



U.S. Office of Government Ethics  
Program Review Division

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# Ethics Program Review

Central Intelligence Agency

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## Results in Brief

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The United States Office of Government Ethics (OGE) conducted a review of the Central Intelligence Agency's (CIA) ethics program in November 2010. The results of the review indicated that the CIA's ethics program is not effectively administered and is not in compliance with statutory and regulatory requirements in the areas of financial disclosure, training, outside activities, oversight, and general program administration.

### Highlights

- CIA did take immediate action to address issues noted by OGE regarding the ethics program's structure and systemic problems involving financial disclosure and tracking of information vital to the administration of the ethics program.
- Ethics officials provide training targeted to address the specific concerns of various segments of CIA employees, including employees not required by regulation to receive training.

### Concerns

- The constant rotation of employees, including directorate Deputy Ethics Officials (DEO), makes it difficult to ensure stability, continuity, and competence within the ethics program.
- The review of public and confidential financial disclosure reports filed within CIA's directorates and reviewed by directorate DEOs is inadequate.
- No system is in place, other than through filer self-identification, to identify new entrant confidential filers when they enter a covered position for the first time. Additionally, the practice of relying on individual employees to self-identify themselves as filers increases the risk that employees whose duties involve the exercise of significant discretion in certain sensitive areas are not subject to a review for possible conflicts of interest.
- Ethics officials are able to track employee compliance with ethics training requirements, but the process is so burdensome it prevents officials from effectively administering the substantive elements of the ethics program.
- The CIA has established a prior approval requirement for outside activities which requires a supplemental regulation.
- Written procedures for the administration of financial disclosure systems are outdated.

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## Objectives, Scope, and Methodology

OGE provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance. The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program. OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act and 5 CFR part 2638.

To assess the CIA's ethics program, OGE examined a variety of documents provided by ethics officials; other documents that the Commission forwarded to OGE, including the annual questionnaire; prior program review reports, and a sample of the Commission's public and confidential financial disclosure reports and advice and counsel provided to the Commission's employees.

## Program Administration

The OGE review team conducted a preliminary exit conference with the ADAEO at the completion of the on-site portion of the ethics program review. The review team noted a number of deficiencies in the CIA's ethics program that were at least partially related to the staffing, structure, and processes in place to administer the ethics program. The CIA immediately took action to redesign its ethics program to address the noted deficiencies. The redesign calls for new staffing, structure, and processes that should help to vastly improve the ethics-related services provided to employees. These improved services, once fully implemented, should help protect both the CIA and its employees from potential conflicts of interest that could undermine the public's confidence in the agency. This report outlines the staffing, structure, and processes in place at the time the review team was on site as well as the planned changes.

### Current Program Administration

The CIA's General Counsel serves as the Designated Agency Ethics Official (DAEO) and the Chief, Administrative Law Division serves as the Alternate Designated Agency Ethics Official (ADAEO). The CIA's ethics program is administered on a day-to-day basis by the Agency Ethics Counsel under the direct supervision of the ADAEO. Five additional attorneys have been appointed Ethics Counselors. Two Compliance officers support the ethics program by performing both administrative and substantive tasks. Finally, approximately 30 Deputy Ethics Officials (DEO) have been appointed within the CIA's various directorates.

The staffing structure as described would appear to provide robust support for the administration of the ethics program. However, OGE's review found that the actual staffing support provided to the ethics program is minimal:

- The DAEO has no day-to-day role in the ethics program.
- The ADAEO is briefed almost daily on significant ethics issues and makes management decisions but is seldom available to perform routine ethics tasks such as drafting advice or reviewing financial disclosure reports except in unusual circumstances.
- Of the five additional attorneys appointed Ethics Counselors, only one is considered dedicated to the ethics program and spends approximately 80 percent of his time providing advice and counseling, the remaining 20 percent is spent on non-ethics program issues. Additionally, this Ethics Counselor is expected to rotate to another position in 2011.
- The remaining four Ethics Counselors generally only provide advice. In addition, they can only be assigned additional responsibilities if their other work permits. Further, these Ethics Counsels also rotate to new positions approximately every 2 years and will probably not serve as Ethics Counsels when they leave their current positions.
- Some of the Ethics Counselors are "Honors Program Attorneys." These are recent law school graduates hired to obtain a broad exposure to the practice of national security law in two or three Divisions within the CIA's Office of General Counsel over a three year period. The Agency Ethics Counsel, while laudatory of their abilities, acknowledged that

involving the Honors Program Attorneys in the ethics program was intended to be more of a learning experience for them than a way to provide support for the ethics program.

- One of the Compliance officers was only recently appointed and the other will be rotating to a new assignment in January 2011.
- The approximately 30 DEOs are not appointed, approved or supervised by ethics officials. They are chosen by supervisors within each directorate based on availability and workload. Their only responsibility is to review financial disclosure reports from within their respective directorates. Because the DEOs serve no more than 2 years in that role, there is little continuity within the directorates for review of financial disclosure reports. By the time a DEO develops the expertise to review financial disclosure reports, he or she rotates to another position.

The practical effect of this staffing structure is that the Agency Ethics Counselor, one other Ethics Counsel and one Compliance Officer are responsible for providing advice and counseling, conducting training, and performing the administrative functions of the CIA's entire ethics program. They receive sporadic assistance from a handful of part-time Ethics Counselors plus approximately 30 DEOs who have little to no experience and over whom the ethics program has little to no control or authority. This structure appears to be at least partially responsible for an ethics program that is not compliant with all statutory and regulatory requirements.

#### Proposed Program Administration

The CIA will create a new Ethics Law Division (ELD) within the Office of the General Counsel. The Chief, ELD will head the new division and also serve as ADAEO. The Chief, ELD will be a member of the Senior Intelligence Service and report directly to the General Counsel who will remain the CIA's DAEO. In addition to the Chief, the ELD is to be staffed by two attorneys, a Program Manager, two technical reviewers, a Compliance Officer, and a Program Coordinator. Additionally, Office of General Counsel attorneys will be "surged" during financial disclosure filing seasons to help review financial disclosure reports, taking the responsibility out of the hands of the Deputy Ethics Officials within the Directorates.

To further emphasize the importance and enhance the stature of the ethics program, the CIA's Director will issue a leadership statement explaining his vision for the ethics program. The letter will also state the Director's support for the ethics program and expectation that employees adhere to ethics-related requirements.

#### Recommendation

- OGE recommends that the CIA continue implementing its planned changes as quickly as possible to improve ethics-related services provided to employees and ensure compliance with relevant requirements.

### **Financial Disclosure**

OGE's examination of public and confidential financial disclosure reports reviewed and certified by DEOs indicated that the review of the reports was inadequate. Some reviewers apparently

were not comparing the previous year's report with the current report or were not following up to resolve discrepancies. In addition, the reviewing and certifying officials did not have a clear understanding of the filers' personal financial interests and did not follow up when information disclosed on reports was obviously inadequate. For instance:

- One public filer reported as an asset "Merill Lynch/Bank of America – Investment accounts – two" and "Bear Stearns/JP Morgan – Investment accounts." Both assets were within the \$500,000 to \$1,000,000 category. The reviewing/certifying official stated that he was sure he would have asked the filer about the assets. However, there were no notes in the comment section of the report and the reviewing/certifying official could not provide any evidence that he sought clarification. This means a public financial disclosure report was certified with significant undisclosed assets that may have posed a conflict.
- One public filer reported as an asset "Charles Schwab." There was no indication that follow-up was conducted to determine the underlying assets of this investment nor was the financial disclosure report amended to provide the additional information.
- One public filer reported as an asset "Stock Options – Northrup Grumman." There was no indication that follow-up was conducted to determine the nature of the stock options or how/when they could be exercised or whether the holding posed a conflict of interest for the filer.
- One public filer reported as an asset "Edward Jones Investments." There was no indication that any follow-up was conducted to determine the underlying assets of this investment nor was the financial disclosure report amended to provide the additional information.

OGE attempted to speak with a number of DEOs about how they certified reports without full disclosure of assets. Unfortunately, many had rotated to new positions and were unavailable for interviews. However, three current DEOs were interviewed. One stated that he did not really understand what he was suppose to do or why he was doing it and that he did not have access to the internet (generally considered necessary to review financial investment vehicles to determine the nature of investments). Another DEO stated he did not know he had access to previous years' reports in the CIA's electronic filing system. The last DEO said she was only comfortable that the reports she certified were free of conflicts because she had discussed any report disclosing questionable information with the Agency Ethics Counsel and Compliance Officers.

The CIA needs to take steps to ensure a more competent review of reports before the annual 2011 public and confidential financial disclosure reports are filed. These steps should include more training for DEOs, a leadership emphasis on the importance of adequate review of financial disclosure reports, and oversight of the DEOs by more experienced ethics staff.<sup>1</sup>

A significant issue in the confidential financial disclosure program is that the CIA has no reliable system to identify confidential filers. Before the annual confidential filing season, the CIA sends out an agency-wide annual notice requesting that employees self-identify themselves as

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<sup>1</sup> Subsequent to the on-site portion of the program review, the CIA requested that OGE provide training to those reviewers who had volunteered and were selected to serve as reviewing officials for financial disclosure reports. OGE provided the training at the CIA's campus on January 12, 2011.

confidential filers. There is no system at all to identify new entrant 450 filers who enter their positions after the annual filing cycle.

The same DEOs responsible for reviewing the public reports were responsible for reviewing the confidential reports. OGE's examination of confidential financial disclosure reports identified deficiencies in the review of those reports similar to what was found in the public reports. Other deficiencies in the confidential system include reports not filed and reports not timely reviewed or certified.

The problems identified by OGE's review are also the product of constant rotation of new DEOs. In most cases, a DEO reviews reports for two years and then rotates to a new position. In most cases, this rotation would prevent an individual from becoming familiar with who should be required to file a report and from gaining the expertise and competence necessary to independently review and certify either a public or confidential report. This is one of the problems which give rise to the concern over the rotation of DEOs.

The CIA's electronic financial disclosure system does not replicate the public or confidential financial disclosure form in appearance as is generally required by OGE. The CIA's electronic system was implemented prior to OGE guidance, which states that "any electronic form developed for use with a system, absent OGE approval, must exactly replicate the existing paper versions of the SF 278 and OGE Form 450 and be capable of being printed as paper copies." The CIA is projected to receive new software in 2011 that will allow them to create an enhanced electronic system. This new software should include the ability to create forms that duplicate the official forms.

The CIA's written procedures are out of date. The procedures provided during the review were dated October 21, 1996 and pre-date the CIA's electronic system. Each agency is required by statute and regulation to have written procedures. Those procedures should be current and accurately reflect the processes in place to administer the financial disclosure systems. Therefore, OGE recommends that the CIA update its written procedures for its financial disclosure systems. Such an update will not only bring this aspect of the program into compliance but will also provide information necessary to successful succession planning.

### Recommendations

- Develop procedures--other than self-identification--that reliably identify confidential financial disclosure report filers, including new entrant and annual filers.
- Develop procedures to ensure all reports are timely filed, reviewed and certified.
- Draft new procedures for the administration of the public and confidential financial disclosure systems that address all required elements and accurately reflect the revamped processes for financial disclosure that have been put in place.

The CIA has also implemented an alternative financial disclosure system for contracting and procurement officials. This system requires that covered employees determine who the interested private sector parties are in each contracting or procurement action they are assigned to work on and certify they have no conflicts of interest. The employee's immediate and next level supervisor are also required to review the contracting or procurement action documents to

verify that all interested private sector parties are identified to ensure that the employee's certification addresses all potential conflicts.

OGE did not review this system while on site but intends to do so during the six-month follow-up to this review. At that time, OGE will select a judgmental sample of self-certification forms and compare them against contracting and procurement action documents to verify that all interested private sector parties have been identified in the employees' forms.

#### Suggestion

- OGE suggests that CIA ethics officials periodically review samples of self-certification forms to ensure that they identify all interested private sector parties involved in contracting and procurement actions. This review is analogous to conducting the required review of public and confidential financial disclosure reports and a basic management practice that should be incorporated into any ethics program that has a similar alternative system.

### **Education & Training**

The education and training program is one of the strongest elements of the CIA's ethics program. OGE was pleased to see that CIA's training objectives within its 2010 training plan provided for a mixture of both in-person, written, and computer-based ethics training, covering a range of ethics issues, targeted to different audiences (both covered and non-covered employees). In addition to conducting the requisite initial and annual ethics training, OGE was also pleased to see the host of discretionary training that the Ethics Office provides throughout the year to keep employees knowledgeable of the ethics laws and regulations and the high priority that ethics officials assign to maintaining a strong training program. Nevertheless, OGE believes certain improvements can be made to strengthen this program element further in view of the importance of ethics education and training in preventing employees from committing ethics violations. OGE's suggestions and recommendations for improvement are discussed below.

#### Initial Ethics Orientation

While OGE found evidence that ongoing IEO training is provided to new employees of CIA, as required, one concern was raised with ethics officials.

- OGE found no indication as to whether ethics officials, or more directly the Human Resources Office, were aware during IEO training whether any new employees were required to file a confidential report. As discussed with ethics officials this could be contributing to the challenges of timely new entrant confidential filing.

To help address this concern, OGE suggests that the Ethics Office begin to track additional information within its tracking system to include the following employee information: (1) entrance on duty date, (2) job title, (3) work telephone number and/direct extension, (4) grade and position description, and (5) their supervisor's name (if known), when requesting IEO reports from the personnel offices. Although this additional information is not required to carry



out IEO, OGE believes that by cross-referencing a more detailed IEO list against the Ethics Office's own new entrant confidential filers' list, CIA will be able to ensure, as appropriate, that new employees entering covered positions do not "fall through the cracks" and are identified and instructed to file their confidential reports timely. This information will also help the CIA ensure that the most up-to-date master list of confidential filers is maintained as well. As a good management practice, OGE also suggests that new procedures be established to make the Human Resource Office responsible for including a notification of the financial disclosure requirements in the position vacancy announcements (or their equivalent) and for including the financial disclosure requirements in the position descriptions to which the requirement to file applies.

The review also identified that the CIA's ethics officials have no practical way to track which or how many employees required to receive annual ethics training actually received the training. Current procedures call for individual employees to attend training, which is readily available, and then self-certify online that they attended the training. However, ethics officials acknowledged that not everyone who attended training actually certifies that they were trained. Further, even those who do self-certify do so in a database that does not identify them as required to receive the training. In order to verify that those employees who were required to receive ethics training actually were trained, ethics officials would have to print out a list of those employees who self-certified they were trained and manually compare it against master lists of financial disclosure report filers. Given the number of employees who file financial disclosure reports, and the number of ethics officials available, the current monitoring system is not efficient.

#### Recommendation

- CIA must implement a more efficient tracking system that allows ethics officials to timely and continually monitor completion of annual ethics training.

#### **Advice & Counsel**

There were no written procedures governing the advice and counseling element of CIA's ethics program. However, the availability of ethics advice and counseling is stressed during ethics training and advertised on the CIA's intranet. In fact, one request for advice examined during the review noted that the requestor used the Office of General Counsel's webpage to identify the process for requesting advice.

A sample of advice and counseling regarding gifts, invitations, and permissible activity while an employee is on leave-without-pay was examined. All advice and counseling examined during the review appeared to be appropriate and was provided within one business day of the request.

After her arrival in 2007, the current Agency Ethics Counsel learned that there were numerous and ongoing instances of CIA employees supervising their spouses who were performing services for the CIA, creating a violation of 18 U.S.C. § 208. The Ethics Counsel raised the issue within the agency and began consultation with OGE. As a result, it was determined that a waiver under the provisions of 18 U.S.C. § 208(b)(1) could be granted in limited circumstances.

The waivers would allow one spouse to supervise another within certain parameters without violating the law. OGE examined the CIA's procedures for granting waivers and a sample of 23 classified waivers. Based on this examination, it appears that CIA has been granting waivers in consultation with OGE and according to guidelines agreed upon by both OGE and the CIA.

#### Suggestion

- OGE suggests that CIA develop written procedures for the administration of the ethics program. These procedures should, at a minimum, address who is authorized to provide ethics-related advice, how employees will be made aware of the availability of ethics officials to provide advice, when advice must be provided in writing, and how advice will be shared and retained.

#### **Agency-Specific Ethics Rules**

CIA requires all employees to receive permission to engage in any outside activity, e.g., jury duty, becoming a Cub Scout leader, going to court for divorce proceedings, and seeking outside employment. According to the Agency Ethics Counsel the basis for the requirement is the need to ensure employees are not exposed to situations that could compromise security. However, each request must also be approved by an ethics official who reviews the outside activity for conflicts of interest. Permission to engage in the outside activity is not granted unless the ethics official signs off on the request.

The requirement that a conflict of interest analysis be conducted and that approval of the outside activity is contingent upon a determination that there would be no conflict establishes this system as a prior approval for outside activities system. To establish such a system, an agency must have authority under a supplemental regulation under the Standards of Ethical Conduct for Employees of the Executive Branch or the agency's organic statutes.

OGE recognizes that the Intelligence Authorization Act for Fiscal Year 2010 (Authorization Act) requires that "[t]he Director of National Intelligence, in consultation with the Director of the Office of Government Ethics, shall issue regulations prohibiting an officer or employee of an element of the intelligence community from engaging in outside employment if such employment creates a conflict of interest or appearance thereof." Therefore, OGE recommends that the CIA should begin drafting its own regulatory language now. OGE is willing to assist and expedite the process for issuing a supplemental that could be implemented until the overarching regulation directed by the Authorization Act can be issued.

#### Recommendation

- Draft supplemental regulations to address the outside activities approval process as it relates to the requirement to receive approval from ethics officials subsequent to a conflict of interest analysis.

## Ethics Agreements

OGE reviewed six written authorizations for employees to engage in activities under the provisions of 5 CFR § 2635 502(d) and seven recusals. Each authorization and recusal appeared to be well-structured and specific. The written authorizations each provided a reasonable basis for granting a waiver. Each recusal included a screening arrangement.

## Enforcement

During the on-site review, the OGE review team met with the CIA's Counsel and Deputy Counsel to the Inspector General (IG) to discuss the requirements of 5 CFR § 2638.203(b)(12) and determined that the services of this office are utilized when appropriate, including the referral by the DAEO of matters to and acceptance by the DAEO of matters from the IG's office. OGE is satisfied that there is and has been a continuing relationship between the DAEO (and staff) and the IG (and staff), which is responsible for making conflict-of-interest referrals to the Department of Justice (Justice) and concurrently notifying OGE. It was clear during discussions with both parties that they view their coordination with one another as fundamental to their respective missions and that systems are in place to effectively exchange ethics-related information and to resolve ethics issues. This is important based on the fact that the DAEO is required to ensure that prompt and effective action, including administrative action, is undertaken to remedy ethics violations.

During discussions with ethics officials, OGE learned that the Ethics Office may not always be aware of when a referral is made to the Justice. Therefore, as a good management practice, OGE suggest that IG officials begin to concurrently notify the DAEO when making a referral to Justice regarding the conflict-of-interest laws to help in monitoring this system. OGE also encourages both ethics and IG officials to periodically update and clarify the roles of each of their respective offices in CIA's system of enforcement.

### Suggestion

- Coordinate with IG officials to ensure OGE is concurrently notified when referrals to the Department of Justice regarding potential violations of the criminal conflict of interest statutes are made.

## Oversight of the Ethics Program

OGE is concerned that the oversight mechanisms currently in place are not sufficient to adequately oversee the financial disclosure program CIA-wide. At a minimum, OGE believes the DAEO must develop an oversight program that routinely assesses the quality and timeliness of reviews of financial disclosure reports.

To apply the oversight requirements to the structure at CIA, the review team discussed with IG officials the idea of expanding their audit objectives and scope to address ethics during CIA audits. (Some IG offices are now incorporating this approach and their review procedures have

been developed and modeled after OGE's program review guidelines.) To improve accountability CIA-wide, process-related functions such as the collection, review, and evaluation of public and confidential financial disclosure reports; ethics education; and the ethics-related support functions provided by human resource contacts could be examined by IG staff. The focus of these oversight reviews would be to give assistance to the DAEO in helping to reasonably ensure compliance with OGE's ethics regulations.

### 1353 Travel Acceptances

The CIA accepts relatively few travel payments from non-Federal sources for travel, subsistence, and related expenses incurred by agency employees on official travel under the authority of the General Services Administration (GSA) regulation at 41 CFR chapter 304, implementing 31 USC § 1353. In fact, based on a review of CIA's last three semiannual travel reports submitted to OGE, covering the periods April 1, 2009, through November 30, 2010, only two acceptances of travel payments were reported. During the on-site review, the review team examined the underlying documentation supporting both travel payments and concluded that both were accepted based on all relevant considerations regarding the conditions for travel acceptance described within the GSA regulation. We also confirmed that both payments were forwarded to OGE timely using GSA's Standard Form 326 (SF 326).

Even though the CIA has had a limited history of accepting § 1353 travel payments, OGE did evaluate other areas to assess the agency's system of accepting § 1353 travel payments and reporting them to OGE. OGE identified one procedural issue during the evaluation that needed improvement:

#### Suggestion

- While OGE found written procedures in place to accept travel payments from non-Federal sources, it was noted that updates had not been made to them since January 21, 2003. Despite the infrequency of CIA employees accepting travel payment from non-Federal sources, the agency's written procedures should reflect the most up-to-date GSA changes made to 41 C.F.R. part 304-1. Accordingly, OGE suggests that these procedures be evaluated and revised, as appropriate, to remain current with regulatory policy and/or agency procedural practices.

### Special Issues

The CIA requires individuals hired under personal services contracts (independent contractors) to complete financial disclosure reports. Documents provided to the contractors also appear to suggest that they are subject to the criminal conflict of interest statutes. During conversations about these documents, the Agency Ethics Counsel noted that it is made clear to independent contractors that the law does not apply to them as a criminal matter, but rather as a term of their contract. Further, the Agency Ethics Counsel advised OGE that the CIA has begun steps to obtain approval to change the documents to delete the inartfully crafted language. To ensure that the language in the documents is redrafted, OGE is recommending that CIA ethics officials

follow through on efforts to remove the language. OGE will review the status of those efforts during its 60-day follow-up.

### Recommendation

- OGE recommends that the CIA cease including references to chapter 11 of title 18 and the criminal conflict of interest statutes in documents independent contractors are required to sign.

Many of the documents that were critical in conducting this review are classified and therefore could not be removed from CIA facilities. OGE asks that the materials identified to the Agency Ethics Counsel as relevant to the review and this report be preserved by the CIA at least until the next review conducted by OGE. Further, OGE asks that these materials be made available to properly cleared OGE personnel upon request.

### **Agency Comments**

OGE provided CIA with a draft copy of this report for comment. Their comments are included in the appendix of this final report.