



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)<sup>1</sup> 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)

---

<sup>1</sup>For 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  
Page 3

All of the annual reports and all but three of the new entrant reports were filed timely<sup>2</sup> 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

---

<sup>2</sup>Two 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).

Mr William J Haynes II  
Page 4

Employees' Guide to the Standards of Conduct<sup>3</sup> 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.<sup>4</sup> 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

---

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

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

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

Mr William J Haynes II  
Page 6

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.<sup>5</sup> 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.

---

<sup>5</sup>For 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.<sup>6</sup> 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.

---

<sup>6</sup>No advice was rendered by AT&L.

Mr William J Haynes II  
Page 8

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 Covalesski  
Deputy Director  
Office of Agency Programs

Report Number 03- 021