



August 19, 2004

Charles S Brown
Designated Agency Ethics Official
National Science Foundation
4201 Wilson Boulevard
Suite 1265
Arlington, VA 22230

Dear Mr Brown

The Office of Government Ethics (OGE) has recently completed its review of the National Science Foundation's (NSF) 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 compliance with applicable ethics laws and regulations and to evaluate NSF's systems and procedures for ensuring that ethics violations do not occur. Our current review was conducted intermittently from January through April 2004. The following is a summary of our findings and conclusions.

HIGHLIGHTS

We are pleased to report that the ethics program at NSF complies with applicable ethics laws and regulations and has many strong program elements that effectively ensure the public's confidence in an ethical Government, including a noteworthy counseling and advice program and an outstanding education and training program. As the agency's Designated Agency Ethics Official (DAEO), it is apparent that you and the Alternate DAEO (ADAEO) take your duties and responsibilities very seriously and are dedicated to the highest standards of integrity for NSF and its employees. We discussed with you several procedural issues that you have either already corrected or have assured us would be corrected in the future. Of these, most importantly was your expeditious change in the process for granting 18 U.S.C. § 208 (b)(3) waivers to members of NSF advisory committees. As a result, we have no formal recommendations but have highlighted these issues within the body of this report as evidence that NSF's ethics program continues its effectiveness.

ADMINISTRATION OF ETHICS PROGRAM

NSF's activities are guided by the National Science Board (NSB) which consists of 24 part-time members who are appointed by the President and confirmed by the Senate (PAS). The NSF

Mr Charles S Brown
Page 2

Director, who serves as an ex officio member of the NSB, and the Deputy Director are the agency's only other PAS appointees

As the Assistant General Counsel, within NSF's Office of General Counsel (OGC), you have long-served as the agency's DAEO for the approximately 1,300 NSF employees who are located at headquarters in Arlington, Virginia. You are assisted in the day-to-day management of the ethics program by the ADAEO, a Legal Analyst, and the approximately 42 Conflicts Officials who are primarily responsible for providing guidance to their staff in resolving conflict-of-interest issues arising in the handling of proposals and awards. These Conflicts Officials, usually Division Directors or Deputy Division Directors, are located throughout the agency and are designated by their Assistant Director and/or staff office heads. We were advised that both you and the ADAEO serve as Conflicts Officials for the Office of the Director and the NSB.

FINANCIAL DISCLOSURE

NSF's public and confidential financial disclosure systems appear very effective in preventing potential conflicts of interest and generally accord with statutory and regulatory requirements. Although at the time of our fieldwork, we found the written procedures for both financial disclosure systems to only generally meet the fundamental requirements of section 402(d)(1) of the Ethics Act, we commend you on your development of written procedures which now fully meet these requirements. Despite the overall effectiveness of both systems, we discussed with you several procedural issues noted during our examination of both systems.

Public Financial Disclosure System

We examined all 168 public financial disclosure reports (SF 278s) required to be filed in 2003 by employees other than yourself, the 24 NSB members, and the NSF Director and Deputy Director. Of the 168 reports, there were 131 annual, 26 new entrant, and 11 termination or combined annual/termination reports. The majority of these reports were filed, reviewed, and certified timely and were reviewed in a thorough and comprehensive manner. We found no substantive deficiencies and only a limited number of technical reporting deficiencies. Additionally, we examined a sample of the accompanying cautionary letters attached to these reports and found them very useful in keeping filers apprised of potential conflicts.

Notwithstanding this, we did notice that 16 of the 168 examined public reports had not been certified due to the ADAEO needing additional information from the filer.¹ Although these reports were generally submitted and initially reviewed timely and were found to have no real or apparent conflicts, we were advised that technical clarification was needed for certification. We note that by the time of our exit conference, the ADAEO certified all remaining reports. As we discussed with you during our exit conference, although we realize there is no explicit requirement for public reports

¹ Of these 16, 7 were annual, 6 were new entrant, and 3 were termination reports

to be certified within 60 days, each report should be certified as soon as the examination determines there is no violation of applicable statutes and/or regulations

Additionally, we examined and confirmed timeliness of filing, review, and forwarding to OGE of your annual report as well as the annual reports for both the Director² and Deputy Director (Our examination of the public reports filed by NSB members are discussed in greater detail in the section entitled "Financial Disclosure System for National Science Board Members")

Confidential Financial Disclosure System

NSF uses various confidential financial disclosure reports for different categories of employees. Regular NSF employees file the standard confidential financial disclosure report (OGE Form 450), while special Government employee (SGE) members of NSF's general advisory committee, as well as peer review panelists (inclusive of proposal review panels, site visitors, and committee of visitors), file an OGE-approved alternative confidential report in lieu of the OGE Form 450. Additionally, members of the NSB, in accordance with NSF's statutory authority, are required to file a financial disclosure report under title I of the Ethics Act (even though they work 60 days or less in a calendar year). However, these reports are to be held confidentially and are exempt from any law otherwise requiring their public disclosure. Accordingly, NSF uses the SF 278 to fulfill this filing requirement.

Confidential System For Regular Employees

We reviewed the master list of combined new entrant and annual confidential filers and examined a sample of 127 of the approximately 633 confidential financial disclosure reports that were required to be filed in 2003. Our sample consisted of 21 new entrant and 78 annual OGE Form 450s and 28 OGE Optional Form 450-As (OGE Form 450-As). With the exception of 4 new entrant and 15 annual OGE Form 450 reports, all other examined reports were submitted timely. Considering the size of our sample and the number of confidential filers required to file, we believe the number of examined reports submitted late is insignificant. All reports were reviewed within the required 60 days and certified soon after review. Although we found few reports that included any review annotations, the reports appeared to have been reviewed thoroughly, as evidenced by the limited number of technical reporting omissions.

In addition, you currently ensure compliance with 5 C F R § 2634.905(d) by having annual NSF filers who wish to file the OGE Form 450-A in lieu of the OGE Form 450 come to your office to certify to you as to having no new interests and/or positions since last filing an OGE Form 450. We believe this to be an outstanding practice for an agency of your size and we encourage your continued efforts.

² We were advised that the NSF Director departed the agency on February 21, 2004.

Confidential System For SGE Advisory
Committee Members

When serving on an NSF advisory committee, NSF advisory committee members file an annual alternative disclosure form, Confidential Conflict-of-Interest Statement for NSF Advisory Committee Members (Form 1230A),³ in lieu of the OGE Form 450. We were advised that advisory committee members typically serve a term of two or three years on a committee and provide NSF organizational units with general policy advice on board policy matters. Committees usually meet once or twice per year.

In our last review of NSF in 1998, we found limited compliance with the filing requirements of the alternative procedure. We are pleased to report that we have now found compliance with the filing requirements based on our examination of the Form 1230As filed by approximately 252 members of NSF's 14 advisory committees. Moreover, the Form 1230As were thoroughly reviewed.

18 U S C § 208 (b)(3) Waivers
Issued Using The Form 1230A Itself

We noted that 3 of the 14 committees indicated by simple check-off at the bottom of the Form 1230A that a waiver had been granted. Twenty-six waivers had been issued, with copies of the 1230A being submitted to OGE as compliance with 5 C F R § 2640.303. At the time of our fieldwork, you indicated that this check-off box was considered to be the actual grant of a waiver, and you had been using this process since OGE's approval of the alternative procedure. As we discussed with you in several follow-up meetings, we believe this process does not fully meet the requirements at 5 C F R § 2640.302 for issuing 18 U S C § 208 (b)(3) waivers. All waivers must hereafter be executed in separate documents indicating that consideration of the factors contained in § 2640.302 (b) lead to the decision to issue the waiver.

We commend you for expeditiously changing the process for granting 18 U S C § 208 (b)(3) waivers to members of NSF advisory committees. Under your new process, if a reviewing official now believes that a member may have a disqualifying interest with respect to any future particular matter or matters expected to come before his or her committee, but believes the need for the member's services outweighs the potential for a conflict, the official will now immediately contact you or the ADAEO. We were advised that you and/or the ADAEO will be responsible for reviewing the relevant facts and circumstances, deciding whether a waiver is appropriate, and (if appropriate)

³The Form 1230A was approved in 1993 by OGE as an alternative procedure, in accordance with 5 C F R § 2634.905(c). Form 1230A requires disclosure of all financial interests and all positions or arrangements with any educational, nonprofit, or other institution or organization with which a member is connected as an employee, officer, director, trustee, partner, or consultant, where some reasonable possibility exists that he or she might be affected by the committee's deliberations or advice. It also asks the member to report any other interests, affiliations or relationships that might affect his or her impartiality while serving on the committee.

Mr Charles S Brown
Page 5

helping to prepare the waiver document. Additionally, you have agreed to revise the sentence, *"Because of the general nature of such matters, it would be impossible to place a reliable dollar value on any financial interests of the companies listed above or on the member's individual financial interests"* to indicate the speculative effect. Finally, you have decided to delete the waiver check box at the bottom of the NSF Form 1230A to avoid any confusion by reviewing officials.

Confidential System For Peer Review Panelists

SGE members of peer review panels, inclusive of proposal review panels, site visitors, and committee of visitors (panelists), are required to file an alternative disclosure form in lieu of the OGE Form 450. This form, Confidential Conflict-of-Interest Statement for NSF Panelist (Form 1230P), was approved in 1993 by OGE as an alternative procedure. Panelists are required to sign the form prior to each meeting to certify that, to the best of their knowledge, they have no affiliations or relationships that would prevent them from impartially performing their duties of reviewing applications and recommending the award of grants.

In our last review of NSF, we had concerns that some panelists were certifying their Form 1230Ps without knowing the identities of the applicants submitting proposals. We are pleased to report that we no longer have these same concerns due to NSF's ability to disseminate applications to panelists electronically via its online FastLane system prior to meetings. This enables panelists to have the knowledge they need to properly certify their Form 1230Ps prior to meetings.

To evaluate the effectiveness of the 1230P system, we met collectively with 3 of the 42 Conflicts Officials to discuss their role in administering their division's 1230P system. We examined a large sampling of the 1230Ps signed in 2003 within all three divisions and found the forms to have been filed and reviewed in accordance with the alternative procedure.

Financial Disclosure System For National Science Board Members

At the time of our examination, we examined only 18 of the 24 SF 278 reports required to be filed and held confidentially in 2003 by members of the NSB. As was the case with the public system, we were advised that the remaining six reports were not yet certified pending additional information from the filer. Prior to the conclusion of our fieldwork, however, the ADAEO was able to certify five of the six reports, and one report was still pending. We urge you to certify the remaining report and in the future to certify these reports as soon as the examination determines there is no violation of applicable laws and/or regulations.

Pursuant to 5 C F R § 2634.704, one NSB member was subjected to the \$200 late filing fee for failure to file his report timely. All other reports were filed, reviewed, and certified timely. Although we found no substantive deficiencies, we did observe a few technical deficiencies, including the omission of reporting status and date of appointment on several reports. However, we

Mr Charles S Brown
Page 6

found most reports to have a good deal of review annotations and/or documentation associated with each review

PRIOR APPROVAL OF OUTSIDE EMPLOYMENT

Our review of the outside employment prior approval system focused primarily on whether the approval requirement in NSF's supplemental standards of conduct, at 5 C F R § 5301 103, was being met, based on our examination of the outside employment/activities reported on both the public and confidential financial disclosure reports. Of the 22 listed outside employment/activities we questioned, we were advised that only 1 required prior approval and it had been supported with the appropriate supervisory approval. As a general practice, copies of written approvals and/or the advice generated from them are not routinely maintained with the filer's financial disclosure files for use in reviewing the financial disclosure reports. We believe this would be a good management practice to ensure that filers have properly received prior approval to engage in the outside employment and also to enable reviews to be conducted in accordance with 5 C F R §§ 2634 909(a) and 2634.605. You advised us that you would make this a routine practice from now on.

EDUCATION AND TRAINING

We found NSF's education and training program to exceed the minimal training requirements found at subpart G of 5 C F R part 2638, as evidenced by your commitment to provide in-person initial ethics orientation training to new employees and in-person, verbal annual ethics training to all non-SGE financial disclosure filers. In addition to conducting the requisite initial ethics orientation and annual ethics training, we were impressed with the host of discretionary training you provide throughout the year to keep employees knowledgeable of the ethics laws and regulations and the high priority you assign to maintaining a strong training program.

NSF's Ethics Program Web Site

We found the ethics section on OGC's Web page located on NSF's Web site to serve as a very useful and comprehensive ethics tool for all NSF employees. Our content examination of this page found the ethics coverage to be extremely useful and informative. This outstanding resource features separate modules for financial disclosure filing, frequently asked questions, links to internal agency documents, the post-employment restrictions, and helpful ethics resource links. Immediate access to both OGE regulations and agency specific regulations, along with points of contact information for all NSF ethics officials are also provided.

Initial Ethics Orientations for Regular Employees

You advised us that one-on-one, in-person initial ethics orientation training is provided to all new NSF Directors and Deputy Directors when they enter on duty. Once a week, you also provide in-person initial ethics orientations to new NSF employees, usually during their first day on duty.

Mr Charles S Brown
Page 7

You also rely on the assistance of NSF's Division of Human Resource Management, which provides you a monthly list of all NSF new hires, departures, transfers, and promotions, to help you ensure that all new entrant filers are timely identified. In addition to these in-person briefings, new employees are also provided with written materials and information that satisfy the requirements found at 5 C F R § 2638 703

Annual Ethics Training For Regular Employees

To satisfy the annual training requirement in 2003, you advised us that you conducted approximately 28 (two hour) in-person ethics training sessions for all NSF financial disclosure filers, including visiting scientists and detailees under the Intergovernmental Personnel Act. Although you require in-person, verbal training for all financial disclosure filers, all other employees are also encouraged to attend one of the many training sessions held throughout the year. In addition to your presentation, representatives from NSF's Office of the Inspector General (OIG) provide attendees with a brief summation of their responsibilities in the areas of investigations, audits, oversight, and misconduct in science.

You accomplished in-person training for the approximately 900 employees who were required to receive it in 2003.⁴ You indicated that you relied primarily on the discussion of various NSF-specific case studies as well as NSF's Manual Number 15, Conflicts of Interest and Standards of Ethical Conduct, to explain to participants the criminal conflict-of-interest laws, the basic standards of ethical conduct regulations, NSF's supplemental standards of conduct, and the rules covering other pertinent ethics issues. In 2003, training participants were also provided a guide, Avoiding Conflicts In Handling Proposals and Awards. As a good management practice, we acknowledge your use of both sign-in sheets to verify attendance and evaluation forms for the attendees' use in evaluating the overall presentation and effectiveness of your case-study training.

Ethics Training For National Science Board Members

We were advised that all new NSB members are provided with in-person initial ethics orientations on the most significant conflict-of-interest laws and ethics regulations that apply to them. However, NSB members are provided with annual written ethics training in lieu of in-person, verbal training, in accordance with 5 C F R § 2638 705 (d)(2). In 2003, each member was provided a copy of NSF's Summary of Basic Conflict-of-Interest and Ethics Rules for Members of the National Science Board.

⁴Although all financial disclosure filers were required to receive verbal ethics training, there were a few confidential filers who received written training, in accordance with 5 C F R § 2638 705(d)(1), either because of scheduling difficulties or because they were off-site and could not attend one of the training sessions.

Mr Charles S Brown

Page 8

Ethics Training For Other SGEs

In our last review of NSF, we found that panelists were receiving very little in the way of ethics training and recommended that you provide them with annual written ethics training that met the minimum content requirements of subpart G of 5 C F R part 2638. You subsequently did so. We also found that the advisory committee members were receiving very little in the way of ethics training, but that you already were developing written annual ethics training similar to that provided to NSB members. We are pleased to report that you have continued to provide this training to panelists and advisory committee members, in accordance with 5 C F R § 2638.704(d)(2).

Additional NSF Ethics Training Efforts

As previously mentioned, we believe you do an outstanding job in keeping NSF employees knowledgeable of ethics laws and regulations and are particularly impressed with your efforts in providing discretionary training throughout the year to both financial disclosure filers and non-filers. You advised us that at least once a year you provide specialized in-person ethics training exclusively to employees of the OIG, to the Director's Policy Group, which is essentially made up of NSF's top level management, and to all Conflicts Officials on their ethics responsibilities.

ADVICE AND COUNSELING SERVICES

Effective and useful ethics advice and counseling is provided to all NSF employees. Employees are encouraged to contact you and/or the ADAEO via all forms of communication, including e-mail, telephone, and in-person. We were advised that most inquiries are made and advice rendered via e-mail correspondence.

Our examination of the advice and counseling services found that NSF 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. When appropriate, records are kept on the advice rendered. We reviewed a large number of the e-mail responses that were dispensed on a variety of issues (covering approximately a 12-month period) and found these determinations to be comprehensive and consistent with the appropriate laws and regulations. We also found the advice to be responsive to employees' needs in terms of timeliness.

Additionally, post-employment counseling is provided to all departing NSF public and confidential filers. Departing filers are required to schedule an exit interview with you prior to their departure so they may receive in-person counseling and written materials. All departing employees are provided with the post-employment restrictions within a document entitled A Guide to Post-Employment Restrictions for former NSF Staff. Counseling is also available to all other employees on a per request basis. Departing public filers are provided with their termination report and instructions for its completion during this time.

ENFORCEMENT

We discussed with you and NSF's Inspector General (IG) the requirement to notify OGE when a case involving the potential violation of a criminal conflict-of-interest statute is referred to the Department of Justice (Justice). You both agreed that the OIG would concurrently notify OGE of all referrals and any other matters required to be reported to us by 5 C F R § 2638.603. You were also both aware of the requirement to provide subsequent reports on the disposition of the case, including reporting any disciplinary action taken if the case is declined for prosecution. While there were no recent violations of the criminal conflict-of-interest laws referred for prosecution to Justice during the period covered by our review, we believe you will comply with the prescribed procedures if a referral is made in the future. The only case related to criminal conflict-of-interest statutes to arise during the time covered by this review is currently under investigation. Additionally, we were advised that there were no disciplinary actions taken for violations of the standards of conduct during the period covered by this review.

From our discussions with all parties concerning the relationship that exists between the ethics staff and the OIG, we believe that the services of the OIG would be utilized when appropriate, including the referral of matters to and the acceptance of matters from OIG, as required by 5 C F R § 2638.203(b)(12).

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

NSF accepts payments from non-Federal sources for travel, subsistence, and related expenses incurred by agency employees on official travel under 31 U S C § 1353. NSF employees who seek approval under this authority are required to complete an NSF Form 1311. Employees forward it to you for review and approval at least one week prior to the commencement of their travel. Upon approval, employees are then assigned an OGC tracking number and the original form is returned to the originating office.

To determine whether travel payments accepted under this authority were properly authorized, we examined all of the 171 travel payments from non-Federal sources that were reported on 2 NSF semiannual reports to OGE of travel payments of more than \$250 per event, covering the period from October 1, 2002 through September 30, 2003. Upon our examination of these reports, we addressed with the ADAEO two procedural issues noted during our review.

First, NSF used its own reporting form for the last two semiannual travel reports. Effective June 16, 2003, GSA published its final rule requiring the use of the Semiannual Report of Payments Accepted from a Non-Federal Source (SF 326) form to report payments to OGE. Agencies can be granted permission from OGE to do otherwise. Prior to the conclusion of our fieldwork, NSF requested and was granted OGE's permission to use its own form. Moreover, we encourage you to submit, in lieu of paper submissions, all future semiannual travel reports via e-mail to OGE's new 1353 travel electronic mailbox at 1353travel@oge.gov.

Mr Charles S Brown
Page 10

Second, there were 21 instances of travel payments totaling less than \$250 included on the semiannual reports. Agencies are only required to submit semiannual reports, including negative reports, to OGE of travel payments totaling more than \$250 per event. The ADAEO provided assurances that only payments meeting the required reporting threshold would hereafter be included on future NSF semiannual travel reports.

In closing, I wish to thank you and your staff for all of 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 the report is being forwarded to NSF's IG via transmittal letter. Please contact David A. Meyers at 202-482-9263 if we can be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs

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