



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

February 4, 2003

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

Dear Ms. Schneider:

The Office of Government Ethics (OGE) has completed its review of the Merit Systems Protection Board's (MSPB) ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objective was to determine the ethics program's effectiveness, measured by its compliance with applicable laws and regulations.

#### HIGHLIGHTS

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

#### ETHICS PROGRAM ADMINISTRATION

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

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

PUBLIC FINANCIAL DISCLOSURE SYSTEM

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

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

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

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

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

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

#### EDUCATION AND TRAINING

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

##### Initial Ethics Orientation

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

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

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

Annual Ethics Training

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

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

COUNSELING AND ADVICE

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

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

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

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

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

#### INSPECTOR GENERAL

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

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

#### ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

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

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

#### CONCLUSIONS

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

We wish to thank you, the Alternate DAEO, and all other MSPB personnel involved in this review for your efforts on behalf of MSPB's ethics program. Normally, a brief follow-up review is conducted to resolve any recommendations. However, as there were no findings that warranted a recommendation, a follow-up review will not be necessary. A copy of this report is being sent by transmittal letter to MSPB's Legislative Counsel. Please contact Jan E Davis at 202-208-8000, extension 1176, if we can be of further assistance.

Sincerely,



Jack Covaleski  
Deputy Director  
Office of Agency Programs

Report Number 03- 007