



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

Defense Security Service

Report No. 11-009
February 2011

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Defense Security Service (DSS) ethics program between November and December 2010. The results of the review indicated that the DSS ethics program generally appears to be in compliance with applicable laws, regulations, and policies. However, OGE recommends improvement in the administration of the confidential financial disclosure element of the ethics program, specifically with regard to identification of new entrant confidential filers. All other program elements appear to be effectively administered.

Highlights

- DSS ethics officials have shown consistent interest and enthusiasm toward seeking further improvements to the ethics program.
- DSS agency leadership has shown support for the ethics program.
- DSS has several model practices in the administration of its ethics training program.

Concern

- A number of confidential financial disclosure reports were submitted by filers late.

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Objectives, Scope, and Methodology

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

To assess the DSS ethics program, OGE examined a variety of documents provided by ethics officials; other documents that DSS forwarded to OGE, including the annual questionnaire; prior program review reports; and a sample of DSS' public and confidential financial disclosure reports and advice and counsel provided to DSS employees. In addition, members of OGE's Program Review Division met with the Designated Agency Ethics Official (DAEO) and the Alternate DAEO (ADAEO) to obtain additional information about the strengths and weaknesses of the DSS ethics program, seek clarification on issues that arose through the documentation analysis, and verify data collected.

Program Administration

The DSS ethics program is administered within the Office of General Counsel (OGC). The General Counsel serves as the DAEO. The Assistant General Counsel serves as the ADAEO. Both the DAEO and the ADAEO are day-to-day administrators of the ethics program. As a Department of Defense component, DSS adheres to the requirements of the Department of Defense's (DOD) Joint Ethics Regulation (JER).

DSS agency leadership has shown support for the ethics program. Ethics officials attended a briefing with the new DSS Director and meet with the Director once every two weeks and more often when necessary. Ethics officials also attend DSS senior staff meetings. OGE believes that leadership support is vital to success of an ethics program.

Financial Disclosure

Public and confidential financial disclosure reports were generally certified by ethics officials in a timely manner, and it appears that DSS is conducting a thorough conflict of interest analysis.

While public financial disclosure reports were submitted timely, many confidential financial disclosure reports were filed late, particularly new entrant reports, some of which were filed hundreds of days late. Supervisors have been responsible for disseminating notices to new entrant and incumbent filers regarding their filing requirement. Ethics officials indicated that late dissemination of the notices to file within the supervisory chain was the cause of some late confidential reports. Additionally, DSS experienced difficulty in identifying new entrant filers. In particular, ethics officials indicated that there were discrepancies in the coding of positions used to identify new entrant filers.

At the time of OGE's review, DSS was in the process of preparing to adopt the Department of the Army's Financial Disclosure Management (FDM) system. During this process, the ADAEO worked with the Human Resources (HR) Office to correct coding discrepancies and to ensure an accurate list of filers. DSS adopted the FDM system and began using the system to track and receive financial disclosure reports in January 2011. Ethics officials indicated that the identification of new entrant filers will remain manual; however, the FDM system will allow them to directly notify filers. OGE recommends that DSS develop an efficient process to obtain accurate and timely personnel data so that new entrant confidential filers are identified in sufficient time for the filers to meet the 30-day filing requirement. OGE suggests that this process be documented in writing.

Ethics officials stated that extensions were granted for some confidential filers who were notified late. However, correspondence provided did not mention specific filers or duration of the extensions. OGE suggests that DSS specify the name(s) of the filer(s) and the duration of any filing extension granted.

DSS requires, according to the JER, that public financial disclosure filers certify each year that they are aware of and have not violated the restrictions that ethics statutes place on them when they are negotiating employment and after they leave. OGE observed signed annual certification forms in public financial disclosure files reviewed.

Recommendation

- Develop an efficient process to obtain accurate and timely personnel data so that new entrant confidential filers are identified in sufficient time for the filers to meet the 30-day filing requirement.

Suggestions

- Document in writing the procedures developed to obtain accurate and timely personnel data to facilitate the identification of new entrant confidential filers in sufficient time for the filers to meet the 30-day filing requirement.
- Specify the name(s) of the filer(s) and the duration of any filing extension granted.

Education & Training

A DSS ethics official provides in-person initial ethics orientation (IEO) to new employees, including field employees who receive IEO at headquarters. Completion of IEO is tracked via sign-in sheets. DSS reported that it provided IEO to all new employees in 2009 and all employees in 2010. The agency reported that five employees who were unable to attend in-person IEO in 2009 were provided with written materials and were encouraged to contact the ethics office with any concerns or questions.

DSS utilizes online training provided by the Department of Defense Standards of Conduct Office for its annual ethics training. Ethics officials track the completion of annual ethics training via training completion certificates. In 2010, confidential filers were required to submit training

completion certificates to supervisors along with their financial disclosure forms. Supervisors forwarded the package to ethics officials after reviewing the financial disclosure forms. OGE observed training completion certificates in confidential financial disclosure files reviewed. Public filers were also required to submit training certificates along with their financial disclosure report. Some public filers satisfied the annual ethics training requirement by attending other ethics training provided by DSS ethics officials or ethics training offered outside of DSS. Ethics officials track the completion of annual ethics training by public filers on the master list of filers. DSS reported that all but one covered employees received annual training in 2009 and all received the training in 2010.

Model Practices

- In-person IEO is provided to all employees, including those in the field.
- In 2010, annual training completion certificates were required to be submitted with financial disclosure reports, and training certificates are kept in financial disclosure files.
- In addition to required ethics training, each year ethics officials provide training during all-hands conferences. The conferences are attended by a majority of the agency's financial disclosure filers.

Advice & Counsel

Written advice and counsel samples reviewed by OGE were timely, complete, and in accordance with established procedures. Ethics advice and counsel is primarily provided by the DAEO and ADAEO. Post-employment counseling is provided to financial disclosure filers as a part of the check-out process. Additionally, DSS disseminates ethics guidance to employees on pertinent ethics topics throughout the year, such as prior to all-hands conferences and during the holidays.

Agency-Specific Ethics Rules

As it does with other program elements, DSS follows JER procedures. Based on a provision in the JER that allows agency designees to require DOD employees under their jurisdiction to report any outside employment or activity prior to engaging in the employment or activity, DSS requires that all employees seek prior approval. See DOD 5500.7-R Sections 2-303 and 3-306(e).

OGE noticed that approvals for outside employment and a newsletter article relative to outside employment and activities referenced DSS Regulation 11-735, a standards of conduct regulation that DSS enforced before the JER was issued. DSS ethics officials stated that they do not rely on the DSS regulations since it has been deemed superseded by the JER. OGE suggests that DSS refrain from referencing DSS Regulation 11-735 in regards to the outside employment and activities requirement.

Suggestion

- Refrain from referencing DSS Regulation 11-735 in regards to the outside employment and activities requirement.

Ethics Agreements

DSS does not have Presidentially appointed, Senate-confirmed (PAS) officials. Additionally, DSS does not enter into ethics agreements for any of its employees.

Enforcement

From January 1, 2009 until OGE's review in December 2010, DSS reported one disciplinary action based wholly or in part upon violations of the standards of conduct provisions (5 CFR part 2635). DSS reported no disciplinary actions based on criminal conflict of interest statutes (18 U.S.C §§ 203, 205, 207, 208, and 209) and made no referrals to the Department of Justice of potential violations of the criminal conflict of interest statutes.

DSS reported that allegations regarding violations of the criminal conflict of interest statutes by DSS employees would be referred to the DSS Inspector General (IG) who would then refer the matters to the Department of Defense Office of the Inspector General (DOD IG). The DOD IG would be responsible for referring the matters to the Department of Justice (DOJ), and when appropriate, to the Defense Criminal Investigative Service (DCIS), the DOD IG's criminal investigative component. OGC holds responsibility for concurrent notification to OGE of DOJ referrals.

The IG has administrative authority to handle potential violations of the standards of conduct provisions. Disciplinary actions are processed by the Employee Relations Office in coordination with OGC. Ethics officials stated that they work closely with both the Employee Relations Office and the IG.

1353 Travel Acceptances

During the course of its review, OGE found that DSS had not sent to OGE its negative report for the period of October 1, 2009 through March 31, 2010 by the due date. DSS ethics officials promptly sent the report to OGE when reminded and indicated that they have established procedures to remind appropriate officials of approaching report deadlines to facilitate timely submission to OGE. OGE notes that DSS timely submitted all other travel reports for the time period covered by the program review.

The DSS Director has sole authority to accept travel benefits provided to DSS employees for official travel from non-Federal sources. The authority has not been delegated. Before travel payments are accepted, prior approval must be requested from the Director via a request memorandum completed by the traveling employee's supervisor. The request memorandum is required to go through OGC for concurrence. After travel is completed, a report is required to be submitted to OGC.

Agency Comments

OGE provided DSS ethics officials a copy of the draft report for comment. Where appropriate, the comments were incorporated into this report and are contained in the appendix.



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February 9, 2011

Ms. Patricia Zemple
Associate Director
Program Review Division
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1201 New York Avenue, NW
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Dear Ms. Zemple:

RE: Defense Security Service Response to Draft Ethics Program Review Report

This letter provides the response of the Defense Security Service (DSS) to the findings and recommendations contained in the Office of Government Ethics (OGE) February 2011 draft Ethics Program Review report. This letter also provides suggested substantive and technical corrections to the draft report. DSS concurs with the OGE's recommended improvements to the agency's ethics program and, as noted below, has already taken steps to implement the suggested improvements.

Suggested Technical and Substantive Corrections

DSS respectfully requests that OGE consider the comments and suggested corrections below and incorporate them into the final draft report. In the alternative, DSS requests that this letter be appended to the OGE final report.

(1) Financial Disclosure section. In the second paragraph, the draft report states that at the time of OGE's review, DSS was "in the process of preparing to adopt the Department of the Army's Financial Disclosure Management (FDM) system." DSS requests that the final report reflect that, at the time of OGE's review, DSS *had adopted* the FDM system and had begun using the FDM system to track and receive financial disclosure reports in January 2011.

(2) Education & Training section. In the first paragraph of the "Education & Training" section, the draft report erroneously states that "new employees receive certificates certifying their completion" of initial ethics orientation (IEO). While it is true that DSS financial disclosure filers who complete the Department of Defense Standards of Conduct Office's web-based annual ethics training receive training completion certificates, the agency's new employees do not receive certificates for completing IEO. It should also be noted that, beginning in February 2011, DSS includes written IEO briefing materials containing all of the information required by 5 C.F.R. § 2638.703 with the "welcome aboard" packages that all new employees receive from the agency's Human Resources office. DSS continues to offer in-person IEO to all

of its new employees during new employee orientation classes and verifies attendance at the training using sign-in sheets.

(3) Enforcement section. For clarification purposes, DSS requests that the second paragraph be restated as follows: "DSS reported that allegations regarding violations of the criminal conflict of interest statutes by DSS employees would be referred to the DSS Inspector General (IG) who would then refer the matters to the Department of Defense Office of the Inspector General (DOD IG). The DOD IG would be responsible for referring the matters to the Department of Justice (DOJ), and when appropriate, to the Defense Criminal Investigative Service (DCIS), the DOD IG's criminal investigative component." This more accurately reflects the interactions and relationship of the DoD IG and DCIS.

(4) 1353 Travel Acceptances section. DSS requests that OGE note that the agency timely submitted its 31 U.S.C. § 1353 report for the period of April 1, 2010 through September 30, 2010 and that we have put procedures in place to remind appropriate officials of approaching report deadlines.

Agency Response to Suggested Program Improvements

In its draft report, OGE makes three recommendations for improving the administration of the DSS' ethics program. OGE's individual recommendations and the agency's respective responses are set forth below:

(1) OGE Recommendation: In its report, OGE recommends that DSS "develop an efficient process to obtain accurate and timely personnel data so that new entrant confidential filers are identified in sufficient time for the filers to meet the 30-day filing requirement." OGE further suggests that DSS "document in writing the procedures developed to obtain accurate and timely personnel data to facilitate the identification of new entrant confidential filers."

Agency Response: DSS concurs with this recommendation and has adopted procedures under which the agency's Human Resources office will notify the DSS Office of General Counsel of new entrant confidential filers within one day of the filers' entry on duty date. DSS is currently in the process of documenting those procedures in writing. Additionally, the DSS Office of General Counsel is working closely with the agency's Human Resources office to code all positions requiring the filing of financial disclosure reports, in order to ensure the prompt and accurate identification of DSS confidential report filers when those employees are appointed.

(2) OGE Recommendation: With regard to the agency's confidential financial disclosure filers, OGE recommends that DSS document the specific name(s) of filers who have been granted filing extensions and the duration of any extension granted.

Agency Response: DSS concurs with this recommendation. In January 2011, all DSS financial disclosure report filers began using the Department of the Army's web-based FDM system to file their financial disclosure reports. DSS will use the FDM system's extension

tracking feature to record the names and revised due dates for any filers who have been granted filing extensions.

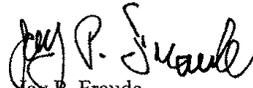
(3) OGE Recommendation: OGE recommends in its draft report that DSS refrain from referencing DSS Regulation 11-735, "Standards of Conduct," in its responses to outside employment requests and other written materials since the regulation has been superseded by DoD 5500.7-R, "Joint Ethics Regulation."

Agency Response: DSS concurs with this recommendation and no longer refers to DSS Regulation 11-735 in its responses to outside employment requests or in other written materials.

DSS appreciates the opportunity to respond to the findings and recommendations made in the OGE's draft report. We thank the members of the review team for their professionalism, and we believe the review was a beneficial experience for DSS. We look forward to working with OGE in the future to improve the administration and effectiveness of the DSS ethics program and to ensure our program's continued compliance with applicable ethics laws, regulations, and policies.

If you have any questions or require additional information, please do not hesitate to contact me or James Peel, DSS Assistant General Counsel, at (703) 325-5337 or james.peel@dss.mil.

Sincerely,


Jay P. Fraude
General Counsel