

## **Ethics Program Review**

# **Federal Bureau of Investigation**

October 2008 Report

## Introduction

#### **OGE MISSION**

The U.S. Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance initiatives.

#### PURPOSE OF A REVIEW

The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures in place for administering the program.

#### REVIEW AUTHORITY AND SCOPE

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. *See* Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the Federal Bureau of Investigation (FBI) focused on the elements listed below:

- Leadership involvement in the ethics program
- Program structure
- Department of Justice supplemental regulation and outside employment
- Financial disclosure systems
- FBI Advisory Committee
- Ethics education and training
- Ethics counseling
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

In view of the FBI's decentralized ethics program structure, OGE limited its review scope to only the key program elements associated with the FBI Headquarters' (FBIHQ) ethics program. OGE conducted its fieldwork intermittently between May and December 2006 and focused on calendar year 2005 and 2006 activities.

## **Program Elements**

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

#### **LEADERSHIP**

Commitment and action by agency leadership is the keystone for ensuring the integrity of an agency's ethical culture and for fostering public confidence in the decision-making processes of Government. In connection with this review, OGE leadership met with the FBI's leadership to share some of the modifications in OGE's review process and to discuss the importance of agency leadership in implementing an effective ethics program, in accordance with 5 CFR § 2638.202(a). OGE considers leadership involvement in the ethics program to be a model practice.

#### ETHICS PROGRAM STRUCTURE

Within the Department of Justice (Justice), the Assistant Attorney General for Administration (in the Justice Management Division (JMD)), serves as the agency's Designated Agency Ethics Official (DAEO) and has oversight responsibility for the Justice-wide ethics program. At the component level, general responsibility for all ethics matters rests with JMD's Departmental Ethics Office. The Deputy Designated Agency Ethics Officials (Deputy DAEOs) assist the DAEO in administering the ethics program at their respective components.

Within the FBI, the ethics function resides organizationally within the General Law and Legal Training Branch (GLLTB) of the Office of the General Counsel (OGC) and is currently managed by the GLLTB Deputy General Counsel. The day-to-day operation of the ethics program is carried out by GLLTB's Administrative Law Unit, hereafter referred to as the Ethics Office. The Ethics Office is comprised of a Unit Chief and nine attorneys, four of whom have ethics-related duties and serve the FBI's ethics program in varying capacities. The Ethics Office is responsible for carrying out the majority of the ethics functions, including providing and coordinating counseling and advice services agency-wide, implementing the requirements for both initial and annual ethics training, and administering and monitoring the FBI's public and confidential financial disclosure systems. However, other offices within the FBI are also utilized to handle other aspects of the program, such as the Employee Benefits Unit, the Reinvestigation Adjudication Unit, the Access Integrity Unit, the Training and Development Division, the Security Reinvestigation Unit, the Finance Division, the Inspection Division, and the Office of Professional Responsibility.

In addition to the Ethics Office staff, the FBI also utilizes its Chief Division Counsels (CDC) within each of the 56 FBI field offices and the Assistant Directors in Charge, or more specifically, their designees within each of the FBIHQ offices and divisions, to serve as ethics contacts for their respective units. This report will refer to these individuals as ethics officials. The ethics officials serve the ethics program on a collateral-duty basis and have the responsibility for administering the confidential financial disclosure system, coordinating ethics training, and dispensing ethics advice on an as-needed basis. The Ethics Office provides overall direction to these ethics officials throughout the reporting and training cycles.

## **General Observation**

At the time of fieldwork, the Ethics Office experienced some staff turnover. One attorney, who served as OGE's primary ethics contact for this review, retired from Federal service, while another attorney started a one-year detail with a different agency. In response to these changes, the Deputy DAEO hired two new attorneys to help carry out the FBI's day-to-day ethics functions. OGE was pleased to see the Deputy DAEO respond quickly in addressing this matter as it reflects positively on the FBI's commitment toward administering its ethics program in a positive and effective manner.

# FBI'S MANUAL OF ADMINISTRATION OPERATIONS AND PROCEDURES

The Ethics Office has established written procedures that are tailored to the FBI's own individual needs in terms of administering its ethics program. The written procedures are set forth within the FBI's Manual of Administration Operations and Procedures (MAOP), which contains guidelines for every sector of FBI work. Written procedures pertaining to ethics within the MAOP include administering the public and confidential financial disclosures systems, rendering ethics advice and training, accepting travel payments from non-Federal sources, and engaging in outside employment and/or activities. In light of the fact that the Justice DAEO is responsible for developing Justice-wide written procedures that provide the overall framework for administering both the public and confidential financial disclosure systems, and seeing as the requirement in Section 402(d)(1) of the Ethics Act for developing written procedures is not clearly applicable to a subunit of an agency, OGE considers the FBI's individualized procedures to be a model practice and a valuable resource to both employees and ethics officials.

# JUSTICE'S SUPPLEMENTAL STANDARDS OF CONDUCT REGULATION

Justice has supplemented the executive branch-wide standards of conduct regulation. Employees of Justice are prohibited from engaging in outside employment that involves: (1) the practice of law, unless it is uncompensated and in the nature of community service, or unless it is on the behalf of the employee, his parents, spouse, or children, (2) any criminal or habeas corpus

matter, or (3) litigation, investigations, grants or other matters in which Justice is or represents a party, witness, litigant, investigator or grant maker. Employees who wish to engage in outside employment not otherwise prohibited must obtain prior approval for outside activities that involve the practice of law or a subject matter, policy, or program that is in the employee's area of responsibility.

Within the FBI, requests for approval must be submitted using the FBI's FD-331 form, Request to Engage in Outside Employment. Approval is granted based on a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation. <sup>1</sup>

#### **OUTSIDE ACTIVITY SYSTEM**

OGE last reviewed the FBI's ethics program in June 2000. As part of that review, OGE compared the FBI's policies and procedures for prior review and approval of activities contained in the MAOP against the language found in Justice's supplemental regulation. OGE found that the FBI imposed much broader prior approval restrictions for its employees than those required by the supplemental regulation. For example, the Justice supplemental regulation prohibits certain outside employment and requires prior approval for certain other outside activities that are related to the work of an employee's component or that involve the practice of law. The FBI, on the other hand, required all of its employees to obtain prior approval before engaging in *any* outside employment activities. Further restrictions also applied to FBI Special Agents; they were prohibited from engaging in *any* compensated outside employment activities wherein services were rendered or were actively or materially involved in managing, creating, developing or transforming something to produce economic gain or to generate income pursuant to an informal or formal contract.

During the previous review, OGE discussed these discrepancies with the Ethics Office (and separately with Justice's Departmental Ethics Office) and was advised that the FBI's need for the broader requirement was based on personnel management considerations, such as employee availability and security requirements, rather than on ethics. To illustrate this need, the FBI indicated that FBI employees must possess a Top Secret clearance as a condition of employment, for which the FBI must continually monitor eligibility. Even where classified issues are not present, employees may not be privy to sensitive FBI cases and so are not always able to determine for themselves whether or how a particular organization is involved in ongoing FBI matters. Moreover, there is the need for the reputations of law enforcement personnel to be unimpeachable when they are called to provide testimony in criminal proceedings. As a result, it is critical that FBI management be apprised in advance of any proposed associations in order to properly assess any potential security/operational issues. Another non-ethics-based reason for the

<sup>&</sup>lt;sup>1</sup>When employees terminate from an approved outside position or when they do not accept employment which has already been approved, the FBI's FD-331a form is used.

broader requirements is the FBI's need to ensure that investigative personnel are readily available to be called to duty when they are needed.

To resolve OGE's concerns, the FBI and Justice both agreed to establish a "Memorandum of Understanding" to document the aforementioned reasons for the FBI's broader prior approval requirements. This document was created on December 7, 2000.

#### OGE's Current Review

At the time of OGE's current review, the FBI was revising its outside employment prior approval policies and procedures. As a result, OGE was unable to fully evaluate the FBI's ability to integrate Justice's supplemental standards' requirements into its internal procedures or fully assess whether the application of the FBI's policy for prior approval was effectively operating as designed. OGE did, however, examine a number of outside employment/activities approved in 2005 and 2006, and they appeared to have been appropriately approved.

The proposed revisions will continue to substantially retain the FBI's current policy on outside employment. However, according to the Ethics Office, the revisions will ensure that important definitions are consistent with Justices' supplemental regulation, incorporate all relevant requirements into a single policy, and aid employee understanding of the policies and procedures for requesting approval of outside employment.

#### FINANCIAL DISCLOSURE SYSTEMS

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (SF 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions, to facilitate internal agency conflict of interest review (OGE Form 450).

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs in providing counseling to employees. See 5 CFR § 2634.104(b).

## Public Financial Disclosure System (SF 278)

The public financial disclosure system at the FBI is centrally administered by the Ethics Office. Based on the FBI's master list of public filers, 369 employees met the filing criteria found at subpart B of 5 CFR part 2634 for public financial disclosure filing in 2005.

To evaluate the filing, review, and certification of public reports at the FBI, OGE selected 78 of the 369 reports for examination. These 78 reports consisted of:

## Type of Report

- 46 incumbent reports
- 20 new entrant reports
- 12 termination reports

78 total

## Filing Timeliness

• All 78 reports were filed timely.

## Review/Certification Timeliness

• All 78 reports were reviewed and certified in a timely manner.

#### Quality of Review

OGE examined a sample of the cautionary letters that were attached to many of the reports and determined that the letters were useful in keeping filers apprised of potential conflicts.

In addition to the aforementioned reports, OGE examined the one annual Presidential-appointed and Senate-confirmed employee (PAS) report filed by the FBI Director in 2006 and confirmed its timeliness of filing, review, and forwarding to OGE. OGE also examined the Director's screening arrangement, which described the steps that he intended to take to avoid any actual or apparent conflicts, and determined that it had been properly updated.<sup>2</sup>

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<sup>&</sup>lt;sup>2</sup>Shortly after assuming office, the Director was provided a limited waiver from the Federal conflict-of-interest statute, 18 U.S.C. § 208, so that he could participate in matters affecting some entities in which he holds a financial interest. The waiver did not, however, extend to entities in which the Director's financial interest exceeded a certain dollar amount. For this reason, the Ethics Office maintains and annually updates a screening arrangement list to ensure that the Director does not become unwittingly involved in particular matters affecting those interests not covered by the waiver.

## Confidential Financial Disclosure System (OGE Form 450)

The FBI's confidential financial disclosure system is decentralized. The Ethics Office is responsible for reviewing, certifying, and retaining all confidential reports filed within the OGC. Ethics officials throughout the FBI are responsible for reviewing, certifying, and retaining all reports filed within their respective divisions/offices. To help administer the confidential system, the FBI utilizes two different confidential financial disclosure reports to meet the needs of the different categories of FBI employees. For example, while the OGE Form 450 is filed by most covered employees, an OGE-approved Conflict of Interest Certification (CIC) form is filed by Contracting Officer Technical Representatives (COTR) on active contracts prior to each assigned case or contract in lieu of the OGE Form 450.

Based on OGE's examination of the FBI's master list of confidential filers, 2,484 employees met the filing criteria found at subpart B of 5 C.F.R. part 2634 for confidential filing in 2005. Of those, 2,311 were required to file the OGE Form 450 and 173 were required to file the CIC form.

To evaluate the confidential system, OGE examined the confidential reports that were filed, reviewed, and certified by the Ethics Office and by ethics officials within one FBIHQ division, the Administrative Services Division (ASD). In total, OGE examined 54 new entrant and annual reports. The breakdown of these reports consisted of:

## Type of Report

- 47 incumbent reports
- 7 new entrant reports

54 total

#### Filing Timeliness

• All 54 reports were filed timely.

## **Review/Certification Timeliness**

• All 54 reports were reviewed and certified in a timely manner.

<sup>&</sup>lt;sup>3</sup>The CIC is a one-page form designed to determine whether an employee has actual or apparent conflicts of interest.

## Quality of Review

In view of such a highly decentralized system, OGE noted that Ethics Office conducted "ethics assistance reviews" within FBIHQs to assess each division's/office's ethics program operation and to offer assistance to ethics officials on program issues. 4 OGE also noted that part of the review included checking OGE Form 450s and the CICs for completeness and accuracy, and ensuring that the reports are securely maintained, properly organized, and reviewed in compliance with both the FBI and OGE requirements. According to records provided to OGE at the time of fieldwork, 19 assistance reviews had been conducted by the Ethics Office since 2004.

OGE considers these ethics assistance reviews to be yet another model practice. Consistent monitoring of a financial disclosure system's operation and, when necessary, making adjustments to address any weaknesses, is essential in administering an effective decentralized confidential system.

#### FBI ADVISORY COMMITTEE

At the time of OGE's fieldwork, the Ethics Office was working to provide the basic ethics program services, including the collection of confidential reports and the provision of annual ethics training, to SGE members serving on a newly established advisory committee, the Chief Information Officer Information Technology Advisory Council (CIOIT).<sup>5</sup> Though the Ethics Office was late in learning of the establishment of this committee, the Deputy DAEO took prompt action by meeting with each member to discuss their obligations as an SGE as defined at 18 U.S.C. § 202(a).

Because of its recent establishment, OGE was not able to fully access the strengths and weaknesses of the FBI's ethics program for SGE members of the CIOIT. However, based on discussions with the Ethics Office, OGE is confident that procedures for SGE members of this committee will be established to ensure that the ethical requirements and restrictions that apply to SGE members will be effective.

To assist the FBI in its efforts to develop procedures for SGEs, OGE would like to

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<sup>&</sup>lt;sup>4</sup>As it relates to the confidential financial disclosure system outside of FBIHQs, the Ethics Office relies on the INSD assessments to assure proper management focus and attention at each of the FBI division/field offices.

<sup>&</sup>lt;sup>5</sup>The CIOIT Advisory Council, a sub-panel of the FBI's Director's Advisory Board, was established to advise the FBI Chief Information Officer and Director on matters relating to science, technology, research, engineering, information management, and other information technology concerns of special interest to the FBI. The Council is comprised of individuals chosen for their highly recognized accomplishments, varied talents, diverse backgrounds, and proven expertise in the fields of industry, government, and academia.

reiterate the fundamental requirements that will ensure that the procedures are effective. Fundamental requirements include:

- Collecting new entrant confidential reports initially from all SGE advisory committee members and, if term appointees, annually thereafter, in accordance with 5 CFR § 2634.903(b);
- Developing and maintaining a tracking system to ensure that all SGE advisory committee members timely submit their new entrant confidential reports;
- Ensuring that all advisory committee members who are SGEs receive initial ethics orientation in accordance with 5 CFR § 2638.703, including orientation on the most significant conflict-of-interest laws that apply to them, and, if term appointees, written annual ethics training thereafter, in accordance with 5 CFR § 2638.705(d)(2); and
- Ensuring that committee management officials (Designated Federal Officials) are educated on the ethics rules applicable to SGEs as part of the education and training program conducted in accordance with 5 CFR § 2638.203(b)(6) and subpart G of 5 CFR part 2638.

#### **EDUCATION AND TRAINING**

An ethics education and training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees.

The FBI's education and training program is one of the strongest elements of the FBI's ethics program. OGE found the FBI's education and training program to exceed the minimum training requirements found at subpart G of 5 CFR 2638, as evidenced by the FBI's commitment to provide verbal initial ethics orientation briefings to new employees and annual ethics training to all employees. The Ethics Office also keeps employees aware of ethics laws and regulations through the use of discretionary training, which is provided throughout the year to both filers and non-filers. OGE considers the use of discretionary training to be a good way to reinforce the importance of ethical conduct and to ensure that employees understand what standards of ethical behavior are required within the FBI. The FBI's training efforts clearly indicate that ethics within the FBI is a significant and continuous part of the FBI management culture.

## Initial Ethics Orientation (IEO)

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with initial ethics orientation. An initial ethics orientation must include:

- the Standards of Ethical Conduct for Executive Branch Employees (Standards) and any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. See 5 CFR § 2638.703.

## **IEO for New Special Agents**

For new Special Agents, ethics is woven into the curriculum of the FBI's New Agents' Training which is conducted at the FBI Academy located in Quantico, Virginia. Lasting 17 weeks and consisting of over 600 hours of instruction, this intense program is designed to prepare new agent trainees for duty at one of the 56 field offices located throughout the country. A course on ethical leadership is provided during regularly scheduled classes throughout the duration of the program.<sup>6</sup>

During the review, OGE visited the FBI Academy and observed a live training session that was conducted by the FBI's Training and Development Division (TDD), which is responsible for training new agents and providing them with written material and information that satisfy the IEO requirements found at 5 CFR § 2638.703. The session OGE attended, which added a value-based approach to the existing compliance-based requirements of IEO, was informative and well-geared to the variety of ethics issues that new agents may face while on the job. The instructor's use of interactive elements within his presentation, such as the use of visual materials (e.g., portions of current movies) and a question-and-answer format was also found to be a useful and effective technique to engage trainees.

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<sup>&</sup>lt;sup>6</sup> This course is provided every two weeks and is divided into seven classes, with the last class consisting of an in-class examination and a visit to the Holocaust Center in Washington, DC. The course is designed to vividly demonstrate the importance of ethics in law enforcement. Outside of the core ethics training requirements, course topics include, among other things, discussions on FBI Core Values & Core Competencies, On Duty and Off-Duty FBI conduct requirements, Steven Covey's book on the "Seven Habits of Highly Effective People," and the DISC (Drive, Influence, Steadiness, and Compliance) personality system.

## **IEO for All Other Employees**

To meet the IEO requirement for all other new employees, written materials are provided at the location at which they begin work (either at FBIHQ or at one of the 56 field offices). New employees are provided with:

- the Standards and Justice's supplemental regulation;
- the names, titles, office addresses, and phone numbers of the Justice DAEO, the FBI's Deputy DAEO, and other ethics officials; and
- Justice's <u>Ethics Handbook</u> pamphlet, which includes a synopsis of the conflict of interest statutes found at 18 U.S.C. §§ 202-209, Executive Order 12674 on Principles of Ethical Conduct, as amended by Executive Order 12731, the Standards, and additional Justice regulations found at 28 CFR part 45.

In addition to the written material, new employees are shown OGE's <u>Earning the Public Trust</u> videotape.

OGE's IEO requirement is exceeded in that all new employees also receive in-person training either by the Ethics Office (at FBIHQ) or by the CDCs (in the field offices) when they attend a mandatory one-hour ethics training session as part of a three-day orientation for new FBI employees. During its review, OGE also attended one of the FBIHQ initial ethics orientation sessions conducted by the Ethics Office and found it to be informative and well-geared to the variety of new employees in attendance. In total, 25 initial orientation training sessions were conducted in 2006.

## **Annual Ethics Training**

Public financial disclosure filers are required to receive verbal annual ethics training each year. See 5 CFR § 2638.704(a). Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. See 5 CFR § 2638.704(c)(2). Other covered employees (e.g., confidential filers) are required to receive verbal annual ethics training at least once every three years and may receive written annual training in the intervening years. See 5 CFR § 2638.705(c). The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct,
- the Standards,
- any agency supplemental standards,
- the Federal conflict of interest statutes, and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See* 5 CFR § 2638.704(b).

To meet the annual training requirement, the FBI uses a number of different training methods from year to year to ensure that OGE's annual training requirement for covered employees is met, in accordance with 5 CFR §§ 2635.704 and 2635.705. These training methods include:

- the viewing of videotaped or live ethics video presentations,
- the interactive playing of computer/web-based training modules,
- attending classroom lectures and training sessions, and
- receiving written material.

While the Ethics Office is responsible for satisfying the verbal training requirement for all FBI public filers and for ensuring the completion of training FBI-wide, ethics officials throughout the FBI have the responsibility for ensuring that all OGE Form 450 and CIC filers within their respective units are trained using any of the aforementioned methods. The completion of training for covered employees is tracked using the FBI's Certification of Annual Ethics Training form which certifies not only the receipt of training but also the training method used to accomplish it.

In 2005, to meet the verbal annual training requirement for public filers, two one-hour training sessions were conducted by the Ethics Office. The sessions consisted of a discussion on the employees' basic responsibilities under the 14 Principles of Ethical Conduct, the Standards, the conflict of interest statutes, the restrictions regarding post-Government employment, and the requirements of the Justice supplemental regulation. Both sessions were made available for viewing via live simulcast on the FBI's Intranet to all employees. OGE Form 450 and CIC filers could view one of the two sessions to help satisfy their own annual training requirement. Numerous one-hour ethics training sessions were also conducted by the Ethics Office during the annual divisional training sessions held by all FBIHQ divisions to help satisfy the annual training requirement. By the end of 2005, with the exception of five confidential filers, all covered employees FBI-wide had completed the requisite training. With regard to the five who did not complete the training in 2005, due mainly to either operational or medical reasons, all were trained in the early part of 2006.

To meet the annual training requirement for 2006, all OGE Form 450 and CIC filers were required to receive verbal training in accordance with the requirements of 5 CFR § 2638.705(c)(1). While the training consisted of discussions of some of the same basic topics that were addressed in 2005, it also focused upon actual disciplinary cases as well as the ethics-related trends identified by the Office of Professional Responsibility.

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<sup>&</sup>lt;sup>7</sup>OGE Form 450 and CIC filers who were not able to satisfy their annual ethics training requirement by viewing one of these sessions were required to satisfy their training requirement using one or more of the aforementioned training methods under the direction of a qualified ethics official.

<u>Initial Ethics Orientation and Annual</u> <u>Ethics Training for SGEs</u>

As mentioned in the FBI ADVISORY COMMITTEE section above, OGE noted that the FBI's Deputy DAEO took prompt action in meeting with each CIOIT Advisory Council member to discuss their SGE obligations, which included providing them with an inperson initial ethics orientation briefing in accordance with 5 CFR § 2638.703. As a general reminder, all new SGE advisory committee members serving on the CIOIT Advisory Council must receive an initial ethics orientation on the conflict-of-interest laws and ethics regulations that apply to them when they first come on board, and annually thereafter, via written training material, in accordance with 5 CFR § 2638.705(d).

#### ETHICS COUNSELING

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. See 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. See 5 CFR § 2638.204.

OGE's assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of advice to assess whether processes and written procedures are effective.

OGE examined approximately 35 pieces of email advice dispensed on varying ethics-related issues, ranging from gift questions to seeking and post-employment matters, rendered by the Ethics Office. OGE found all advice to comply with the requirements of 5 CFR § 2638.203(b)(7) and (8). The advice and counseling services provided by the Ethics Office were also found to be timely which is important in preventing conflicts of interest and other ethics violations from occurring. Moreover, OGE found the advice to fully document the specific issue(s) at question and the basis for the advice being rendered, thus enhancing the transparency of the counseling program.

## **ENFORCEMENT**

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General are utilized when appropriate, including

the referral of matters to and acceptance of matters from that Office. See 5 CFR § 2638.203(b)(11) and (12).

The Ethics Office utilizes the services of, when appropriate, both the FBI's Inspections Division (INSD) and the Office of Professional Responsibility (OPR). INSD is responsible for evaluating investigative, financial, and administrative programs and for conducting internal audits that assist in improving efficiency, accountability, and program effectiveness within the FBI. OPR is responsible for adjudicating employee misconduct cases based on INSD's investigations (and those conducted by Justice's Office of the Inspector General). OPR is also responsible for establishing policy and procedures pertaining to the adjudication process and for monitoring disciplinary trends.

It was clear during OGE's review that a close working relationship exists between the Ethics Office, INSD, and OPR to effectively exchange ethics-related information and to resolve ethics issues. OGE noted that all parties meet quarterly to facilitate discussions on items of mutual interest. The meetings provide all parties with an opportunity to compare professional notes and to identify trends of misconduct that may be occurring within the FBI. The information shared during the meetings is used to improve the training for FBI employees. Feedback from INSD internal reviews are also used to enhance future training. (see the Internal Program Review section below). In view of the fact that education and training is one of the most important elements in maintaining an ethical culture within any agency, OGE finds these quarterly meetings to be a model practice that can be shared with other agencies. As more agencies look for better ways to coordinate with their internal investigative organizations, OGE will recommend this approach as a way to communicate and develop relevant ethics training in an effort to help strengthen and promote an agency's ethical culture.

During the period covered by OGE's review, there were no recent violations of the criminal conflict-of-interest laws referred for prosecution to a U.S. Attorney's Office or to the Public Integrity Section within Justice's Criminal Division. According to records provided to OGE, approximately 250 administrative actions for alleged ethics-related offenses were taken or considered for violations of the Standards or statutes governing conduct from the period of January 1, 2005 to May 1, 2006. Of the 250 allegations considered, 138 of the allegations were substantiated. Actions were taken for the substantiated allegations which ranged from misusing Government vehicles and credit cards to failing to honor just debts.

## Internal Assessments within the FBI

As mentioned, INSD is responsible for conducting internal assessments that assist in improving efficiency, accountability, and program effectiveness within the FBI. As a part of these assessments, INSD conducts reviews of the ethics programs administered by ethics officials within each of the FBI division/field offices to ensure their compliance with all basic requirements of the FBI ethics program. The areas generally examined are similar to those

examined during an OGE program review, with particular emphasis placed on the review and certification of confidential disclosure reports and the provision of ethics training. OGE noted the FBI's willingness to address ethics as an important part of its overall management improvement efforts. OGE finds the depth of the INSD assessments to exceed general regulatory requirements.

# ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports of travel payments from non-Federal sources in excess of \$250 to OGE. See 31 U.S.C. § 1353.

In accordance with the FBI's policy and procedures found within the MAOP, only under limited circumstances are FBI employees authorized to accept travel payments from non-Federal sources under the authority of the General Services Administration (GSA) regulation at 41 CFR chapter 304, implementing 31 U.S.C. § 1353. In most cases, FBI employees are reimbursed for official travel and related expenses using FBI appropriated funds. Additionally, although the GSA regulation permits the FBI to accept travel reimbursement for an employee's accompanying spouse when the spouse's presence at the event is determined to be in the best interest of the agency, Justice-wide policy prohibits such reimbursement from being accepted.

Officials within the FBI's Finance Division are responsible for ensuring that the acceptance of travel payments from non-Federal sources under 31 U.S.C. § 1353 are approved in advance and that payment is made either in cash to the agency or in kind. The Finance Division is also responsible for drafting the required semiannual report and forwarding it through Justice to OGE. OGE's examination of the acceptances reported on the FBI's last two semiannual travel reports submitted to OGE covering the period from April 1, 2005 through March 31, 2006 identified 69 payments that were accepted during this timeframe. OGE examined several of these payments and found them all to have been properly authorized, in accordance with 31 U.S.C. § 1353 and 41 CFR chapter 304.

#### **Summary**

OGE's review identified several model practices that have been implemented at the FBI. These model practices include:

- providing verbal training to all employees,
- utilizing its own written procedures to administer its ethics program,
- conducting quarterly meetings with the agency's two internal investigative organizations to facilitate discussion on items of mutual interest, and
- conducting internal reviews to assist in improving efficiency, accountability, and program effectiveness within the FBI.

OGE also noted the direct involvement the FBI leadership has in support of the FBI ethics program.

If you have comments or would like to discuss the report, please contact Dale Christopher, Associate Director for Program Reviews, at 202-482-9224.