct. Recognizing that other improvements are underway, we are only recommending that you:

1. Ensure that sufficient resources are continually dedicated to the ethics program
2. Complete your review of and certify the two remaining uncertified public reports from 2002.
3. Ensure that financial disclosure reports are reviewed and certified timely.

In closing, we wish to thank you for your efforts on behalf of the ethics program. Please advise me within 60 days of the specific actions planned or taken concerning the recommendations in our report. A 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 ethics officials take actions to correct these deficiencies in a timely manner. Please contact Ilene Cranisky at (b) (6) if we may be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs



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

May 20, 2003

David L. Frank
Legal Counsel and
Designated Agency Ethics Official
Equal Employment Opportunity Commission
1801 L Street, NW.
Washington, DC 20507

Dear Mr. Frank.

The Office of Government Ethics (OGE) has completed a review of the Equal Employment Opportunity Commission's (EEOC) ethics program. 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 ethics program's effectiveness, measured primarily by its compliance with applicable statutes and regulations. The review was conducted in January 2003.

HIGHLIGHTS

We found EEOC's program meets most requirements. The program is staffed by very capable ethics officials who are dedicated to providing the best possible services to EEOC's employees. However, we examined documents which indicated employees took actions in cases involving entities in which they may have had a disqualifying financial interest under 18 U.S.C § 208. Our report recommends that ethics officials revisit these cases and conduct a section 208 conflict of interest analysis of each. If it is found that there were any conflicts of interest, the appropriate actions must be taken. We also found that EEOC has no reliable procedures for ensuring that Schedule C employees file the required public financial disclosure reports when they enter or leave their positions. Our report further discusses the difficulty EEOC has in identifying some new entrant confidential filers. Additionally, it could not be confirmed that any of the Commissioners have ever received initial ethics orientation or, with the exception of one of the Commissioners, annual training.

ADMINISTRATION

EEOC's ethics program is largely centralized at headquarters with the Assistant Legal Counsel within the Office of Legal Counsel (the primary ethics official) being responsible for the day-to-day administration of the program. The primary ethics official coordinates the efforts of the legal staff members (Ethics Liaisons) and administrative support personnel who assist him in carrying out the various functions of the ethics program. In addition, Deputy

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Ethics Officials provide some services to the District Offices in which they work, with oversight from the primary ethics official.

POTENTIAL VIOLATIONS OF
18 U.S.C. § 208

Documents provided during our review of the confidential financial disclosure system raised significant questions as to whether six employees assigned to three District Offices may have violated 18 U.S.C. § 208 by participating personally and substantially in particular matters in which they had a financial interest. Headquarters ethics officials sent memorandums to the three District Directors noting which employees disclosed interests (on their 2002 confidential reports) in entities against whom charges were pending within their respective districts. The memorandums asked the Directors to confirm that the indicated filers had no involvement in cases concerning the entities in which they disclosed an interest. The Directors reported that six employees had such involvement.

None of the District Directors conducted an 18 U.S.C. § 208 conflict of interest analysis. One determined that "none of these instances involved any decisions which would have a material effect on the financial interests of the individuals involved." In such cases, the District Directors remind those filers that they are not to have involvement in cases in which they have a financial interest. We would note that the "material effect" test articulated by one of the Directors is not the accepted standard under section 208, which does not have a de minimis or materiality requirement.

In a conference call with headquarters ethics officials, they confirmed that District Directors do not conduct conflict of interest analyses. Instead, they make a determination as to whether an employee's decision was affected by his or her financial interest in the entity being charged. Headquarters ethics officials, who are responsible for conducting any necessary conflict of interest analyses, do not usually put such analyses in writing. We would note that section 208 does not require any analysis of whether the disqualifying financial interest actually affected a decision by the employee.

Furthermore, during the conference call, EEOC stated that it would not consider the act of approving or disapproving a request for information made under the Freedom of Information Act (FOIA) by a District Office employee to be an act which could violate 18 U.S.C. § 208. OGE does not agree with this conclusion, as a matter of law. Generally, OGE believes that an employee has a financial interest in a FOIA request, within the meaning of section 208, if the employee owns stock in the requester. A company necessarily expends resources in requesting documents under FOIA and

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may expend additional resources to appeal any denial of its request. Consequently, we believe that the resolution of a FOIA request affects the financial interest of the requester. Moreover, it has been our longstanding view that stockholders, as part owners of a company, have a financial interest in any particular matter that directly and predictably affects the financial interests of the company. Consequently, an employee who owns stock in a company has a financial interest, under section 208, in any FOIA request submitted by that company. In some circumstances, an employee also may have a financial interest if he or she owns stock in a company that is not the requester but is the subject of the documents requested, for example, if those documents concern confidential commercial information of that company.

We identified for headquarters ethics officials each of the six employees who took official action in matters involving an entity or entities in which they had a financial interest. EEOC must analyze each case for conflicts of interest by first determining whether the employee's financial interest in the affected entity or entities was the ownership of securities which met the de minimis exemption criteria found at 5 C.F.R. § 2640.202 at the time the actions were taken (\$5,000 prior to April 18, 2002 or \$15,000 on or after April 18, 2002). If the interest exceeded the de minimis, EEOC must then determine whether there is information indicating that 18 U.S.C. § 208 was violated and refer the matter for possible investigation consistent with the requirements of 28 U.S.C. § 535. We understand that many agencies comply with section 535 by referring the matter to their Inspector General.

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

We examined 55 of the 261 confidential financial disclosure reports required and filed in 2002. Most of these were filed, reviewed, and certified timely and without significant issues. As already noted, six employees disclosed that they had a financial interest in entities against whom charges were pending within their respective District Offices. As also noted, these filers took official action in those cases. These potential conflicts were identified as ethics officials compared disclosed holdings to lists of entities against whom charges were pending in each District Office. The list of entities was generated by EEOC's Charge Data System. We commend EEOC for using this efficient method to identify potential conflicts of interest. However, contrary to EEOC's practice of not committing a conflict of interest analysis to writing, we feel that it would be prudent to document any analysis that is done.

While there was no problem identifying newly hired EEOC employees, our examination of confidential reports revealed difficulty in identifying employees promoted or transferred to

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covered positions from within the agency. This weakness is mostly due to a recent change in providers of human resource services from the General Services Administration to the Department of the Interior and the different ways those providers handle position coding. The primary ethics official was aware of the problem and working to resolve the issue. We encourage you to work with your human resources services provider to establish procedures for the timely identification of all filers.

PUBLIC FINANCIAL DISCLOSURE SYSTEM

The public financial disclosure system is generally in compliance with 5 C.F.R. part 2634. We examined all 56 public reports required to be filed during 2002 for technical deficiencies, conflict of interest issues, and timeliness of filing, review, and certification. We found them to be generally well-reviewed by ethics officials using EEOC's Charge Data System, and (except for reports filed by Schedule C employees) filed, reviewed, and certified in a timely manner. These 56 reports did not include the reports filed by you and four employees who are Presidential appointees requiring Senate confirmation (PAS). We did verify, however, that your report and the PAS reports were filed, reviewed by the agency, and forwarded to OGE in a timely manner

During our examination of the public reports we determined that there are no reliable procedures for ensuring that Schedule C employees file new entrant reports when they enter their positions or termination reports when they leave those positions. Four of the five reports filed by Schedule C employees (three new entrant reports and one termination report) were filed more than 30 days late. Ethics officials are trying to determine what procedures can be implemented to notify them of the arrival and departure of Schedule C employees so that the employees can be timely informed of the filing requirements.¹ Since Schedule C employees can hold positions which are particularly vulnerable to conflicts of interest, EEOC must resolve the issue of timely filing for these employees in order to protect both the agency's interests and its Schedule C employees. Alternatively, ethics officials are considering whether they can justify exclusion from the filing requirement for at least some of the current Schedule C employees

INITIAL ETHICS ORIENTATION

EEOC met the requirements for providing initial ethics orientation to new employees in 2002, except as regards to PAS

¹There was evidence that at least three of the late filers were not made aware of the filing requirement until well after their filing deadlines had passed.

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employees. At the time of our review, ethics officials could not verify that current PAS employees had ever received initial ethics orientation. If no verification can be found, training must be provided. We were gratified to learn that other new headquarters employees, in addition to receiving the required written materials, also received verbal training provided by the primary ethics official.

Employees hired into District Offices are also routinely provided with a package of the requisite materials, fulfilling the requirement for written training. All employees were required to complete a certificate verifying they had reviewed the materials and then submit it to the primary ethics official. Completion of training was tracked by comparing a list of new hires against the certificates received.

ANNUAL ETHICS TRAINING

EEOC generally met the requirements for providing annual ethics training to covered employees in 2002, again with the exception of PAS employees. Ethics officials could not confirm that any of the Commissioners had ever received annual ethics training prior to this year when training was provided to one Commissioner. If it cannot be verified that training was provided, these employees must be trained as soon as possible. Headquarters ethics officials visited about half of EEOC's field offices and provided verbal training to local covered employees. The remaining covered employees at headquarters and in the field completed their training online.

ADVICE AND COUNSELING

We examined the limited written ethics-related advice and counseling rendered by EEOC ethics officials during 2002. Based on our examination, we concluded that all the advice and counseling was consistent with applicable statutes and regulations.

According to the primary ethics official, advice is available from approximately eight Ethics Liaisons, four other headquarters ethics officials, and the Deputy Ethics Officials in the field. Headquarters ethics officials receive 5 to 10 questions a week to which they usually respond to orally.

OFFICE OF INSPECTOR GENERAL

EEOC appears to be complying with 5 C.F.R. § 2638.203(b)(12), wherein the services of the Office of Inspector General (OIG) are utilized, including the referral of matters to and the acceptance of matters from OIG. However, there was some question concerning EEOC's compliance with § 2638.603, wherein agencies are to concurrently notify OGE concerning referrals for prosecution of

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alleged violations of criminal conflict of interest laws to DOJ as well as certain information on the subsequent disposition of the referrals.

There were two alleged violations of 18 U.S.C. § 207 in 2002. Ethics officials appeared to have taken appropriate action in both cases in terms of referring the cases to DOJ for prosecution, although they did not notify OGE. We were provided two memorandums and their attachments sent by ethics officials to DOJ's Public Integrity Section in the Criminal Division concerning the alleged violations. They document conversations between EEOC officials and an official within the Public Integrity Section regarding EEOC's opinion that the former employees had violated the statute. DOJ's response in both cases was to recommend that the matters be referred to EEOC's OIG for investigation. We consider each of these contacts to constitute a referral to DOJ. Ethics officials subsequently sent memorandums to the OIG notifying them of DOJ's response. While the former employee ceased the activity that was in question in one case, the OIG continued to monitor the remaining case.

The primary ethics official did not believe the actions taken constituted a referral to DOJ and therefore did not concurrently notify OGE. However, he did not object to forwarding such information to OGE in the future. We encourage ethics officials to contact their OGE Desk Officer in the future if there is any doubt as to what OGE would consider reportable information. The receipt of this information is an important means by which OGE can monitor EEOC's system of enforcement, including whether disciplinary action is considered when DOJ declines to prosecute.

PAYMENTS FOR TRAVEL FROM NON-FEDERAL SOURCES

The procedures in place to accept payments for travel from non-Federal sources pursuant to 31 U.S.C. § 1353, and from 26 U.S.C. § 501(c)(3) organizations pursuant to 5 U.S.C. § 4111 appear to be appropriate for ensuring such payments are accepted in accordance with applicable regulations. They provide for conflict of interest analysis and approval prior to acceptance. We examined two semiannual reports of payments accepted from non-Federal sources sent to OGE covering the period October 1, 2001 through September 30, 2002. All reported acceptances of payments were analyzed for conflict of interest issues. However, we found three cases in which approval was not granted until after travel had occurred. We advised ethics officials to ensure in the future that all acceptances are approved in advance except as provided in 41 C.F.R. § 304-3.13.

CONCLUSIONS

EEOC's ethics program is administered by capable, experienced, and dedicated ethics officials. With the noted exceptions, it is in compliance with applicable statutes and regulations. The implementation of the recommendations below will help strengthen the program further.

RECOMMENDATIONS

We recommend that you:

1. Analyze for conflict of interest each of the six cases in which a violation of 18 U.S.C. § 208 may have occurred and, as appropriate, refer the matter for investigation consistent with the requirements of 28 U.S.C. § 535.
2. Develop and implement procedures to identify new entrant and termination Schedule C employees so that they can be made aware of the filing requirements.
3. Either verify that initial ethics orientation and annual training was provided to EEOC's current Commissioners, or provide the required training as soon as possible.

In closing, I would like to thank you for all of your efforts on behalf of the ethics program. Please advise me within 60 days of the actions you have taken or plan to take to satisfy the requirements of our recommendation. 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 in the OGE Director under subsection 402(b) of the Ethics 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 via transmittal letter to EEOC's IG. Please contact Jerry Chaffinch at 202-208-8000, extension 1157, if we can be of assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs



United States
Office of Government Ethics

1201 New York Avenue, NW., Suite 500
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July 8, 2003

Edgar M. Swindell
Associate General Counsel for Ethics and
Designated Agency Ethics Official
Department of Health and Human Services
(b) (6) Humphrey Building
200 Independence Avenue, SW.
Washington, DC 20201

Dear Mr. Swindell:

The Office of Government Ethics (OGE) has recently completed a review of the Indian Health Service's (IHS) 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 ethics program's effectiveness, as measured by its compliance with applicable ethics laws and regulations. Our current review focused primarily on the ethics program at headquarters (HQs)¹ and was conducted intermittently between December 2002 and February 2003.

HIGHLIGHTS

The ethics program is well served by a professional, highly organized, and dedicated Program Integrity and Ethics Staff (PIES) Director and an ethics staff that is dedicated and committed toward maintaining a strong and viable ethics program. It is apparent that IHS ethics officials take their duties and responsibilities seriously and that they are dedicated to providing the highest standards of integrity for IHS and its employees.

¹ IHS has approximately 15,000 employees located throughout its headquarters in Rockville, MD; its 2 Engineering Services located in Seattle, WA and Dallas, TX; and its 12 administrative units, called Area Offices, located in Aberdeen, SD; Anchorage, AK; Albuquerque, NM; Bemidji, MN; Billings, MT; Nashville, TN; Oklahoma City, OK; Phoenix, AZ; Portland, OR; Sacramento, CA; Tucson, AZ; and Window Rock, AZ.

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Though the essential ethics program requirements are currently being met at IHS, this report also highlights the current Department of Health and Human Services (HHS) restructuring initiatives and our suggestions to ensure that adequate resources are provided to IHS to continue the program's effectiveness. Although we were unable to assess the impact of any of the current restructuring initiatives on the IHS ethics program during our current review, we remind you that it is vitally important that the IHS ethics program receive adequate support to effectively sustain and monitor the ethics program outside of HQs. Our suggestions are included within the body of this report.

ADMINISTRATION OF THE PROGRAM

As the Associate General Counsel for Ethics, you currently serve as HHS' Designated Agency Ethics Official (DAEO), in the Office of the General Counsel's Ethics Division (OGC-Ethics Division), and have oversight responsibility for the HHS-wide ethics program. While general responsibility for all ethics matters rests with the OGC-Ethics Division, Deputy Ethics Counselors (DEC), generally senior-level officials within the various HHS components, assist you in administering the HHS-wide ethics program as ethics liaisons for their respective component.

The IHS ethics program is currently administered by the Director, Office of Management Support, who was appointed as the IHS DEC on February 4, 2002. The day-to-day operation of the program is carried out by PIES which is comprised of a Director and three analysts.² An Attorney-Advisor from your staff also assists PIES on a weekly basis with the dispensing of legal advice, the rendering of ethics training, and other ethics matters.³

² A support staff position was vacant during our on-site review.

³ In addition to managing the IHS ethics program, PIES is also responsible for 1) formulating plans and providing leadership, guidance, and evaluations for the IHS Personnel and Physical Security programs; 2) providing management focus and guidance for the IHS-wide employee drug testing program; 3) providing focus for IHS-wide management investigative capability for hotline cases; 4) directing the investigation and resolution of allegations of impropriety, mismanagement of resources, abuse of authority, violations of Standards of Conduct, or other forms of wrongdoing or mismanagement; and 5) advising IHS management of appropriate corrective and remedial actions to be taken on investigatory findings and recommendations.

Additionally, the ethics program is supported by Area Directors, or more specifically their designees who serve the IHS ethics program as Area/Field Ethics Contacts (AECs). These AECs serve on a collateral-duty basis and are located within each Area Offices' personnel office and are responsible for notifying confidential financial disclosure filers and collecting and performing the final review of the reports (OGE Form 450s); providing administrative support and coordinating ethics training; dispensing of ethics advice; and other related matters. Direction is provided to AECs throughout the reporting and training cycles by PIES.

RESTRUCTURING INITIATIVES

In response to Government-wide management initiatives set forth in The President's Management Agenda,⁴ HHS-wide restructuring efforts are currently underway to make HHS more citizen-centered, results-oriented, and market-based. To improve efficiencies and streamline and build cohesion among all HHS components, a series of cross-cutting restructuring initiatives will consolidate and move some functions traditionally carried out within HHS components into the Departmental level. One major cross-cutting initiative will consolidate the number of HHS-wide personnel offices from its current 40 to 6 by the end of 2003 and then again to 4 by 2004. These four personnel offices will be located in Baltimore, Atlanta, Bethesda, and Rockville and will provide on-site services for the major employment centers of HHS.

For IHS, the consolidation of its personnel offices will eliminate the current 12 AECs who administer the ethics program within each Area Office. Because of the uniqueness of IHS and the specialized local expertise and skill needed to support the dispersed and remote locations of the IHS workforce, the Director expressed concern about whether any realigned ethics staff will adequately ensure the continual quality and effectiveness of the ethics program outside of HQs. Since IHS' internal restructuring plans were still being developed during the time of our on-site review, we were unable to assess what impact a realignment would have on the ethics program. However, as we discussed with the Director, we believe it imperative for the IHS leadership to recognize this issue and ensure that IHS' ethics program, outside of HQs, receives the proper resources and assistance needed to administer the program in a positive and effective manner.

⁴ The President's Management Agenda is a strategy for Government-wide reform to improve the management and performance of the Federal Government.

EDUCATION AND TRAINING

IHS' education and training program exceeds the minimal training requirements found at subpart G of 5 C.F.R. part 2638, as evidenced by PIES' commitment to providing live initial ethics orientation briefings to all new HQ employees. In addition to conducting the requisite annual ethics training, we were also impressed with the host of discretionary training provided throughout the year to keep employees knowledgeable of ethics laws and regulations.

Initial Ethics Orientation

PIES provides all new HQs employees with live initial ethics orientation briefings. When employees are unable to attend a live session, make-up sessions are held or written materials are distributed that satisfy the requirements found at 5 C.F.R. § 2638.703. Sign-in sheets are used to track employee attendance. According to PIES' training records, 18 new HQs employees were provided an initial ethics orientation in 2002. PIES provides the AECs with written guidance along with an ethics training program package to assist in ensuring that orientations are completed. An in-person ethics orientation is provided by your office when a new IHS Director enters on duty.

Annual Ethics Training

IHS' public and confidential filers, as well as contracting officers and those employees designated for training by the IHS Director, are required to participate in annual ethics training. To satisfy the annual training requirements in 2002, live training sessions were provided. Training certificates were used to acknowledge completion of the requisite training. The Director assured us that all covered employees completed annual ethics training in 2002.

Additional IHS Ethics Training Efforts

Our examination of the IHS Web site's contents found the ethics coverage to be very useful and informative, and to feature immediate access to both OGE regulations and the HHS supplemental regulation. The site also featured immediate access to general guidance on areas governing ethics in Government, ethics alerts regarding prevalent ethics topics, computer-based training links for incumbent employees, and point of contact information for all IHS ethics officials.

Throughout the year, by request, PIES and the Attorney-Advisor from your staff provide ethics briefings to senior contracting officials and other IHS groups. Biennially, PIES conducts a three-day Area Ethics Contact Ethics Conference to discuss pertinent ethics-related topics with the AECs and other representatives. The most recent conference was held in April 2002 and included workshops provided by the Office of Special Counsel (OSC), OGE, and PIES. Additionally, we were impressed with PIES' creative and innovative training approaches used to bring attention to the IHS ethics program. We were particularly impressed with an ethics briefing that was given during a Halloween "Trick or Treat" event, which resulted in increased employee enthusiasm over the training material rendered.

ADVICE AND COUNSELING SERVICES

Our current examination of the advice and counseling services found that IHS has complied with 5 C.F.R. § 2638.203(b)(7) and (8) by developing and conducting a counseling program for employees concerning all ethics matters, including post employment, with records being kept, when appropriate, on the advice rendered.

We examined the advice dispensed electronically by both PIES and the AECs for the 11-month period preceding the commencement of our fieldwork. We found the advice covered a number of ethics issues concerning outside activities, fundraising, commissioned officers, gifts, award/prizes, contracting/partnering, and gaming on Federal property. The advice was responsive to the employees' needs in terms of timeliness, as responses were generally rendered promptly to the questions that were posed. Moreover, the advice completely and accurately applied the ethics statutes and regulations.

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

Our current examination of the confidential system found IHS to be administering a well-run, decentralized system, with sufficient written guidance and direction provided to PIES by the OGC-Ethics Division. To evaluate the system's effectiveness, we examined a sample of 95 of the 325 IHS confidential reports required to be filed by both HQs and Area Office employees in 2002. Of these 95 reports, there were 4 new entrant and 36 annual confidential financial disclosure reports (OGE Form 450s) and 55 OGE Optional Form 450-As (Form 450-As). With the exception of eight reports, including the four new entrant reports, all were filed and reviewed timely and certified soon after review. We found reviewing officials to have knowledge of the circumstances

surrounding the approval of each report questioned by the review team. There were no conflicts of interest or other substantive deficiencies revealed on the reports; only minor technical errors.

Notwithstanding the overall effectiveness of IHS' confidential system, we discussed with the Director several recurring reviewer errors noticed throughout our examination of the confidential reports filed within the Area Offices. The following information is provided to help emphasize training areas that PIES should address when training its reviewers:

- The date of receipt must be recorded immediately on all confidential reports, in accordance with 5 C.F.R. §§ 2634.909(a) and 2634.605(a). The date of receipt indicates whether reports are filed timely and is useful in ensuring that reports are reviewed timely. Delinquent or missing reports, or delayed reviews, diminish your ability to provide timely and specific conflict of interest advice, which is the fundamental purpose of the ethics program.
- The annual confidential reporting period ends on September 30 each year; employees are not permitted to file reports prior to that date. If early reports are received, reviewing officials should ensure that all time periods are accounted for by obtaining verification from filers that there were no changes in their holdings from the date of filing to September 30th.
- To safeguard the prevention of conflicts of interest, a Form 450-A filed in lieu of the annual Form 450 must be submitted in accordance with 5 C.F.R. § 2634.905(d).

PUBLIC FINANCIAL DISCLOSURE SYSTEM

IHS' public financial disclosure system is centrally administered and is well managed by PIES. To evaluate the system's effectiveness, we examined 2 new entrant, 25 annual, and 2 termination public reports that were required to be filed in 2002.⁵ Our examination revealed no technical errors or substantive deficiencies and each report was thoroughly reviewed for potential conflicts.

⁵ We did not examine the public report required to be filed by the DEC since your office is responsible for collecting, reviewing, and retaining this report.

Notwithstanding the overall effectiveness of the public system, we discussed with the Director two procedural issues that we noticed during our examination of the public reports:

First, although all examined reports were filed in a timely manner, the date on which PIES received the filers' reports was not always indicated, as required by 5 C.F.R. 2635.605(a). We advised the Director of this and were assured that this will be a consistent practice during next year's annual filing cycle.

Second, during our examination of filers' individual report files, we found several prior-year reports being retained longer than the required six-year period. We reminded the Director that pursuant to 5 C.F.R. § 2634.604(a), after the six-year period, public reports must be destroyed unless needed in an ongoing investigation. The Director confirmed that the appropriate reports would be destroyed.

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

PIES is appropriately authorizing the acceptance of payments for travel and related expenses from non-Federal sources incurred by agency employees on official travel, in accordance with General Service Administration's Interim Rule 4 at 41 C.F.R. part 304-1, implementing 31 U.S.C. § 1353. We examined the 72 travel acceptances reported on IHS' last 2 semiannual travel reports to OGE covering the 2 6-month periods from October 1, 2001 through September 30, 2002, and found all acceptances to have been appropriately authorized. We were impressed with the way PIES performs its conflict of interest analyses by directly verifying with each sponsoring organization the pertinent information needed to ensure that each payment is properly accepted.

In addition, although all examined acceptances were reported properly, we noticed several travel payments totaling less than \$250 per event included on each of the aforementioned travel reports. We reminded the Director that, in accordance with 41 C.F.R. § 304-1.9, agencies are only required to submit semiannual reports to OGE of travel payments totaling more than \$250 per event, including negative reports. We were assured that only payments meeting the required reporting threshold would be included on future semiannual travel reports.

OUTSIDE EMPLOYMENT

In accordance with HHS' supplemental standards of conduct regulation at 5 C.F.R. § 5501.106, which is intended to prevent ethics violations, IHS requires employees to obtain advance written approval for certain types of outside employment and/or other outside activities. This includes outside professional and consultative work, writing and editing, teaching and lecturing, and holding office or membership in professional societies. In addition, through internal procedures pursuant to § 5501.106(d)(5)(ii), IHS requires its employees to obtain advance approval when serving on tribal governing bodies.

During our examination of the financial disclosure reports, one filer reported outside employment for which prior approval had not been obtained. The filer obtained written approval prior to the conclusion of our on-site review work.

TRIBAL OR ALASKA NATIVE GIFTS

In accordance with HHS' supplemental regulation at 5 C.F.R. § 5501.103, an employee may accept unsolicited gifts of native artwork or crafts, from Federally recognized Indian tribes or Alaska Native villages or regional or village corporations, valued up to and including \$200 per source in a calendar year. A written approval is necessary if the donor is a tribe or village that has interests that may be substantially affected by the performance or nonperformance of the recipient's official duties. Our current review found no instances of gift acceptance under this authority.

COORDINATION WITH THE OFFICE OF INSPECTOR GENERAL

PIES is meeting the requirements of 5 C.F.R. § 2638.203(b)(12) pertaining to coordination with HHS' Office of Inspector General on ethics-related matters. We have determined that the offices have established a good working relationship with each other. We were advised that there have not been any recent violations of the criminal conflict of interest laws referred for prosecution to the Department of Justice.

Mr. Edgar M. Swindell
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In closing, we wish to thank you and all PIES personnel involved in this review for your efforts on behalf of IHS' ethics program. A copy of this report is being forwarded to the IHS Interim Director. Please contact David A. Meyers at 202-208-8000, extension 1207, if we can be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs

Report number 03- 014



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

July 8, 2003

Paul R. Corts
Designated Agency Ethics Official and
Assistant Attorney General for Administration
Department of Justice
950 Pennsylvania Avenue, NW.
(b) (6)
Washington, DC 20530

Dear Mr. Corts:

The Office of Government Ethics (OGE) has completed its review of the ethics program at the Department of Justice (Justice). The review focused on the Civil Division (Civil), the Environment and Natural Resources Division (ENR), the Tax Division (Tax), and the Office of the Attorney General (OAG). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. The review was conducted intermittently from July 2002 through October 2002. This report contains our findings and conclusions.

We also performed a review of the ethics program at the Executive Office of the United States Attorneys (EOUSA). We are reporting our findings from the EOUSA review in a separate letter to you.

HIGHLIGHTS

Our review found that the ethics program is well managed. We believe that ethics officials in Justice's Departmental Ethics Office (DEO) are providing quality overall direction and ethics advice to Deputy Designated Agency Ethics Officials (DDAEO) throughout Justice. These officials, in turn, demonstrated dedication to providing high-quality services to their components' employees. Especially noteworthy are DEO's frequent (biweekly) meetings with DDAEOs to discuss ethics issues and DEO's mini-program reviews to determine components' compliance with ethics requirements. Ethics officials are to be commended for their commitment to effectively carrying out their various ethics program responsibilities. However, we did find one shortcoming in the confidential disclosure system that needs improvement.

Mr. Paul R. Corts

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CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

Our review found that the confidential financial disclosure system was generally in compliance with the ethics laws and regulations. This was based upon our examination of 152 of Civil's 706 OGE Form 450s and 24 conflict of interest certifications (alternative report), 81 of ENR's 403 OGE Form 450s, and 71 of Tax's 325 OGE Form 450s. OAG had no confidential filers in 2001.

However, we found that 5 of 15 Tax section chiefs had neglected to review and certify the OGE Form 450s filed within those sections, which amounted to 99 reports. Although all 99 reports were immediately reviewed once Tax was notified of non-compliance, we believe that the supervisors may be unaware of the importance of the financial disclosure review in preventing employees from committing ethics violations. This lack of review of the reports limits the agency's ability to provide timely and specific conflict of interest advice.

In our discussions with the Tax DDAEO, we were informed that he erroneously was notified by the section chiefs that the 99 reports had been reviewed and certified timely and he then forwarded the information to DEO on January 18, 2002. Since we did not have similar findings at Civil and ENR this may be an isolated incident. We recommend that you ensure that the Tax confidential reports are reviewed and certified timely. One suggested way of accomplishing this is by random inspections and providing reviewers guidance on the importance of timely reviews that provide timely and specific conflict of interest advice, which is a fundamental purpose of an agency ethics program.

On another matter, since litigators in Civil, ENR, and Tax are assigned new cases throughout the year and parties to these cases could pose conflicts of interest, it may not be feasible for supervisors to review all the OGE Form 450s every time a case is to be assigned. We suggest that you may want to consider using an alternative financial disclosure system in lieu of the OGE Form 450 that would require litigators to certify that they do not have conflicts of interests upon the assignment of each case. Using the certification process as cases are assigned would raise employee consciousness of potential conflicts they may have with parties involved in such cases. Our office can help you develop such a system.

PUBLIC FINANCIAL DISCLOSURE SYSTEM

Our review found that the public financial disclosure system was in compliance with the ethics laws and regulations. This was based upon our examination of the public reports required to be filed in 2002, which consisted of a total of 98 public reports (46 Civil, 20 ENR, 20 Tax, and 12 OAG reports). Additionally, we confirmed that two of the three annual reports for Presidential appointees subject to Senate confirmation (PAS), required to be filed in 2002, were forwarded to OGE shortly after agency certification. The third report, although reviewed and certified by the agency two months earlier was not forwarded until we notified the agency that it had not been received.

EDUCATION AND TRAINING

For the components under examination, DEO holds monthly new employee initial ethics orientation sessions. We were informed that employees who hold PAS positions were provided one-on-one initial ethics orientation during their nomination process.

We understand that the 2002 annual ethics training has been completed, but, since it was not completed by the end of our fieldwork, we examined the 2001 training. We found that all covered employees (public filers and other employees) received the required ethics training. Public filers received either one-on-one annual ethics training or attended one of the in-person training sessions offered. Confidential filers completed the "Quandaries" training module or reviewed the written materials entitled "Conflicts of Interest: How to Avoid the Headaches" prepared by DEO. For employees in PAS positions, we encourage one-on-one annual ethics training with emphasis on 18 U.S.C. § 208 and 5 C.F.R. § 2635.502. Additionally, we suggest varying the ethics materials to address the different ethics issues faced by Justice's employees.

ADVICE AND COUNSELING

Our review found that the ethics advice provided to employees was thorough and consistent with the ethics laws and regulations. This finding was based upon our examination of the most recent written advice rendered at the components (45 from Civil, 43 from ENR, 32 from Tax, and 36 from OAG), and appears to be attributable to the team efforts of DEO's ethics officials and the components' DDAEOs sharing ethics information at DEO's biweekly meetings. Additionally, we found that the written advice covered a wide variety of topics, including gifts, misuse of position, outside

Mr. Paul R. Corts

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activity, post employment, travel acceptance from non-Federal sources, and widely attended gatherings.

ACCEPTANCE OF TRAVEL PAYMENTS
FROM NON-FEDERAL SOURCES
UNDER 31 U.S.C. § 1353

Our review found that the requests for travel payments were properly analyzed for conflicts of interest in accordance with 41 C.F.R. § 304-1.5 and 31 U.S.C. § 1353. This finding was based upon our examination of 10 requests for travel payments at Civil, 21 requests at ENR, and 13 requests at Tax (OAG had no requests).

We observed that DEO's semiannual reports required to be submitted to OGE were somewhat late. Remember that the reports are required to be submitted to OGE by May 31 for the period ending on March 31, and by November 30 for the period ending on September 30.

RELATIONSHIP BETWEEN ETHICS OFFICIALS
AND THE OFFICES OF INSPECTOR GENERAL
AND PROFESSIONAL RESPONSIBILITY

Our discussions with DEO, Office of Inspector General (OIG), and Office of Professional Responsibility officials disclosed that no matters involving criminal conflicts of interest have been referred to the Criminal Division's Public Integrity Section for prosecution. Nonetheless, during our discussions with the OIG representatives, we determined that one investigation involving a possible violation of 5 C.F.R. 2635.702 should have been brought to DEO's attention. Providing this type of information to DEO might enable it to determine the need for Justice to take prompt action to remedy an actual or potential violation. Moreover, such information, if sanitized, might be used to enhance Justice's ethics training program. We suggest that DEO's ethics officials initiate periodic requests to OIG and OPR officials regarding such matters.

DEO'S ETHICS PROGRAM REVIEWS

DEO periodically conducts mini-program reviews to determine components' compliance with ethics requirements. This is a good practice that we encourage other agencies to do.

CONCLUSIONS AND RECOMMENDATION

Justice's ethics program appears to be solid and generally complies with applicable ethics laws and regulations. We want to

Mr. Paul R. Corts
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commend DEO's ethics officials for participating in the biweekly meetings with DDAEOs to discuss ethics issues. However, we are making one recommendation that will ensure that the confidential system is in full compliance.

Accordingly, to more fully comply with ethics regulatory requirements, we recommend that the Tax Division:

1. Ensure that confidential financial disclosure reports are reviewed and certified timely.

In closing, I would like to thank everyone involved in this review for their cooperation on behalf of the ethics program. Please advise me within 60 days of the specific actions your agency plans to take on our recommendation. 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 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,



Jack Covaleski
Deputy Director
Office of Agency Programs

Report Number 03 - 015



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

July 14, 2003

Christopher Hughey
Designated Agency Ethics Official
Federal Maritime Commission

(b) (6)

800 North Capitol Street, NW.
Washington, DC 20573

Dear Mr. Hughey:

The Office of Government Ethics (OGE) recently completed its review of the ethics program at the Federal Maritime Commission (FMC). This 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 effectiveness, measured largely by its compliance with applicable statutes and regulations.

HIGHLIGHTS

FMC's ethics program complies with OGE's regulations and appears effective. You exceed requirements by providing verbal annual ethics training for all covered employees at headquarters each year and offering post-employment counseling to all departing employees. The consistent timeliness of filing, reviewing, and certifying financial disclosure reports further testifies to ethics officials' diligence and commitment to the ethics program.

ADMINISTRATION

As the Designated Agency Ethics Official (DAEO), you administer FMC's ethics program with the assistance of the Alternate DAEO (ADAEO). You spend approximately 15 percent of your time on ethics, while the ADAEO spends about 5 percent of her time. Even though the ethics office is housed within the Office of General Counsel, in the capacity of ethics official you and the ADAEO work directly under the Office of the Chairman.

EDUCATION AND TRAINING

FMC's education and training program not only meets, but in some areas exceeds, OGE's requirements. Since training is one of

Mr Christopher Hughey
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the best ways to prevent unethical behavior, OGE considers this a sign of the effectiveness of your program.

Initial Ethics Orientation

In 2002, all 10 new FMC employees received initial ethics orientation. FMC's Office of Human Resources (OHR) provides training to employees when they first report for duty by providing them with a copy of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and one hour in which to review it. Subsequent to our fieldwork, ethics officials and the OHR Director decided to attach to the Standards a memorandum which refers new employees to FMC's policies on financial disclosure, official travel, and personal use of Government office equipment, as well as listing ethics officials' contact information.

FMC's ethics training program exceeds OGE's requirements in that you and the ADAEO provide verbal in-person initial ethics orientation to new commissioners and Schedule C employees. During these briefings you illustrate the ills of not following ethics rules with a true account of a former commissioner who was investigated by the Department of Justice (DOJ) and reprimanded for his actions. OGE believes your method of training upper-level officials is very effective in preventing violations of the ethics rules, and thus ensuring public trust in FMC's integrity.

Annual Ethics Training

FMC also exceeds the requirements for annual ethics training. At the beginning of each year you create a plan detailing how you will conduct training for covered employees. Every year, all covered headquarters employees receive one hour of verbal training presented by you and the ADAEO. You carefully track attendance and provide a make-up session for those who miss the first three sessions. In 2002, training focused on the 14 Principles, highlighted the major ethics rules, used the OGE's "Gameshow PAL" as a competitive game, and reminded attendees of the "good faith reliance" protections. All 33 headquarters employees required to receive training had attended one of your live sessions by the end of the year. These employees included the commissioners, who you attest also received training in each of the three previous years.

All seven Area Representatives also completed their required training in 2002. Since these confidential filers are located in one- or two-person field offices, they always receive computer-based annual ethics training. Last year, Area Representatives completed eight modules, including one on conflicting financial

Mr. Christopher Hughey
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interests, on the U.S Department of Agriculture's ethics Web site. You tracked compliance by requiring them to notify you of the modules they had completed.

ADVICE AND COUNSELING

FMC's ethics advice and counseling program appears to comply with OGE's requirements. We commend you for following the best practice of making post-employment counseling available to all departing employees.

We were unable to assess the quality of your advice, since you and the ADAEO dispense all advice verbally and do not maintain a written record. You clarified that you often offer to provide advice in writing, but that no one has taken you up on the offer. You have not felt that any of the issues you have thus far addressed have been sensitive enough to warrant a written record. Moreover, you receive only approximately one inquiry per month, a sparsity you attribute to the limited potential for conflicts of interest and the fact that the majority of the career staff has been at FMC for many years and is familiar with the ethics rules. Nonetheless, OGE strongly encourages ethics officials at all agencies to keep a written record of advice in order to achieve consistency, provide an idea of relevant annual ethics training topics, and most of all prevent disputes over what was said.

FMC's policies ensure that all employees are offered post-employment counseling upon departing the agency. As part of the check-out process, departing employees must have an ethics official sign off on their clearance form. You use this opportunity to provide relevant post-employment counseling and provide SF 278 forms to those required to file termination reports.

ETHICS AGREEMENT

The only current employee with an ethics agreement has complied with all terms of the agreement. Furthermore, those on his immediate staff act as screeners to ensure he does not inadvertently participate in a matter from which he has recused himself.

FINANCIAL DISCLOSURE SYSTEMS

You and the ADAEO manage effective systems for both public and confidential financial disclosure in accordance with OGE's requirements and FMC's written procedures. We note that you have agreed to update the written financial disclosure procedures to

Mr. Christopher Hughey
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reflect recent transfers of authority from OGE to agencies concerning filing extensions and late filing fee waivers. The procedures are otherwise effective, detailing, among other things, the close cooperation between ethics officials and FMC's OHR Director in identifying new entrant and termination filers. Furthermore, you and the ADAEO aggressively track the filing of reports. These practices not only ensure timely filing, but also convey to employees the seriousness with which FMC regards ethics.

Public Financial Disclosure

We examined annual public financial disclosure reports filed in 2003, as well as all new entrant and termination reports filed from 2002 up to the time of our review. These 23 reports consisted of 4 new entrant, 17 annual, and 2 termination reports, 7 of which were filed by commissioners. Since one filer was granted a filing extension and was not yet required to file, we examined the remaining 22 reports. All reports were filed in a timely manner, reviewed both quickly and thoroughly (though at the time of our review you had not yet completed the review of one report), and certified on time.

Confidential Financial Disclosure

In 2002 FMC employees were required to file 26 confidential financial disclosure reports, 25 of which were filed and which we examined.¹ These reports were generally filed timely, were thoroughly reviewed as evidenced by few technical and no substantive deficiencies, and were all certified within 60 days.

ENFORCEMENT

Although the Inspector General (IG) informed us that no ethics violations have occurred at FMC recently, his office and the ethics office have planned for that eventuality. A 1991 memorandum from the IG and the DAEO to the Chairman assigns responsibility for certain aspects associated with handling an ethics violation. For instance, you are responsible for notifying OGE of all referrals to DOJ and of subsequent case developments. Since different people

¹One filer transferred from another agency around the 2002 annual filing deadline. You mistook his forwarded 2001 report for a new entrant report, and consequently did not collect an annual report from him. You intend to rectify the situation by requiring the filer to report information covering the previous two years on his 2003 report.

Mr Christopher Hughey
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now occupy the positions of DAEO and Chairman, issuing a similar memorandum now would serve to solidify the cooperation between you and the IG.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

FMC complies with the requirements of 31 U.S.C. § 1353 in accepting payments for travel-related expenses from non-Federal sources. Its procedures ensure that an ethics official conducts a conflict of interest analysis and approves the acceptance of funds from non-Federal sources before travel occurs.

Over the last two reporting periods, from April 2002 through March 2003, FMC accepted four such payments of greater than \$250. The Alternate DAEO compiled both semiannual reports and submitted them to OGE in a timely manner

In closing, I wish to thank you for all of your efforts on behalf on the ethics program. A brief follow-up review is normally scheduled within six months after an ethics program review. However, as this report contains no formal recommendations, no such follow-up will be necessary. Please contact Christelle Klovers at 202-482-9255, if we may be of further assistance

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs

Report Number 03- 016



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

August 8, 2003

Britanya E. Rapp
Associate General Counsel and
Designated Agency Ethics Official
Corporation for National and
Community Service

(b) (6)
1201 New York Avenue, NW.
Washington, DC 20005

Dear Ms. Rapp

The Office of Government Ethics (OGE) has completed its review of the Corporation for National and Community Service's (Corporation) ethics program. This 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 effectiveness, measured by its compliance with applicable laws and regulations. The review was conducted during May 2003.

HIGHLIGHTS

We were pleased to find that the Corporation has a model ethics program that not only complies, but extends well beyond OGE's minimum regulatory requirements in every program area. The ethics program achieves a remarkable level of effectiveness and integration into the Corporation's overall culture, an achievement reflective of the collective dedication of you and the ethics staff. Because OGE encourages agencies to implement best practices in order to maintain an overall effective program, we have highlighted throughout this report the many best practices that the Corporation ethics program exhibits

ETHICS PROGRAM ADMINISTRATION

The Corporation's Office of General Counsel (OGC) administers the agency's ethics program, for which you serve as the Designated Agency Ethics Official (DAEO), devoting 80 percent of your time to ethics. You are assisted by the Alternate DAEO, who spends approximately 20 percent of her time on ethics, and an Ethics Advisor, who is primarily responsible for managing the confidential financial disclosure program. You and the Alternate DAEO are known to Corporation employees as the Corporation Ethics Official and Alternate Corporation Ethics Official, respectively.

EDUCATION AND TRAINING

The Corporation is exceeding OGE's minimum requirements for both initial ethics orientation and annual ethics training.

Initial Ethics Orientation

The Corporation exceeds initial ethics orientation requirements by providing in-person training for new employees, including full-time Presidentially-appointed, Senate-confirmed (PAS) employees, and giving briefings to potential Corporation employees.

New employees at the Corporation receive initial ethics orientation during "New Employee Orientation" sessions, which are conducted approximately every other month and typically last a day and a half. At these sessions, new employees participate in interactive ethics training scenarios, guided by PowerPoint slides and led by you and the Alternate DAEO. You also provide new employees with a brochure which contains a brief summary of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and contact information for you and the other ethics officials. The brochure directs new employees to the entire text of the Standards, posted on the Corporation's intranet. Employees are informed that they have one hour of official duty time to read the Standards, and should do so within 30 days of entering on duty, a policy that encourages timely completion of the training.

Your practice of meeting with new (full-time) PAS employees in person enhances the customer service aspect of the Corporation's ethics program and enforces your role of helping employees understand their responsibilities under the ethics rules.

In addition to the aforementioned initial ethics orientation process, you also talk to potential Corporation employees when requested to do so by the Chief Executive Officer (CEO) or Chief Financial Officer (CFO), to provide them with an overview of the ethics rules to which they will be held, if hired. This is a customer-friendly practice that demonstrates your commitment to serving the Corporation's ethics program

Annual Ethics Training

You exceed annual ethics training requirements by providing training to all 600-plus Corporation employees, regardless of whether they are required to receive it. You also go above and beyond by providing verbal in-person training to high-level officials, tailoring ethics materials for special Government employees (SGE), integrating ethics into supervisory training, and utilizing organized record-keeping practices to track completion.

In 2002, you trained all headquarters Corporation employees by attending staff meetings where you spent one hour discussing criminal statutes, ethics principles, and enforcement mechanisms. Providing training in the structure of staff meetings not only allowed you to tailor the material to each audience, but also demonstrated to employees their supervisors' support of the ethics program. Where practicable, you also give in-person annual ethics briefings to the Corporation's CEO and other PAS employees, a practice we encourage you to continue. Alternately, the CEO's appearance at training sessions is a valuable endorsement of the ethics program.

To ensure full compliance with the annual ethics training requirements, you tracked employees' attendance at meetings, held conference calls with regional employees, and offered make-up options to those who could not attend the meetings. Your diligence in tracking completion of annual ethics training conveys to employees that this training is both significant and mandatory. Further, the newly-implemented tracking mechanism, an Excel spreadsheet which contains each employee's arrival and departure dates, training completion date, and type of financial disclosure report, if any, he or she files, appears to be efficient.

Members of the Corporation's Board of Directors (Board) and of the newly-established President's Council on Service and Civic Participation (Council), all of whom are SGEs, receive a version of the Standards prepared specifically for them. You also disseminated a brochure, "Rules and General Principles of Ethical Conduct," to Council members. Such tailored publications communicate to employees the relevance of ethics rules to their particular positions. Requiring that they complete an acknowledgment form solidifies that the responsibility of knowing the ethics rules is theirs.

Lastly, we were pleased to discover that a one-hour portion of the Corporation's supervisory training is devoted to ethics. The corresponding Supervisor's Desk Reference also contains a thorough section on ethics which provides a description of supervisors' roles with respect to each subpart of the Standards.

COUNSELING AND ADVICE

The Corporation has established ethics counseling and advice services that meet and exceed the requirements of 5 C.F.R. § 2638.203(b)(7) and (8). Specifically, we noted that employees feel comfortable seeking advice and already have a general awareness of the ethics rules. Files are well organized, advice is consistent, the ethics office is well advertised, your post-employment counseling is excellent, and it appears that ethics agreements are being carefully honored.

The samples of written counseling and advice that we examined were complete, accurate, and in accordance with applicable statutes and regulations. Based on the consistently high volume of inquiries you receive (approximately five or six per week), it is clear that employees feel comfortable contacting you, an element that is crucial to the success of any agency's ethics program. Further, by examining employees' inquiries to you, we concluded that many employees already had a general awareness of the ethics rules and were simply seeking confirmation from you. Such an awareness among employees is indicative of effective ethics training.

Your organized filing, by subject, of written advice you have issued, coupled with your efforts to keep the Alternate DAEO aware of the questions you receive and the responses you provide, ensure that consistent responses are given by both you and the Alternate DAEO.

Overall, the ethics office appears to be well advertised, resulting in a well-utilized ethics office. The OGC's Web page on the Corporation's intranet is a handy resource for employees and advertises the ethics office by offering contact information for you and the other ethics officials.

We were particularly impressed with the post-employment counseling procedures at the Corporation. In order to provide a departing employee with post-employment counseling, ethics officials must first be aware of when the employee is leaving, and subsequently ensure that they contact and meet with the employee before he or she leaves the agency. The mechanisms you have established to ensure that this occurs appear to be fail-safe. The Corporation's out-processing form, entitled "Clearance for Final Salary Payment," requires employees to certify that they have met with an ethics official to receive post-employment information and have filed a financial disclosure report, if required. For regional employees, you provide such counseling via telephone, after which you issue a code for these employees to document on the form. Departing employees receive your "Post Employment Guide" brochure, which contains a user-friendly overview of the restrictions applicable to former employees, including procurement officials. In addition to the out-processing form, you have secured the valuable assistance of the Corporation's Office of Human Resources (OHR). OHR regularly sends your office a listing of all new, transferring, and departing employees, which you use as another safeguard to ensure that employees leaving the Corporation receive post-employment counseling.

The ongoing counseling you provide to the CEO, CFO, and other Corporation employees who have established ethics agreements is in the spirit of "preventative maintenance," the theme which you feel

describes the advice and counseling services you and the Alternate DAEO provide. Screeners have been appointed to assist in keeping matters that might pose conflicts of interest from coming before the CEO and CFO. These screeners contribute significantly to the honoring of ethics agreements to which these highly visible PAS employees are held.

FINANCIAL DISCLOSURE SYSTEMS

The Corporation's public and confidential financial disclosure systems are in compliance with applicable laws and regulations and are supported by comprehensive written procedures outlining the responsibilities of filers, filers' supervisors, ethics officials, and OHR. The procedures, available on the Corporation's intranet, contain frequently-asked questions, useful tips, and a listing of covered positions.

Public Financial Disclosure System

Almost all of the public financial disclosure reports were filed, reviewed, and certified in a timely manner. An effective system for collecting new entrant reports and providing personalized assistance to filers contributes to this success.

In 2002, all 45 non-PAS employees required to file public financial disclosure reports did so. Our examination found that only 3 reports were filed late (less than 30 days), and all 45 were reviewed and certified in a timely manner. We found no substantive deficiencies and only a few minor technical issues. While no PAS termination reports were required, the one annual PAS report was filed, reviewed, and forwarded to OGE in a timely manner.

Given the high proportion of new entrant filers, the timely filing of all of these reports is exceptional. Below are delineated those of your practices that we feel contribute to the efficiency of the public financial disclosure system and the timely identification of new entrant filers.

First, the database that OHR maintains, wherein all Corporation employees' positions are coded to reflect their filing status, is one of the most effective ways for ethics officials to identify new entrant filers in a timely manner. Because the database includes employees' entrance-on-duty date, and a code to reflect whether they are public filers, confidential filers, or non-filers, it plays a key role in both the public and confidential systems.

Second, the cooperation you have established between your office and OHR is remarkable. In particular, the e-mails that OHR routinely sends to your office when a new employee is hired,

changes jobs internally, or is leaving the Corporation allow you to fulfill your responsibilities under the ethics program in a timely manner, without the administrative burden of locating and tracking personnel changes. Should any new employee "slip through the cracks," the general office e-mail notifications sent by the Director of Personnel to provide biographies of new employees serve as an additional reminder.

Third, your diligence in continuously updating the master list of filers also facilitates the timely capture of new entrants. By collaborating with OHR to review position descriptions, you are able to ensure that employees are appropriately filing financial disclosure reports, notwithstanding changes in their duties.

Fourth, the support of management, including filers' supervisors, conveys to employees that noncompliance with Federal requirements will not be tolerated. When necessary, you have enlisted the assistance of filers' supervisors, who respond accordingly and help disseminate reminder notices and/or contact late filers. We were pleased to discover such strong working relationships between the ethics office and Corporation management.

Finally, the fact that you offer personalized assistance to public filers in completing their reports each year is commendable. Such a level of service strengthens filers' trust in you as their ethics official and allows you to conduct a thorough conflict of interest analysis with less time spent contacting public filers to obtain clarifying information, thereby aiding in the timely reviewing of reports.

Confidential Financial Disclosure System

The confidential financial disclosure system generally meets all the regulatory requirements. We commend the Ethics Advisor for his administration and management of the confidential financial disclosure system. In particular, the Microsoft Word version of the OGE Form 450 that he created allows filers to complete their reports, easily make amendments, and save the form each year. His timely notification of confidential filers, maintenance of a master list, diligent tracking of the reports, and thorough conflict of interest analyses contribute to a confidential system that parallels the effectiveness of the public system.

In 2002, all 312 of the confidential financial disclosure reports for the Corporation's non-SGEs were filed as required. To assess the effectiveness of the confidential system, we examined a sample of 50 reports, consisting of 48 incumbent and 2 new entrant reports. Of these, we found that 12 were filed late, but only 3 of the 12 were filed over 30 days late. All 50 reports were reviewed and certified well within the 60-day review period.

Ms. Britanya E Rapp
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In addition, we reviewed the 8 reports filed by the Board members, who are PAS employees designated as SGEs but who work 60 days or less in a calendar year. We found that 5 reports had been filed late, although only 1 was filed more than 30 days late. All but one of these reports were reviewed timely. We recognize that you notify Board members of the filing due date in a timely manner and that it is often difficult to obtain reports from them as they maintain other full-time jobs and do not have access to the Corporation's intranet, where electronic reports are available.

With respect to the Council members, also SGEs, we concur with your decision to exempt them from filing confidential financial disclosure reports based on the provision in 5 C F R. § 2634.905, which allows for certain individuals to be excluded from the confidential filing requirements if their duties make remote the possibility of being involved in a real or apparent conflict of interest. You based your decision mainly on the fact that Council members have no procurement or grant making responsibilities and primarily serve to promote the President's Volunteer Service Awards.

INSPECTOR GENERAL

We are confident that our Office would be concurrently notified of any referrals to the Department of Justice (DOJ), as required by 5 C.F.R. § 2638.603. Furthermore, a positive working relationship exists between the Corporation's Office of Inspector General (OIG) and ethics officials, such that the Corporation appears to be complying with § 2638.203(b)(11) and (12).

As you know, agencies are required by 5 C.F.R. § 2638.603 to concurrently notify OGE of any referrals made to DOJ of potential violations of the criminal conflict of interest statutes. Based on our discussion with the Corporation's Counsel to the Inspector General, this responsibility rests with one individual in the OIG. Although there have been no such referrals in the recent past, we feel confident that actions would be taken to investigate, refer to DOJ, and concurrently report to OGE any such violations.

We also noted that a positive working relationship and open communication channels exist between the ethics office and the OIG. The establishment of such a relationship facilitates information sharing between the two offices and your utilization of OIG services.

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

The Corporation rarely accepts travel payments from non-Federal sources pursuant to 31 U.S.C. § 1353 and the implementing

Ms. Britanya E. Rapp
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regulation at 41 C.F.R. part 304-1. This is attributable to your "bright line policy," which discourages the acceptance of such offers from all entities (except for collaborative partners) with which the Corporation is doing business. The Corporation's travel management policy does inform employees that all offers from non-Federal sources must be approved in advance by the CFO and directs employees to contact you.

During the period of October 2001 through September 2002, the Corporation only accepted one payment exceeding \$250. Our examination of this acceptance revealed that you conducted a conflict of interest analysis, appropriately approved it prior to the travel, and timely reported the payment to OGE using the SF 326.

We wish to thank you and all other Corporation personnel involved in this review for your extensive efforts on behalf of the Corporation's ethics program. A copy of this report is being sent to the Corporation's Inspector General. Please contact Christelle Klovers at 202-482-9255 if we can be of further assistance.

Sincerely,



Jack Covalesski
Deputy Director
Office of Agency Programs

Report Number 03- 018



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

August 8, 2003

Robert H. Berry
Deputy General Counsel and
Designated Agency Ethics Official
Defense Intelligence Agency
(b) (6)
The Pentagon
Washington, DC 20301-7400

Dear Mr. Berry:

The Office of Government Ethics (OGE) has completed its review of the Defense Intelligence Agency's (DIA) ethics program. The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Ethics Act). Our objective was to determine the ethics program's effectiveness, measured by its compliance with applicable statutes and regulations. The review was conducted intermittently from October 2002 through April 2003.

HIGHLIGHTS

Substantial effort will need to be expended to bring the DIA ethics program into full compliance with ethics requirements. Deficiencies were revealed in ethics education and training, financial disclosure, and the administration of the ethics program for special Government employees (SGE) serving on DIA advisory committees.

Not all covered employees, including SGEs, were receiving annual ethics training and not all new employees were receiving initial ethics orientation (IEO). Moreover, not all required ethics materials and information were being provided.

Accurate master lists of financial disclosure filers, including SGEs, were not being maintained, current editions of the public and confidential reporting forms were not being used, and reports were not being reviewed and certified in accordance with the Department of Defense (DOD) Joint Ethics Regulation (JER). New entrant confidential financial disclosure reports were not being filed timely, some confidential reports had not been certified, and SGEs were filing annual rather than new entrant confidential reports.

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ADMINISTRATION OF THE ETHICS PROGRAM

You currently serve as the DIA Designated Agency Ethics Official (DAEO) and the Assistant General Counsel is the Deputy DAEO (DDAEO). At the time of our program review the DDAEO was the primary ethics person for DIA and responsible for the day-to-day management of the entire DIA ethics program. The DDAEO advised us that she spends 50% of her time on the DIA ethics program

EDUCATION AND TRAINING

Most employees required by subpart G of 5 C.F.R. part 2638 to receive annual ethics training in 2001 did not receive training. Moreover, not all employees required by subpart G to receive IEO were receiving it, nor were all required ethics materials being provided to employees who did receive IEO. In view of the importance of ethics education and training in preventing employees from committing ethics violations, this lack of compliance--particularly as to annual ethics training--concerns us.

Public financial disclosure filers were required to receive verbal annual ethics training at 1 of 12 scheduled live training sessions, while confidential filers were required to receive computer-based training. Only 81 of approximately 517 employees received training, including only 40 of 86 public filers. We discussed this lack of compliance with the DDAEO, who indicated that it was very difficult to gain cooperation from DIA managers and that employees generally just ignored the requirement. However, she intended to solicit the backing of the Deputy Director for future annual training efforts to preclude a repeat of 2001

As for IEO, subsection 11-300.a. of the JER requires all new DOD employees, who have not previously received IEO, to receive IEO within 90 days of entering on duty. According to the DDAEO, who conducts IEO during a one-week orientation course provided to new DIA employees, 330 new DIA employees, both new Government employees and transferees from other agencies, received IEO from January 2001 through October 2002. However, she was unable to determine whether all of DIA's new DOD employees were receiving IEO as required. Additionally, she was not providing all of the ethics materials required by 5 C.F.R. § 2638.703(a) to the employees receiving IEO.

PUBLIC FINANCIAL DISCLOSURE SYSTEM

The public financial disclosure reports filed in 2002 were generally filed and reviewed in accordance with 5 C.F.R. part 2634. However, DIA was not maintaining a current master list of filers,

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outdated versions of the SF 278 were used in filing reports, and none of the reports were reviewed in accordance with the JER.

We examined all 104 of the public reports the DDAEO believed were required to be filed in 2002 (problems with the master list are discussed in the paragraph immediately below). The reports were generally filed and reviewed timely and did not reveal any substantive or technical deficiencies.

The DDAEO advised us that the master list of public reports is established with the assistance of DIA's Personnel Office Policy Group. Documents purporting to constitute the master list of filers for 2002 revealed a total of 96 filers, although we were provided, for our review, 104 reports that she believed represented all of the reports required to be filed in 2002.

Outdated versions of the SF 278 were being used. We remind you that OGE DAEogram DO-00-042 concerning the March 2000 edition of the SF 278 stated that, subsequent to February 2001, all categories of public filers had to use the March 2000 edition. It is important to use the latest edition of the SF 278 as it reflects changes related to matters such as the revised gift-reporting threshold.

Finally, subsections 7-205 and 7-206 of the JER require all public reports, except those filed by civilian Presidential appointees, to be reviewed initially by a filer's supervisor and the Ethics Counselor prior to the final review and certification by the DAEO or designee (in some cases, the Ethics Counselor and DAEO or designee may be the same person). None of the 104 reports was initially reviewed by the filers' supervisor prior to being forwarded to the DDAEO for final review and certification (the DDAEO, as your designee, serves as the Ethics Counselor). Although such a review by the supervisor is not required by 5 C.F.R. part 2634, this JER-mandated practice would appear to be invaluable in affording a review of a filer's public report by the person who, presumably, is most familiar with the filer's work assignments.

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

The confidential financial disclosure reports filed in 2001 by regular employees were filed and reviewed in accordance with subpart I of 5 C.F.R. part 2634, except for some reports not being certified and most new entrant reports not being filed timely. Moreover, DIA was not maintaining a current master list of filers, all of the reports (other than OGE Optional Form 450-As) were filed using an outdated version of the OGE Form 450, and none of the reports were reviewed and certified in accordance with the JER.

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We examined a sample of 67 of the 250 confidential reports the DDAEO believed were required to be filed in 2001 (problems with the master list are discussed in the paragraph immediately below). Ten of the 67 reports had not been certified. Seven of the 9 new entrant reports (all of which were filed during the 2001 annual filing cycle) were filed more than 30 days after an employee assumed a covered position, with over half of the 7 appearing to have been filed 1 to 2 years late. All of the new entrant reports were reviewed timely and did not reveal any substantive or technical deficiencies. We discussed the lack of new entrant filing timeliness with the DDAEO, who acknowledged the problems she has collecting new entrant reports, especially those from employees who have transferred into covered positions. She said there is essentially no tracking system for new entrants, beginning with them not being notified of the filing requirement. The lack of timely filing by new entrants precludes an agency from providing timely advice and counseling to filers concerning potential conflicts of interest.

According to the DDAEO, an e-mail message along with the previous year's master list was sent to heads of Directorates advising them of the upcoming 2001 annual filing cycle and to update their respective master lists. However, we found confidential reports for only 250 of the 433 names on the list. The DDAEO indicated that she had difficulty obtaining updates from the Directorates, believed the discrepancy was a result of inaccurate information provided by the Directorates, and believed that the 250 reports represented all of the reports required to be filed in 2001.

All 63 reports (from filers who did not use the OGE Optional Form 450-A) of the 67 reports examined were filed using an outdated OGE Form 450. In 2001, the April 1999 edition of the OGE Form 450 should have been used (DAEOgram DO-99-029). Additionally, we remind you that OGE DAEOgram DO-02-024 concerning the new September 2002 edition of the OGE Form 450 stated that the new edition should be used in place of the April 1999 edition after the fiscal year 2002 annual reporting period. Similar to the importance of using the latest edition of the SF 278, the latest edition of the confidential reporting form reflects changes related to matters such as the revised gift-reporting threshold.

Finally, subsection 7-306 of the JER requires all confidential reports to be reviewed initially by a filer's supervisor and then reviewed in final and certified by the Ethics Counselor. Subsection 1-214 provides that, except for a DAEO, Alternate DAEO, or DDAEO, any DOD employee appointed to serve as an Ethics Counselor shall be an attorney. However, in 2001 a DIA paralegal reviewed in final and certified all of the reports, essentially functioning as an Ethics Counselor. Although 5 C.F.R. part 2634

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does not specify the position or background that a reviewing official needs to have, this JER-mandated practice would appear to be a means by which to ensure the quality of the final review.

ADVISORY COMMITTEES

There is room for improvement in the ethics program for SGEs serving on DIA's two advisory committees. Not all SGEs required by subpart G of 5 C.F.R. part 2638 to receive annual ethics training were receiving the training, nor were all required ethics materials being provided to SGEs who did receive the training. Moreover, DIA was not maintaining a current master list of SGEs required to file confidential financial disclosure reports, all reports were filed using an outdated version of the OGE Form 450, most filers indicated their filing status as "Annual" rather than "New Entrant," and none of the reports were reviewed in accordance with the JER.

DIA's Two Advisory Committees

DIA has two advisory committees, the Joint Military Intelligence College (JMIC) Board of Visitors (Visitors) and the Defense Intelligence Agency Advisory Board (Board). The Visitors currently consists of 12 members. The Board is to consist of approximately 25-30 members, although there are currently only 21. The Board's charter also provides for the establishment of a consultant group, which currently has 17 members. All members are SGEs.

Annual Ethics Training

Members of the consultant group were not receiving annual ethics training. Members of the Board (other than consultant group members) and the Visitors receive training. However, the JMIC Provost, who provides training to members of the Visitors, was uncertain whether copies of the DOD Supplement to the Standards of Conduct and information regarding the names, titles, office addresses, and telephone numbers of DIA ethics officials was included, as required by 5 C.F.R. § 2638.705(b).

Confidential Financial Disclosure

We examined all 29 of the confidential reports the DDAEO believed were required to be filed in 2002, despite the fact that there are currently a total of 50 members on the two advisory committees (problems with the master list are discussed in the paragraph immediately below). All of the reports were filed and reviewed timely and revealed no substantive but some technical deficiencies.

The DDAEO provided us with a master list of 45 confidential financial disclosure filers that she had received from Personnel, purportedly listing all of the SGEs on the two advisory committees. However, she was only able to provide us with reports from 29 filers, 9 of whom were not identified on the list. The DDAEO did not have an explanation for whether reports should have been filed by the remaining 25 individuals identified on the list.

All 29 confidential reports examined were filed using the outdated SF 450 rather than OGE Form 450. Since 1996, the OGE Form 450 should have been used, initially the February 1996 and April 1999 editions and, after the fiscal year 2002 annual reporting period, the September 2002 edition. As discussed above in the "Confidential Financial Disclosure System" section, it is important to use the latest edition of the reporting form, reflecting the latest reporting requirements.

Most filers indicated their reporting status on the first page of the report as "Annual" rather than "New Entrant." In accordance with 5 C.F.R. § 2634.903(a) and (b), SGEs, including those on advisory committees, file new entrant reports rather than annual reports. This is important, as a new entrant filer, unlike an annual filer, does not have to report gifts and travel reimbursements.

Finally, subsection 7-306 of the JER requires all confidential reports to be initially reviewed by a filer's supervisor prior to final review and certification by the Ethics Counselor. However, there was no evidence that any of the reports had been initially reviewed prior to being reviewed and certified by the Ethics Counselor (i.e., the DDAEO). As discussed above in the "Public Financial Disclosure System" section, despite such a review not being required by 5 C.F.R. part 2634, this JER-mandated practice for both public and confidential reports would appear invaluable in conducting reviews.

COUNSELING AND ADVICE

We determined that DIA has a counseling and advice program for agency employees, wherein records are kept, when appropriate, that appears to meet the requirements at 5 C.F.R. § 2638.203(b)(7) and (8). We examined a sample of the written counseling and advice and found the most common topics were the widely attended gatherings exception to the gift prohibition at 5 C.F.R. § 2635.204(g), the post-employment restrictions, fundraising activities, and former employees volunteering to assist DIA after separation or retirement. The DDAEO provides post-employment counseling and advice in response to requests from employees. All of the advice complied with applicable ethics statutes and regulations.

INSPECTOR GENERAL

DIA appears to be complying with 5 C F.R. § 2638.203(b)(12), wherein the services of the Office of the Inspector General (IG), if any, are utilized when appropriate, including the referral of matters to and acceptance of matters from the IG. However, DIA has not been complying with § 2638.603, wherein agencies are to notify OGE of any referrals for prosecution to the Department of Justice (DOJ) of alleged violations of the criminal conflict of interest statutes and of certain matters related to the referrals.

The Assistant IG for Investigations indicated that matters are coordinated on a case-by-case basis. She also advised us that she would ensure that the necessary notification is made to OGE on current matters referred to the DOJ as well as any others that have been missed in the recent past. In regard to any matters that have been missed, OGE subsequently received notification from DIA of two referrals that had been made to DOJ.

The Assistant IG for Inspections advised us that during inspections her staff conducts interviews with employees which include questions concerning standards of conduct and fraud, waste, and abuse. If information is developed concerning ethics-related matters, that information is brought to the attention of the DIA ethics officials. However, there has been no information developed in the recent past that would have required such coordination.

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

The approval process for accepting payments under the General Services Administration's Interim Rule 4 at 41 C.F.R. part 304-1, implementing 31 U.S.C. § 1353, is specified in Chapter 4 of the JER. Our examination of the semiannual reports submitted to OGE for payments in excess of \$250 for the period of April 1, 2001 to March 31, 2002 revealed that DIA accepted two payments during this period. Supporting documentation for one acceptance revealed that the acceptance was appropriately approved. Supporting documentation for the other acceptance was not readily available.

RECOMMENDATIONS

The following recommendations are considered necessary to bring the DIA Ethics Program into minimum compliance with current OGE regulations and the JER. You should ensure the following:

1. All covered employees, including SGEs, receive annual ethics training.

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2. All of DIA's new DOD employees receive IEO, first by identifying the employees and second by maintaining a record of their attendance.
- 3 Employees, including SGEs, receive all the ethics materials and information required for IEO (5 C.F.R. § 2638.703(a)) and annual ethics training (§ 2638.705(b)).
4. Accurate master lists of public and confidential financial disclosure filers, including SGEs, are created and maintained.
5. Current editions of the SF 278 and OGE Form 450 are used.
6. Financial disclosure reports are reviewed and certified in accordance with the provisions in the JER
- 7 All confidential financial disclosure reports are filed, reviewed, and certified timely, including timely identification of new entrant filers and notification sent to them of the filing requirement.
8. SGEs file new entrant, rather than annual, confidential financial disclosure reports.

It is evident that the DIA ethics program is not working as it should. Much effort is needed to bring the program into compliance. 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. In view of the corrective action authority vested in 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 DIA implement actions to correct these deficiencies in a timely manner. I suggest you consider using the services of your OGE Desk Officer, Ms. Patricia Anderson, to resolve these recommendations.

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A copy of this report is being sent by transmittal letter to the Director of DIA, the DIA IG, and the Director of the DOD Standards of Conduct Office. Please contact Charles R. Kraus at 202-482-9256, if we can be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs

Report number 03-019



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

August 8, 2003

James J Engel
Deputy General Counsel
National Credit Union
Administration
1775 Duke Street
Alexandria, VA 22314-3428

Dear Mr. Engel:

The Office of Government Ethics (OGE) has completed its review of the National Credit Union Administration's (NCUA) ethics program, which focused on the Central Office and Region II. The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Ethics Act). Our objective was to determine the effectiveness of the ethics program, largely measured by its compliance with applicable statutes and regulations. This review was conducted from May through July 2003.

HIGHLIGHTS

NCUA's ethics program appears sound and well geared to your agency's mission and employees. We believe that the program is appropriately focused on preventing employee ethical violations based on the useful ethics training and advisory services that you provide. Also, NCUA's enforcement process promptly and effectively deals with employee ethical breaches.

STAFFING FOR ADMINISTERING PROGRAM APPROPRIATE

Staffing level for the ethics program appears appropriate given the agency's size and organizational structure. As the Deputy General Counsel, you serve as the Designated Agency Ethics Official (DAEO) for the approximately 950 NCUA employees who are located at NCUA's Central Office in Alexandria, VA and in six regional offices and additional sub-offices. The General Counsel serves as Alternate DAEO. In addition, two other attorneys in your Office who are known as Deputy Ethics Officials (DEO) spend part of their time working on ethics-related matters, including reviewing financial disclosure reports and providing advice. The Associate Regional Director, Operations within each regional office also serves as DEO. These regional office DEOs are responsible for

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administering the confidential disclosure systems for filers in their respective Offices. In addition, they occasionally dispense ethics advice to employees in their respective Offices, often after consulting with ethics officials within your Office.

ETHICS AGREEMENTS SATISFIED

For the time period 2002 up to the present, we confirmed that there were two Board members who agreed to take certain actions related to their Senate confirmation--a recusal by one Board member and a resignation from a position coupled with a recusal by another Board member.¹ All actions were completed before their confirmation date; however, requisite evidence of action taken, in accordance with 5 C.F.R. § 2634 804, was not submitted to OGE shortly after you received it. When we last met with you, we reminded you of the requirement to provide evidence of compliance documentation to our Office timely and you agreed to do so.

We believe that having Board members annually update their recusals is a good practice. All three formally remind key officials, including you and the Secretary of the Board, of their respective credit union memberships. While it is unlikely that specific matters involving an individual credit union would be raised to the Board, out of an abundance of caution Board members formally disqualify themselves from matters involving these institutions.

ENFORCEMENT PROMPT AND EFFECTIVE

NCUA appears to promptly and effectively deal with those employees who engage in unethical conduct, in accordance with 5 C.F.R. § 2638 203(b)(9). From 2002 up to the present, the agency took administrative actions against eight employees who had misused their Government-furnished travel charge cards and/or failed to satisfy their just financial obligations. Administrative actions included issuing letters of reprimand and suspensions ranging from three to five days.

RELATIONSHIP WITH OFFICE OF INSPECTOR GENERAL GOOD

The requirements of 5 C.F.R. § 2638.203(b)(11) and (12) are being satisfied pertaining to reviewing ethics-related information

¹ NCUA is governed by a Board consisting of three members who are Presidentially-appointed, Senate-confirmed (PAS)

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developed by Office of Inspector General (OIG) audits and making appropriate use of OIG services. Ethics and OIG officials stated that they have a good working relationship with one another and that they, as necessary, coordinate on employee misconduct cases and other ethics matters. As a recent example, the two offices coordinated on cases of employees' misuse of the Government-furnished travel charge card. Officials stated that there have not been any recent conflict of interest violations referred to the Department of Justice. Should there be referrals in the future, officials are knowledgeable about the requirement to concurrently notify OGE, in accordance with 5 C.F.R. § 2638.603.

ETHICS COUNSELING AND ADVICE PROVIDED

Ethics counseling and advice services meet the requirements of 5 C.F.R. § 2638.203(b)(7) and (8). While you often provide ethics advice orally, you also dispense it in written form, usually by e-mail. We examined approximately 50 written determinations that you provided to employees from 2000 to the present and found that they were accurate, consistent with applicable laws and regulations, and appeared to meet employees' needs. The advice covered outside activities, gift acceptance, fund-raising activities, and potential conflicting interests.

As a good technique to heighten awareness of ethics rules and regulations, we encourage you to occasionally distribute information to all employees on topical ethics matters. We also advocate that you establish an ethics intranet Web site at your agency as a way to easily provide ethics-related information for employees, such as the Standards of Conduct, ethics training materials, and responses to frequently-asked questions. When we last met, you told us that work on developing a Web site had begun.

You also told us that you always provide departing Board members a post-employment briefing and written materials. However, most other employees do not routinely receive post-employment briefings or materials, except as requested. We believe that materials such as these would be useful to post on an ethics intranet Web site.

ETHICS EDUCATION AND TRAINING REQUIREMENTS SATISFIED

We found that OGE's ethics education and training requirements are being met at NCUA, including annually documenting the ethics training plan. As a good management practice, however, we encouraged that you develop a process to systematically track the

Mr. James J. Engel

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completion of annual ethics training by covered employees. You agreed to do so.

Initial Ethics Orientation

The initial ethics orientation requirement is routinely satisfied for all new employees, including new Board members. You told us that in addition to providing new Board members required written materials, you customarily provide one-on-one ethics briefings, which is a practice we encourage you to continue.

Initial ethics orientation is immediately satisfied for new employees when they in-process through the Office of Human Resources and are given written ethics materials. Materials given to new employees include a copy of the Standards of Conduct. In addition, all new employees receive a CD-ROM which includes a brief discussion of the 14 principles of ethical conduct.

Annual Ethics Training

Annual ethics training requirements were satisfied in 2002. Though we were not able to independently confirm receipt of training because you do not systematically maintain these types of records, you told us that all covered employees received annual ethics training in 2002. You also told us that you provided one-on-one annual ethics training to Board members and personalized the training according to their situations. This is a practice that we encourage you to continue. Another good management practice that we promote is for you to develop a record-keeping process to document the fact that covered employees received annual ethics training.

In 2002, you presented ethics training at three different conferences which you said key Central Office employees and all regional office employees attended. In addition, in 2002, you provided ethics training to new supervisors and gave an ethics training session in December geared for those covered employees who had not already received ethics training in 2002.

In July 2003, you provided ethics training to about 200 attendees at NCUA's annual Managers' Conference. Since most covered employees other than public filers were not in attendance at this training session, at a minimum, you intend to fulfill the annual ethics training requirement for them by distributing a slightly revised copy of the training materials used at the Conference. You also said that, if time permits, you will offer another in-person verbal training session for Central Office

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covered employees before the end of this year. In addition, you intend to keep track of those who receive verbal versus written annual ethics training

PUBLIC AND CONFIDENTIAL SYSTEMS' IN COMPLIANCE

We found that NCUA's public and confidential financial disclosure systems are in compliance with OGE's financial disclosure requirements. However, we suggest two operational improvements. First, although your written procedures for administering the systems meet the fundamental requirements of the Ethics Act, when we met with you we suggested several changes to make them more accurately reflect how the systems are administered. You agreed to update your current procedures and consider our suggestions. Second, as a good management practice, we spoke with you about improving your record-keeping so that you have consistent statistical information on each region's confidential filers. You agreed to improve your record-keeping.

Public System

The centralized public system appears well run. We confirmed that all of the approximately 50 reports required to be submitted by public filers (other than the Board members and you) in 2002 were accounted for. We examined a sample of 21 of these reports for filing and review timeliness and for review thoroughness. All 21 were filed and reviewed timely. In addition, based on the notations we observed on the public reports, we found that the DEO on your staff, whom you have designated as the certifying official, conducted thorough reviews for technical accuracy and for potential conflicts of interest.

We also examined the annual and termination reports filed by Board members and you, which are required to be transmitted to OGE pursuant to 5 C.F.R. § 2634 602, for timeliness of filing, review, and transmittal to OGE. In 2002, due to the appointment of two new Board members, two annual reports (from you and the Chairman) and one termination report (from a former Board member) were required to be filed. We found that all three reports were filed and reviewed timely. While the termination report was transmitted to our Office timely, the two annual reports were not sent to us until several months after they were certified. When we last met, we reminded you of the requirement to transmit reports as soon as they are certified, which you agreed to do.

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Confidential System

The decentralized confidential system appears sound. You told us that all of the approximately 775 reports required to be filed in 2002 were accounted for. However, we could not independently verify this accounting based on the records you maintain from the regions. We examined a sample of 30 of the approximately 85 reports filed by Central Office employees. We also examined a sample of 30 of the approximately 135 reports filed by Region II employees, also located in Alexandria, VA. Generally, reports were filed and reviewed timely and review of reports for both technical accuracy and for potential conflicts of interest appeared thorough.

Since you serve as the overall administrator for your agency's decentralized confidential system, we believe that you should maintain consistent statistical information on the status of the confidential system in each region. You told us that you currently receive information from DEOs in various ways and formats. As a good management practice, we advocate that, at a minimum, DEOs should report to you annually on the number of reports required to be filed and the number collected (and explain any discrepancies). Also, DEOs should attest to the fact that they have certified all reports and explain any discrepancies.

As a reminder, a revision to our Annual Agency Ethics Program Questionnaire for calendar year 2003 calls for agencies to report to us on the number of OGE Forms 450 and number of OGE Optional Forms 450-A filed.² Therefore, when DEOs report to you on the number of reports filed, they should also break-out the numbers of OGE Forms 450 versus 450-A.

TRAVEL PAYMENTS FROM NON-FEDERAL
SOURCES NOT ACCEPTED

We could not assess the acceptance of payments for travel, subsistence, and related expenses from non-Federal sources since NCUA does not accept this type of payment. However, we did confirm that you routinely submit negative semiannual reports to OGE as required.

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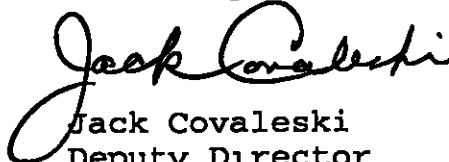
In closing, I wish to thank you for all of your efforts on behalf of the ethics program. No six-month follow-up review is

²See DAEOgram DO-02-031, dated December 24, 2002.

Mr. James J. Engel
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necessary in view of the fact that we have no recommendations for improving your program at this time. We are sending a copy of this report to the Inspector General. Please contact Ilene Cranisky at 202-482-9227, if we can be of further assistance.

Sincerely,

A handwritten signature in black ink that reads "Jack Covalesski". The signature is written in a cursive style with a large initial "J".

Jack Covalesski
Deputy Director
Office of Agency Programs

Report Number 03 - 020



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

September 9, 2003

William J Haynes II
General Counsel and
Designated Agency Ethics Official
Office of General Counsel
Department of Defense
1600 Defense Pentagon
Washington, DC 20301-1600

Dear Mr Haynes

The Office of Government Ethics (OGE) recently completed a review of the ethics program at the Department of Defense's (DOD) Office of the Secretary of Defense (OSD), including the Joint Chiefs of Staff and Joint Staff (JCS/JS) and the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (AT&L)¹ This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Ethics Act) Our objective was to determine the ethics program's compliance with applicable laws and regulations The review was conducted from April through June 2003 The following is a summary of our findings and conclusions

HIGHLIGHTS

OSD's ethics program is well managed by a knowledgeable and dedicated staff in DOD's Standards of Conduct Office (SOCO), who also provide support, including ethics training, to ethics counselors throughout DOD Major elements of the program, including financial disclosure, education and training, and enforcement, meet or exceed the minimum statutory and regulatory requirements Furthermore, the financial disclosure and training elements are enhanced by a SOCO-developed computerized database system that is used to track, among other things, the filing of financial disclosure forms and the receipt of ethics training

Based on documentation made available to us, SOCO officials' efforts appeared to be adequate in preventing conflicts of interest among special Government employee (SGE) members of OSD Federal advisory committees. These efforts have consisted of the routine provision of ethics training, review of financial disclosure reports, and coordination with committee management officials (CMO)

¹For simplicity, we will refer to OSD, JCS/JS, and AT&L collectively as OSD unless otherwise noted

FINANCIAL DISCLOSURE SYSTEMS

OSD's public and confidential financial disclosure systems are well managed and comply with applicable laws and regulations.

Public System Is In Compliance

We conclude that OSD's public financial disclosure system complies with applicable laws and regulations. However, to further enhance the system, we urge personnel offices to consistently identify public filers and notify SOCO of their existence in a timely manner.

As part of our assessment of the public system, we examined all 23 OSD incumbent and termination reports filed from 2002 to the time of our review by Presidential appointees requiring Senate confirmation (PAS). These reports were filed, reviewed, and transmitted to OGE in a timely manner.

We also examined 87 of the 590 non-PAS OSD public reports filed from 2002 to the time of our review. Our sample included 18 new entrant, 8 termination, 48 incumbent, and 13 combination reports (5 incumbent/new entrant and 8 incumbent/termination). All the reports we examined were filed, reviewed, and certified in a timely manner.

Although our examination did not reveal any instances of late filing, the SOCO Director admitted that personnel offices do not consistently identify public filers in a timely manner, largely because of regular turnover of personnel office staff. Section 7-201 of DOD's Joint Ethics Regulation (JER) states that personnel offices are to provide SOCO with immediate notification of new entrant and termination filers. Additionally, personnel offices are required to submit an updated list of incumbent filers to SOCO on an annual basis. We urge personnel office management officials to ensure that their respective staffs adhere to section 7-201 of the JER to ensure the consistent identification of filers and timely notification of SOCO.

Confidential System Is Also In Compliance

Like the public system, the confidential financial disclosure system complies with applicable laws and regulations.

To evaluate the confidential system, we examined 104 of the 807 confidential reports required to be filed from 2002 to the time of our review. Of these, 33 were new entrants and 71 were annual filers.

Mr William J Haynes II
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All of the annual reports and all but three of the new entrant reports were filed timely² All of the reports were also reviewed and certified in a timely manner.

Additional Efforts Are Undertaken

SOCO officials undertake a variety of efforts to ensure the efficient administration of the financial disclosure systems. They are diligent about contacting filers to collect additional information to complete or clarify entries on financial disclosure reports. They also routinely issue letters of warning to filers who could have potential conflicts between their financial interests in DOD contractors and their official duties. Additionally, SOCO officials periodically publish articles in a newsletter issued by DOD's Washington Headquarters Services, entitled Personnel Highlights, reminding filers of the financial disclosure filing requirements and deadlines.

Tracking System Is Impressive

We were impressed with SOCO's computerized tracking system. Among other things, the system is used to track the filing and review status of financial disclosure reports and the completion of ethics training requirements by financial disclosure report filers. It can also be used to generate reports, such as master lists of filers. We applaud this system as an effective tool for administering an organized, and therefore more efficient, ethics program.

ETHICS EDUCATION AND TRAINING

SOCO officials manage an effective ethics training program for OSD employees. In addition to conducting the requisite initial ethics orientation and annual ethics training, they routinely provide training that exceeds OGE's minimum training requirements.

Initial Ethics Orientation Is Provided

SOCO consistently provides new OSD employees with an initial ethics orientation. On a semimonthly basis, a SOCO official meets with all new employees to provide them with an initial ethics orientation, during which attendees are also provided a copy of a handbook entitled

²Two annual filers filed their reports prior to October 1. A SOCO official followed up with both filers to confirm that no new reportable interests had been obtained from the dates they filed their reports up to September 30 (the end of the annual reporting period).

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Employees' Guide to the Standards of Conduct³ This SOCO-developed handbook briefly summarizes the ethics rules and provides employees with contact information for SOCO. It also contains the address of SOCO's Web site. Employees are provided a minimum of one hour to review the handbook and are required to certify their receipt of the orientation materials with SOCO.

Instead of attending one of these orientation sessions, all new PAS employees are provided live one-on-one orientations by a SOCO ethics official upon entering on duty.

Annual Ethics Briefings Are Provided

Each year, SOCO provides covered OSD employees with annual ethics briefings addressing a different topic. These briefings are presented verbally, either live or in the form of a Web-based interactive computer training module, or through the distribution of written materials. In 2002, the annual briefings focused on employees' dealings with non-Federal entities. Based on the computerized tracking system, all OSD public and confidential filers received annual ethics training in 2002.

In 2002, public filers were given the choice of attending one of the live briefings or completing the computerized training module.⁴ If they chose the computer training, they were required to submit an online certification form to SOCO immediately upon their completion of the training module. We asked SOCO officials if they considered this certification system as meeting the requirement at 5 C.F.R. § 2638.704(d) that a qualified instructor be available during and immediately after the training. The SOCO Director stated that there is always a qualified instructor physically present at SOCO during normal business hours who is available to answer any questions public filers may have.

In 2002, OSD confidential filers were provided written materials to meet the annual ethics training requirement. Alternatively, they could have satisfied this requirement by attending one of the live briefings.

Training For Ethics Counselors Is Provided

In addition to providing ethics training for covered employees, SOCO officials conduct a variety of courses for DOD ethics counselors. For example, they participate in providing a one-week ethics training course for new counselors at the Army Judge Advocate General School in Charlottesville, Virginia and conduct several three-day courses outside of the Washington, DC metro

³SOCO also uses this opportunity to identify new employees required to file a financial disclosure report.

⁴In addition to these two choices, PAS employees were afforded the option of receiving a live one-on-one briefing from a SOCO ethics official.

Mr William J Haynes II

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area each year They also conduct assistance visits and program reviews for DOD component organizations on a four-year cycle

SOCO also routinely disseminates ethics-related information and materials to ethics counselors and other relevant DOD officials via e-mail and through postings to the SOCO Web site This information includes such items as training materials, reminders of ethics training requirements and financial disclosure filing deadlines, updates on the ethics rules, and real-life examples of situations where employees have been disciplined for violating ethics laws or regulations

FEDERAL ADVISORY COMMITTEES

Based on available documentation, we conclude that SOCO's ethics-related efforts in support of OSD's Federal advisory committees appear adequate to prevent conflicts of interest To assess the quality of these efforts, we examined the financial disclosure reports filed by and ethics training provided to SGE members of the following five OSD committees The Advisory Group on Electron Devices, the Defense Policy Board, the Defense Science Board, the Strategic Environmental Research and Development Program Scientific Advisory Board, and the Threat Reduction Advisory Committee We also examined a sample of recent meeting agendas and minutes for these committees.

Confidential Financial Disclosure Systems Are Essentially Well Managed But Room For Improvement Exists

To evaluate the confidential financial disclosure systems at the five committees included in our review, we examined a total of 75 confidential reports required to be filed by SGE committee members in 2002 The filing and review timeliness of the reports we examined was adequate and the reviews conducted by CMOs and SOCO ethics officials appeared to be thorough

However, room for improvement exists As required by 5 C F R 2634 903(b), SGE committee members file new entrant OGE Forms 450 upon appointment and follow-on new entrant reports annually upon reappointment or on the anniversary of their original appointment Under this procedure, follow-on new entrant reports might not be filed or reviewed until after a committee has held its first meeting of the year According to a SOCO Deputy Designated Agency Ethics Official (Deputy DAEO), CMOs should be reviewing the most recent report filed by each member prior to each meeting However, he admitted he was not certain whether all CMOs conduct this review prior to each meeting and suspected that some may be better than others in conducting the reviews He also conceded that SOCO must rely heavily on the CMOs' review of the members' financial disclosure reports and knowledge of the ethics rules to identify and remedy potential conflicts among the members With this in mind, the SOCO Deputy DAEO plans to provide CMOs with additional ethics training following the issuance of this report We advocate the further training of CMOs to ensure that, as the committees' first line of defense in identifying and resolving conflicts, they are knowledgeable of the ethics rules and recognize the importance of conducting timely and thorough reviews of the confidential reports

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Disqualification Statements
Are Required

In addition to the OGE Form 450 filing requirement, all committee members must sign a disqualification statement recusing themselves from participating in any matters which would have a direct and predictable effect on the interests reported on their financial disclosure reports. We commend SOCO for taking this additional step toward ensuring that committee members are free of conflicts.

Examination Of Available Meeting
Agendas And Minutes Did Not
Reveal Any Conflicts

In addition to reviewing the OGE Forms 450 for general compliance with the reporting requirements, we also compared the forms filed by committee members against the agendas and minutes of recent committee meetings to identify any potential conflicts between the issues discussed at the meetings and the members' financial interests.

According to SOCO officials, meeting discussions rarely focus on "particular matters," but rather concentrate on long-term policy issues.⁵ Our examination of the agendas and minutes confirmed this assertion, as we did not identify any discussions of matters during the committee meetings that would appear to have an effect on the financial interests reported on committee members' reports. However, we must note that the meeting minutes we examined were generally in summary form, thus making it difficult to definitively determine whether particular matters were discussed, but not reflected in the minutes.

Committee Members
Receive Training

All newly appointed SGE members of OSD advisory committees are provided a copy of the Employees' Guide to the Standards of Conduct prior to serving on a committee. Additionally, a SOCO ethics official provides an ethics briefing for committee members prior to the first meeting of each year. During this briefing, committee members are provided a copy of a document entitled A Very Brief Summary of the Standards of Conduct for Special Government Employees, which was developed by SOCO.

⁵For example, the Defense Science Board charter specifically states that the Board is not established to advise on individual procurements and no matter shall be assigned that would require any member to participate personally and substantially in the conduct of any specific procurement.

ADVICE AND COUNSELING

We examined a sample of the ethics-related advice and counseling rendered to OSD employees by SOCO and JCS/JS ethics officials during 2002.⁶ Based on our examination of this written advice, we conclude that all advice complied with applicable ethics laws and regulations.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

SOCO officials have instituted effective procedures to ensure the proper acceptance and reporting of travel payments accepted by OSD employees on behalf of DOD under 31 U.S.C. § 1353 and the implementing General Services Administration regulation at 41 C.F.R. part 304-1. To assess these procedures, we examined OSD's two most recent semiannual reports to OGE of payments accepted in excess of \$250 and a sample of written authorizations and other documentation approving the acceptance of the payments. All of the payments we examined were approved and accepted in compliance with the statute and regulation. Additionally, both semiannual reports were sent to OGE in a timely manner.

ENFORCEMENT

Effective procedures appear to be in place to ensure that prompt and effective action would be ordered to remedy any such violation and that follow up would be conducted to ensure that actions ordered would be taken in accordance with 5 C.F.R. § 2638.203(b)(9).

According to SOCO ethics officials and the Office of Inspector General's (OIG) Associate Deputy General Counsel, no alleged violations of the criminal conflict-of-interest laws by an OSD employee have been referred to the Department of Justice, including the appropriate United States Attorney, for prosecution in the past two years. Additionally, the Associate Deputy General Counsel did not recall recently investigating any ethics-related regulatory violations by an OSD employee, which confirmed the information SOCO ethics officials provided us earlier.

The JER formalizes the delegation of responsibility for conducting investigations, referring cases for prosecution and concurrently notifying OGE, and following up on administrative remedies. If an alleged criminal violation were to be referred for prosecution, OIG, rather than SOCO, would be responsible for making the referral. However, SOCO would be responsible for making the appropriate concurrent notification to OGE. After completing an investigation of a case which does not merit referral for prosecution, OIG follows up with the appropriate administration and/or management officials to see what administrative action, if any, has been taken against an employee who is the subject of the case. However, OIG rarely, if ever, second-guesses any action taken, or the lack thereof.

⁶No advice was rendered by AT&L.

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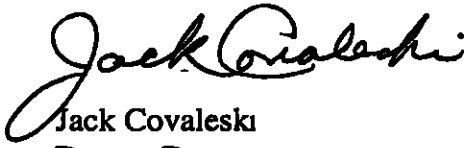
Officials from both OIG and SOCO stated that they work closely together. For example, the Associate Deputy General Counsel attends SOCO's monthly ethics coordination meetings. As with the aforementioned delegation of responsibilities, the JER also requires this coordination, as necessary, between OIG officials and ethics officials.

CONCLUSION

Based on our examination of available documentation regarding the various program elements, we conclude that OSD's ethics program meets or exceeds minimum statutory and regulatory requirements. SOCO officials should be commended not only for their administration of OSD's ethics program, but also for the guidance and support they provide to the program DOD-wide.

In closing, I would like to thank you and your staff for your efforts on behalf of the ethics program. A copy of this report is being forwarded to DOD's Inspector General via transmittal letter. Please contact Dale Christopher at 202-482-9224 if we may be of further assistance.

Sincerely,


Jack Covaleski
Deputy Director
Office of Agency Programs

Report Number 03- 021

Review Copy
FY04



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

November 3, 2003

William C. Love
Designated Agency Ethics Official
National Transportation Safety Board
490 L'Enfant Plaza East, SW.
Washington, DC 20594

Dear Mr. Love:

As part of our agency monitoring activities, the Office of Government Ethics (OGE) has reviewed the National Transportation Safety Board's (NTSB) ethics program. The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Ethics Act). Our objective was to determine the effectiveness of the ethics program, largely measured by its compliance with applicable statutes and regulations. This review was conducted during August 2003.

HIGHLIGHTS

NTSB's ethics program has improved since OGE's last review which was conducted in 1999 and resulted in a notice of deficiency. However, we found that some improvements are still necessary. Currently, NTSB is enforcing policies concerning restrictions and prohibitions on employees' financial holdings and a requirement for prior approval of certain outside employment without a supplemental standards of conduct regulation. Additionally, covered employees were not notified timely to file financial disclosure reports for the last reporting cycle and not all public filers received 2002 annual ethics training timely. These timeliness issues occurred during your extended health-related absences. Nonetheless, you are in the process of publishing NTSB's supplemental regulation with OGE's concurrence and have taken the necessary steps toward ensuring that all program elements are adequately covered in your absence.

STAFFING FOR ETHICS PROGRAM IS APPROPRIATE

NTSB has three ethics officials whose responsibility is the ethics program: you, as the Designated Agency Ethics Official's (DAEO) and an attorney; the Alternate DAEO, who is the General Counsel; and a paralegal, who is currently being trained to assist the you. Other attorneys may assist the ethics program when necessary. Although ethics officials work on legal matters other than ethics, you informed us that the staffing level is appropriate given the agency's size and organizational structure.

Mr. William C. Love

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You have taken steps to ensure that covered employees receive adequate notice to file their financial disclosure reports by ensuring that the paralegal receives the necessary ethics training and by posting of ethics events on an electronic calendar that will be shared by the ethics officials.

AGENCY-SPECIFIC ETHICS PROHIBITIONS MAY NOT BE ENFORCEABLE

Until NTSB's supplemental regulation is published in accordance with 5 C.F.R. § 2635.105, the policies that prohibit its employees from retaining certain financial holdings and require employees to obtain written prior approval for outside activities may not be enforceable. On August 17, 1993, OGE provided comments to NTSB regarding the draft supplemental standards along with the repeal of NTSB's superseded residual standards of conduct regulation. However, NTSB's supplemental standards were never published.

FINANCIAL DISCLOSURE SYSTEMS NEED IMPROVEMENT

We found that NTSB's financial disclosure systems are in need of some improvements. The public and confidential filers must be notified timely to ensure that reports are filed timely.

Public System

In 2003, the incumbent public filers were not notified of their filing requirement until June 18, when they were notified that the deadline for filing their reports had been extended from May 15 to July 11, 2003. Although the employees are ultimately responsible for filing their reports timely, we believe that public filers should be reminded of their requirement to file. A reminder notice can be sent as early as January 1 but should not be sent later than April 15.

We found that, considering filing extensions, the public reports were filed, reviewed, and certified timely. This determination was based on our examination of all 22 public reports which were required to be filed in 2003 (as well as all 4 incumbent and termination reports required to be filed by Presidentially-appointed, Senate-confirmed (PAS) employees which, in addition, were transmitted to OGE timely). Your review of the 22 reports was thorough as revealed in the documents filed with the reports which indicated that specific holdings were analyzed for potential conflicts utilizing the Internet. Additionally, specific information was clarified with the filers via e-mail. We noted that your review identified a filer who unknowingly had two holdings that posed a potential of conflict of interest. Once you notified the filer of the potential conflicts, he immediately divested the holdings. This is an excellent example of the fundamental purpose for the timely filing and review of financial disclosure reports, which is to provide timely advice to avoid conflicts.

Confidential System

Due to the your absences, confidential reports for 2001 were not collected at all, and the confidential reports for 2002 were not collected until 2003 after filers were notified in July 2003 to file their reports by August 11. Incumbent reports are required on or before October 31 for the preceding 12 months ending September 30.

All 35 reports for 2002 were reviewed and certified within 60 days of filing. Your review of the reports was thorough as revealed in the documents filed with the reports which indicated that specific holdings were analyzed for potential conflicts utilizing the Internet. In addition, specific information was clarified with the filers via e-mail.

**ETHICS COUNSELING AND
ADVICE IS PROVIDED**

Ethics counseling and advice services meet the requirements of 5 C.F.R. § 2638.203(b)(7) and (8). We examined over 50 written determinations that were provided to employees within the last year and found that they were accurate, consistent with applicable laws and regulations, and appeared to meet employees' needs. The types of advice covered gifts from outside sources, fund-raising activities, outside employment, post employment, potential conflicting interests, speaking, writing, use of Government resources, and use of public office.

NTSB's use of a standardized format for providing certain advice to employees ensures consistent advice. Standardized formats are used for responses regarding acceptance of free attendance at a widely attended gathering, approval of outside employment, and approval of the acceptance of travel payments from non-Federal sources.

Currently, post-employment advice is provided for the departing high salaried staff including covered employees. However, you are considering providing post-employment advice for all departing employees.

ETHICS AGREEMENTS ARE SATISFIED

We found that actions under all ethics agreements, entered into by two PAS employees, were completed in accordance with the time limit prescribed at 5 C.F.R. § 2634.802(b), and evidence of requisite action taken, in accordance with § 2634.804, was submitted to OGE timely. In addition, all employees, as a condition of employment, have been required to execute ethics agreements, as appropriate, to comply with the restricted and prohibited holdings provisions in NTSB's as yet unpublished supplemental regulation. These agreements, completed by seven non-covered employees, all called for divestiture. Once the regulation is published and the restrictions and prohibitions become enforceable, non-covered employees would be given a reasonable period of

Mr. William C. Love

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time, in accordance with § 2635.403(d), to carry out divestiture. Covered employees would have to comply with the very similar time limit prescribed at § 2634.802(b).

All employees with potential conflicts enter into ethics agreements as a condition for hiring. You determine whether an agreement is necessary when you interview prospective employees for potential conflicts of interest. Copies of the agreement are forwarded to the employee's supervisor and office director. Any actions that need verification, such as divestitures, are posted on the ethics calendar to verify that the agreements were satisfied within 90 days. We commend this one-on-one interview process that emphasizes the importance of ethics in Government.

ETHICS TRAINING CURRENTLY MEETS OR EXCEEDS REQUIREMENTS

Ethics training currently meets or exceeds regulatory requirements. Due to your absence, you were unable to provide public filers with the required verbal training in 2002, but provided written ethics materials to all employees. Additionally, all employees receive an ethics orientation prior to being hired.

Initial Ethics Orientation

All employees receive one-on-one ethics orientation prior to their employment, either by telephone or face-to-face. The orientation consists of a standards of conduct briefing and a conflicts-of-interest interview. The PAS filers are the only prospective employees who complete a financial disclosure report prior to starting. Additionally, once a new employee is hired the personnel office provides the required ethics materials in the new employee package.

Annual Ethics Training

According to you, you provided verbal ethics training to all covered employees, including public filers, in 2001. However, you were unable to provide all the public filers with the required verbal training in 2002. Nonetheless, you provided the PAS filers one-on-one verbal training and you provided all other covered employees and non-covered employees with written ethics training during 2002. In February 2003, you provided verbal ethics training to the public filers, and plan to offer computer-based ethics training to all other covered employees and non-covered employees, to be completed by the end of 2003.

Other Ethics Training

You also provide ethics training to offices upon request. For example, you conducted an ethics briefing to the Office of Marine Safety's employees in May 2003. Additionally, you provide ethics information using e-mail and NTSB's Intranet Conduct & Ethics site.

Mr. William C. Love

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TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES ARE ACCEPTED

NTSB accepts payments for travel, subsistence, and related expenses from non-Federal sources authorized under 31 U.S.C. § 1353. We examined the 23 approvals for the acceptance of travel payments during the period from April 2002 through March 2003 and found that they appeared to be in compliance. The types of meetings consisted of conferences, presentations, and training courses.

RECOMMENDATIONS

To more fully comply with ethics regulatory requirements, we recommend that NTSB:

1. Ensure that the prohibitions and requirements in the draft supplemental standards are not enforced until NTSB publishes the standards in the Federal Register in accordance with 5 C.F.R. § 2635.105.
2. Ensure that the financial disclosure reports are filed timely by notifying filers timely.

In closing, I would like to thank everyone involved in this review for their cooperation on behalf of the ethics program. Please advise me within 60 days of the specific actions the agency 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 our recommendations be implemented in a timely manner. Please contact Jean Hoff at 202-482-9246 if we may be of further assistance.

Sincerely,


Jack Covaleski
Deputy Director
Office of Agency Programs

Report Number 03 - 022



December 1, 2003

The Honorable Karen D. Cyr
General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Mail Stop (b) (6)
Rockville, MD 20852-2738

Dear Ms. Cyr:

As part of our agency monitoring activities, the Office of Government Ethics (OGE) has reviewed the U.S. Nuclear Regulatory Commission's (NRC) ethics program. The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Ethics Act). Our objective was to determine the effectiveness of the ethics program, largely measured by its compliance with applicable statutes and regulations. This review was conducted during September 2003.

LIMITED SCOPE OF REVIEW

Based on our pre-review results, including the fact that NRC's ethics program has historically been administered effectively, we decided to limit the scope of the review to cover only the ethics program as it applies to special Government employees (SGE) and the overall enforcement of the standards of ethical conduct.

HIGHLIGHTS OF THE REVIEW

Our review found that NRC's ethics program continues to be administered effectively, which we attribute to the accumulated knowledge of its ethics counselors. SGEs receive timely ethics advice concerning potential conflicts of interest, which is a fundamental purpose of the ethics program. Furthermore, NRC ensures that disciplinary actions are taken for ethical misconduct.

ETHICS PROGRAM FOR SGEs

NRC maintains an ethics program for SGEs which has all the basic elements that are tailored for their needs.

NRC Examination Of Financial Disclosure
Reports For Potential Conflicts

NRC's Deputy Ethics Counselor examines SGEs' financial disclosure reports for potential conflicts of interest as part of the approval process for appointments and reappointments of NRC's advisory committee members, consultants, and experts. Members who are appointed to positions on three of NRC's five Federal Advisory Committees Act (FACA) committees¹ are SGEs. Consultants and experts are also SGEs and are appointed to positions on the FACA committees, on NRC's Atomic Safety and Licensing Board Panel (ASLBP), and within offices at NRC headquarters and its regions.

NRC Examination Of Certain
Financial Disclosure Reports
For Prohibited Securities

NRC's supplemental standards of ethical conduct regulation at 5 C.F.R. part 5801 prohibits ownership of securities identified on its prohibited securities list for SGEs who are identified in NRC's Management Handbook 7.7 (handbook). Members of ACNW and ACRS, members (part-time Administrative Law Judges (ALJ)) of ASLBP, and attorneys who are appointed as experts to ASLBP are prohibited from owning securities on the prohibited securities list. Members of ACMUI and consultants can own securities identified on the prohibited securities list. Nonetheless, 18 U.S.C. § 208(a) prohibits any SGE from participating in particular matters in which he has a personal financial interest.

OGE Examination Of Financial Disclosure Reports

We examined all 89 financial disclosure reports (26 public and 63 confidential reports) required to be filed by SGEs on board at the time of our review and found that they were filed, reviewed, and certified timely. New entrant reports are required to be filed within 30 days of SGEs' appointments. Follow-on new entrant public reports are due by May 15. Follow-on new entrant confidential reports for ALJs are due by July 1. Follow-on new entrant confidential reports for other than ALJs are due by October 1.

We also examined the 14 remedial actions that were taken by SGEs (all public filers) to bring their financial disclosure reports into compliance with applicable laws and regulations specified in 5 C.F.R. § 2634.605(b)(1)(ii). The actions consisted of 2 divestitures, 8 notices to disqualify,

¹NRC's five FACA committees are the Advisory Committee on Medical Uses of Isotopes (ACMUI), the Advisory Committee on Nuclear Waste (ACNW), the Advisory Committee on Reactor Safeguards (ACRS), the Licensing Support System Advisory Review Panel (LSSARP), and the Peer Review Committee for Source Term Modeling (PRCSTM). The members of the LSSARP and the PRCSTM are representatives.

3 waivers (18 U.S.C. § 208(b)(3)), and 1 waiver of prohibited securities made in accordance with 5 C.F.R. § 5801.102(e)(1)(iii). We found that the remedial actions taken appeared timely and appropriate. However, the Deputy Ethics Counselor informed us that OGE was not routinely consulted on the 18 U.S.C. § 208(b)(3) waivers and that the waivers were not forwarded to OGE, as required by 5 C.F.R. § 2640.303. To remedy this, the Deputy Ethics Counselor informed us that he will consult OGE when practicable and will forward all future waivers referred to in §§ 2640.301 and 2640.302 to OGE.

Ethics Advice

Although most SGEs are not required to divest their financial holdings if the holding is listed on the prohibited securities list, all SGEs are advised verbally that, in accordance with 5 C.F.R. § 5801.102(e)(2), they must not participate in particular matters in which the SGE has a personal financial interest unless an 18 U.S.C. § 208(b) waiver is granted. Additionally, the Deputy Ethics Counselor provides verbal advice to advisory committee attendees prior to each committee meeting.

Ethics Training

SGEs receive ethics training materials applicable to SGEs and a conflict of interest briefing upon appointment and reappointment. Additionally, ACNW and ACRS members, most of whom are public filers, receive verbal ethics training annually.

NRC ENFORCEMENT OF THE STANDARDS OF ETHICAL CONDUCT

NRC enforces the Standards of Ethical Conduct for Employees of the Executive Branch regulation. In 2002, there were 14 violations of the misuse of Government property provision at 5 C.F.R. § 2635.704, which resulted in administrative actions ranging from a letter of reprimand to a 45-day suspension. It appears that NRC, in accordance with § 2638.203(b)(9), is ensuring that the administrative actions taken are prompt and effective. NRC had taken no other actions resulting from ethical violations.

Employees violated the misuse of Government property provision irrespective of receiving information regarding the use of Government property. Prior to the 2002 violations, all NRC employees should have received information regarding use of Government property either in the initial ethics training materials that should have been provided to new employees or in the "Yellow Announcements" that were addressed to all NRC employees. Additionally, all employees can access information regarding the misuse of Government property provision on the NRC Web site. The Deputy Ethics Counselor informed us that he coordinates topics of interest for the "Yellow Announcements" and other ethics training materials with the Office of Inspector General and the Office of Human Resources.

The Honorable Karen D. Cyr
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In closing, I wish to thank you and your staff on behalf of the ethics program. No six-month follow-up review is necessary in view of the fact that we have no recommendations for improving your program at this time. We are sending a copy of this report to the Inspector General. Please contact Jean Hoff at 202-482-9246, if we can be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs

Report Number 03 - 024



December 8, 2003

Anne K. Quinlan
Acting Designated Agency
Ethics Official
Surface Transportation Board
1925 K Street, NW.
Washington, DC 20423-0001

Dear Ms. Quinlan:

The Office of Government Ethics (OGE) recently completed a review of the Surface Transportation Board's (STB) 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 program's compliance with applicable laws and regulations as well as to evaluate its effectiveness in terms of the systems and procedures STB has established, beyond the minimal requirements, to ensure that ethics violations do not occur. The review was conducted in August and September 2003. The following is a summary of our findings and recommendations.

HIGHLIGHTS

STB has an essentially well-managed ethics program that generally complies with applicable ethics laws and regulations. STB's public and confidential financial disclosure systems appear effective in preventing potential conflicts of interest. The development of written procedures for administering these systems will bring them into full compliance. The ethics training program also appears well managed. However, new employees were not being provided all of the required initial ethics orientation materials. You have since remedied this shortcoming. Moreover, while our examination of the written ethics-related opinions rendered by the previous Designated Agency Ethics Official (DAEO) appeared lacking in a discussion of all the relevant regulatory requirements, the one piece of written advice prepared by you was complete, accurate, and in compliance with the regulations. In addition, we believe an understanding of your enforcement role and responsibility now exists to ensure that prompt and effective action would be ordered to remedy any ethics-related violations and that follow-up would be conducted to ensure that actions ordered are taken. Finally, STB has procedures in place to approve the acceptance of travel payments and related expenses from non-Federal sources under 31 U.S.C. § 1353. The timely forwarding of semiannual reports of these payments to OGE will bring STB into full compliance with the law.

PROGRAM STRUCTURE

STB's previous DAEO resigned from this position on June 19, 2003. You, as the Alternate DAEO, have been acting as DAEO until a full-time DAEO is selected by the Board members.¹ You are assisted in carrying out your ethics duties by STB's human resources office (HR), particularly in the areas of financial disclosure and ethics training.

SUPPLEMENTAL REGULATION

The Interstate Commerce Commission (ICC), which was the predecessor of STB, issued a supplemental standards of conduct regulation at 5 C.F.R. part 5001. During our last review in 1999, the previous DAEO stated that an attorney at STB was in the process of drafting a new regulation which would repeal the old ICC one and replace it with an STB regulation. Among other things, this was deemed necessary because STB has a much narrower scope of responsibility than did ICC. Therefore, the restrictions on having certain financial interests contained in the ICC regulation are far more restrictive than necessary in light of STB's more narrow mandate. During our current review, you reiterated that a new STB regulation was being drafted but had not been completed. As stated during our previous review, we remind you that the new STB supplemental standards of conduct regulation will require OGE concurrence and approval before being issued.

FINANCIAL DISCLOSURE SYSTEMS

STB's public and confidential financial disclosure systems appear effective in preventing potential conflicts of interest and generally accord with statutory and regulatory requirements. We especially commend the close cooperation between you and HR which allows for the timely identification of new entrant and termination filers, as well as the generation of complete and accurate master lists of annual filers. Although at the time of our review STB had no written procedures on how to collect, review, evaluate, and where appropriate, make publicly available, financial disclosure reports as required by section 402(d)(1) of the Ethics Act, you are working to correct this deficiency.

Public System

To evaluate the public system, we examined all of the reports required to be filed in 2002 by Presidentially-appointed, Senate-confirmed (PAS) employees. These reports were filed, reviewed, and certified timely, though there were some delays in forwarding reports to OGE. You explained that you had been waiting to certify all reports before forwarding them. However, you are now aware OGE would prefer to receive reports as soon as you certify them.

¹The three-member Board currently consists of one commissioner and thus a selection will not be made until at least one more commissioner is appointed.

We also examined all but one of the eight non-PAS reports filed in 2003.² All seven of the reports were filed, reviewed, and certified timely and contained few technical and no substantive deficiencies.

Confidential System

To evaluate the confidential system, we examined all 30 of the reports required to be filed from 2002 to the present, including 3 new entrant reports. All reports were filed, reviewed, and certified timely. Furthermore, we noted only one technical deficiency and no substantive issues.

Review Of Financial Disclosure Reports Vis-a-vis STB's Supplemental Regulation

The ICC supplemental standards of conduct regulation, applicable to current STB employees, prohibits employees, including commissioners, from being employed by or holding any other official relationship with any for-hire transportation company and from owning securities of or being in any manner pecuniarily interested in any such company. The regulation describes for-hire transportation companies as (1) any company that owns or controls and has more than 2 percent of its assets directly invested in or derives more than 2 percent of its income directly from a for-hire transportation company or (2) any company, mutual fund, or other enterprise which has an interest of more than 10 percent of its assets directly invested in or derives more than 10 percent of its income directly from for-hire transportation companies.

You explained that the only potentially prohibited interests for current STB employees are railroad companies, one pipeline company, and a few other companies and mutual funds. To ensure that filers' potentially prohibited reported interests in companies and mutual funds do not exceed the income or investment thresholds contained in ICC's supplemental standards of conduct regulation, you research the value and nature of the companies' and funds' income and investments using one of the on-line financial services Web sites. You stated that conflict of interest determinations should become more straightforward since the new STB supplemental regulation is not expected to define the prohibited interests using the percentage of investment and income thresholds currently contained in the ICC regulation.

ETHICS TRAINING

STB has a generally effective ethics training program. Procedures are in place to ensure that covered employees receive timely and beneficial annual ethics briefings. Ensuring that new employees have access to all required orientation materials will bring the training program into full compliance with regulatory requirements.

²You had not yet completed your review of the one report we did not examine.

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Initial Ethics Orientation

To meet the initial ethics orientation requirement, HR provides written materials to all new employees. These materials consist of the OGE pamphlet entitled A Brief Wrap on Ethics, a copy of the ICC supplemental standards of conduct regulation, and contact information for STB ethics officials.³

We informed you that, in accordance with 5 C.F.R. § 2638.703, if employees are only provided a summary of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), the complete text of the Standards must be readily available in employees' immediate office area. We suggested providing new employees the address of the OGE Web page where the entire text of the Standards is maintained. You agreed to this suggestion.

Upon receiving the orientation materials, new employees must immediately certify with HR that they have received them. HR forwards you a copy of this certification form, which you use to determine whether the employee is required to file a financial disclosure report. Within 60 days new employees must return a second form to you certifying that they have read and understood the orientation materials. We commend you for implementing a certification process which enables you to timely identify new entrant financial disclosure filers and helps to ensure that employees have received and read the orientation materials.

Annual Ethics Briefings

To meet the annual ethics training requirement for covered employees you hold one or two live annual ethics briefings per year which both public and confidential filers attend, including PAS employees (who may also request a personal briefing). You use a sign-in sheet to track the completion of this requirement. Employees who miss the live briefing are given an ethics video and written materials to review and you stand by to answer any questions.

In 2002 training consisted of a general overview of the ethics rules and lasted one hour. You assured us that all covered STB employees received annual ethics training in 2002.

ADVICE AND COUNSELING

The written ethics-related opinions rendered by the previous DAEO appeared lacking in a discussion of all the relevant regulatory requirements. However, the one piece of written advice prepared by you was complete, accurate, and in compliance with the regulations.

³In addition to being provided the written materials, all PAS employees receive a personal briefing from you.

To evaluate the counseling provided, we examined the written counseling files dating from 2001 to the present. The files consisted of 14 opinions from 2001, none from 2002, and 4 from 2003. Most of the advice was rendered by the former DAEO.

The advice rendered by the former DAEO pertained mostly to the acceptance of travel and free attendance from non-Federal sources at speaking engagements of the Vice Chairman, the majority of which took place away from the Vice Chairman's duty location. In approving these acceptances, the former DAEO cited 31 U.S.C. § 1353 as the acceptance authority in three instances; at the other engagements, free attendance was approved using the widely attended gatherings exception to the gift acceptance prohibitions at 5 C.F.R. § 2635.204(g). In approving the acceptance of payments using the 31 U.S.C. § 1353 authority, the former DAEO advised that regardless of whether the source was considered prohibited under part 2635, it could nonetheless reimburse STB for expenses incurred, or provide for lodging and travel in-kind. However, there was no indication that he undertook a conflict-of-interest analysis regarding the source as required by 41 C.F.R. § 304-1.5 (the provision in the implementing regulation in effect when the advice was rendered).⁴ While we cannot definitively determine that such analyses were not performed, a discussion of them was not included in the written advice we examined. Although not specifically required by the statute or regulation, we suggest, as a good management practice, any such analysis be reduced to writing and related to the employee requesting the approval. Moreover, in the case of a prohibited source, such an analysis might have resulted in ethics officials disapproving an acceptance of payment(s).

The one piece of written advice rendered by you regarding a luncheon invitation was complete and appeared to be in compliance with the regulations.

ENFORCEMENT

As you have only recently assumed the role of acting DAEO, you were unsure of exactly what your enforcement-related duties were and which duties were the responsibility of the Department of Transportation's Office of Inspector General (DOT OIG).⁵ Therefore we met with you and officials from DOT OIG to discuss this division of responsibility. Based on our discussion, we believe an understanding of your respective roles now exists to ensure that prompt and effective action would be ordered to remedy any ethics-related violations and that follow-up would be conducted to ensure that actions ordered are taken in accordance with 5 C.F.R. § 2638.203(b)(9).

According to you and DOT OIG officials, in the past two years no alleged violations of the criminal conflict-of-interest laws by an STB employee have occurred. Additionally, no action has been recently taken against an STB employee for an ethics-related regulatory violation. If an alleged

⁴Chapter 304 of title 41, which upon becoming effective on June 16, 2003 (68 Fed. Reg. 12602 (March 17, 2003)) replaced 41 C.F.R. part 304-1, has an identical provision at § 304-5.3.

⁵The DOT OIG conducts various inspector general-related functions for STB, as STB does not have its own inspector general.

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criminal violation were to be referred to the Department of Justice or a United States Attorney for prosecution, DOT OIG would be responsible for making both the referral and the appropriate concurrent notification to OGE. DOT OIG would also be responsible for investigating alleged violations, whether or not they merit criminal prosecution. After completing an investigation, or following a declination to prosecute, DOT OIG would follow-up with the appropriate administration and/or management officials to see what administrative action, if any, has been taken against the employee(s).

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

STB has procedures in place to approve the acceptance of travel payments and related expenses from non-Federal sources under 31 U.S.C. § 1353 and the implementing regulation at Chapter 304 of title 41. You stated that such payment offers are extended almost exclusively to commissioners and that they and their assistants are fully aware of the approval procedures.

We examined STB's five acceptances of travel-related payments greater than \$250 from non-Federal sources between April 1, 2002 and March 31, 2003. All appeared to be approved and accepted in compliance with the law, regulation, and STB procedures. We recognize that the previously mentioned written determinations regarding travel payments, which lacked a discussion of the required conflict-of-interest analysis, were issued by the former DAEO. However, we remind you of the requirement to conduct this analysis and suggest that it be memorialized in writing.

All payments were reported to OGE using the SF 326. However, one of the semiannual reports was submitted a month and a half late. We recommend that in accordance with 41 C.F.R. § 304-6.5, all semiannual reports to OGE are forwarded in a timely manner.

RECOMMENDATIONS

To further enhance STB's ethics program and bring it into full regulatory and statutory compliance, we recommend you:

1. Establish written procedures on how to collect, review, evaluate, and where appropriate, make publicly available, financial disclosure reports, in accordance with section 402(d)(1) of the Ethics Act.
2. Ensure that all semiannual reports to OGE are forwarded in a timely manner, in accordance with 41 C.F.R. § 304-6.5.

In closing, I would like to thank you for your efforts on behalf of the ethics program. Please advise me within 60 days of the specific actions your agency has taken or plans to take on our recommendations. A brief follow-up review will be scheduled within six months from the date of

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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 actions to implement our recommendations. Please contact Dale Christopher at 202-482-9224 if we may be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director

Office of Agency Programs

Report Number 03- 025