



July 6, 2004

Mary L. Walker  
Designated Agency Ethics Official  
Department of the Air Force  
1740 Air Force Pentagon  
Washington, DC 20330-1740

Dear Ms. Walker

The Office of Government Ethics (OGE) recently completed its review of the Air Force's ethics program within four activities located at Kirtland Air Force Base. These activities include the 377<sup>th</sup> Air Base Wing (Wing), the Air Force Inspection Agency (AFIA), the Air Force Safety Center (AFSC), and the Air Force Operational Test and Evaluation Center (AFOTEC). 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 compliance with applicable statutes and regulations. We also evaluated the systems and procedures for ensuring that ethics violations do not occur. The review was conducted in March and April 2004. The following is a summary of our findings and conclusions.

#### HIGHLIGHTS

The Wing's ethics counselors assisted supervisors in taking administrative action, which appeared effective but not prompt, against an employee who may have violated 18 U.S.C. § 208. They also assisted in actions, which we considered to be both prompt and effective, against an employee who violated the Standards of Ethical Conduct for Employees of the Executive Branch (Standards).

The Wing and AFOTEC were not ensuring that all new employees received initial ethics orientation. However, they were already in the process of instituting new procedures to correct this prior to the beginning of our review. All four activities met or exceeded annual ethics training requirements.

Notwithstanding these and other problems noted in this report, the ethics program within the four activities we reviewed appears to be sound. Ethics officials were already addressing the problems prior to our site visit, precluding the need for us to make any recommendations. Ethics counselors appear to be more than competent and very diligent in providing the best possible ethics services.

#### PROGRAM STRUCTURE

The ethics program within the Wing, AFIA, and AFSC is administered by the activities' respective Staff Judge Advocates (SJA). AFOTEC's Legal Counsel administers the ethics program within AFOTEC. Staffing levels appear to be appropriate to the size of each activity. The Wing's SJA and four

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members of his staff are appointed ethics counselors and are involved in various capacities, as required. The SJAs within AFIA and AFSC are the only ethics counselors for their activities, but each relies on an administrative assistant for support. AFOTEC has one recognized, but not formally appointed, ethics counselor who performs all ethics functions. In order to comply with the Department of Defense's Joint Ethics Regulation (JER), AFOTEC's ethics counselor should be formally appointed as such.

## ENFORCEMENT

The Wing's ethics counselors assisted supervisors in taking administrative actions against two employees, a civilian for possibly violating 18 U S C § 208 and a military officer for multiple violations of the Standards and the Uniform Code of Military Justice (UCMJ). In both cases the actions appeared to be effective, but in one case we questioned whether the action could be considered prompt. Section 2638 203(b)(9) of 5 C F R requires the Designated Agency Ethics Official (DAEO) to ensure "Prompt and effective action including administrative action is undertaken to remedy (iv) Potential or actual violations of other laws governing the conduct or financial holdings of officers or employees of that agency."

The possible violation of 18 U S C § 208 involved a civilian employee who, in his official capacity, was responsible for writing a statement of work, tasking, and providing direction and justifications for the future funding of a particular contractor. At the same time, and in his private capacity, he was performing work for a subcontractor that directly related to the matters for which he had official responsibility. The case was informally discussed with the local U S Attorney, who communicated no interest in pursuing the matter. Ethics counselors did not consider this contact to be a referral or declination requiring notification to OGE. The employee was subsequently suspended for three days without pay for violating ethics standards, for engaging in work that constituted an "apparent conflict of interest," and to promote the efficiency of the service. The employee's supervisor, a lieutenant colonel, received a letter of admonishment for failing to take appropriate action when he had knowledge of the "apparent conflict of interest" and for submitting a false statement related to the case.

While we consider the action taken to be effective, we question whether or not it was, as also required, prompt. The employee performed the work in question by the summer of 2000. The Air Force Office of Special Investigations (AFOSI) began investigating the matter in early 2001 and had completed its investigation by July 2002. The employee did not dispute or contend any of the relevant findings. The notice of intent to suspend the employee was not signed until March 2003. We question whether action would have had to have been taken much sooner after the investigation was completed in order to be considered prompt. Ethics counselors related that the supervisor, who alone had the actual authority to discipline the employee, was known to be dilatory in such matters. We therefore encourage that supervisors are reminded, in the future, that it is not only important to take effective action in these cases, but also to make sure such action is taken promptly.

Administrative action was also taken against another lieutenant colonel for multiple violations of the Standards and the UCMJ. The individual received nonjudicial punishment in the form of an Article 15 for accepting loans from subordinates, falsifying a travel voucher, and misappropriating Government equipment. Punishment consisted of forfeiture of pay and a reprimand.

We consider the action taken in this case to be prompt and effective. The violations occurred between approximately July 2001 and July 2003. The violations were brought to the attention of the individual's commander in early September 2003. A Commander Directed Investigation was ordered on September 17 and completed on October 10. The punishment was imposed on November 11.

In addition to the requirement at 5 C F R § 2638 203 (b)(9), the DAEO is to ensure that the services of the Inspector General (IG) are utilized by ethics officials, including referring matters to and accepting matters from the IG (§ 2638 203(b)(12)), and that information developed by the IG is reviewed to determine whether such information discloses a need for taking prompt corrective action (e.g., recusal, waiver, divestiture) to remedy actual or potential conflict of interest situations (§ 2638 203(b)(11)). Based on discussions with ethics counselors and IG and AFOSI representatives, we concluded that there is compliance with § 2638 203(b)(12), but could not conclude whether there was compliance with § 2638 203(b)(11) as there was no evidence of any corrective actions having been taken.

Finally, 5 C F R § 2638 603 requires agencies to concurrently notify OGE of referrals for prosecution to the Department of Justice of alleged violations of the criminal conflict-of-interest statutes, as well as to notify OGE promptly of any declinations to prosecute and follow-up disciplinary or corrective action initiated, taken, or to be taken. Based on discussions with ethics counselors and IG and AFOSI representatives, there have been no such referrals, however, it appeared that the relationship between the parties is such that the requirements of § 2638 603 would be met.

#### INITIAL ETHICS ORIENTATION

The Wing and AFOTEC were not ensuring that all new civilian employees were receiving initial ethics orientation within 90 days, as required by 5 C F R § 2638 703. However, new procedures have been implemented to correct this. AFIA and AFSC already ensured the required training was received.

All new civilian employees hired by the four activities in-process through the base Civilian Personnel Office (CPO) in-processing includes a series of general orientation briefings conducted quarterly by CPO and incorporates initial ethics orientation provided by the Wing's ethics counselors. The ethics counselors provided us with lists of employees generated by the Training Operations Branch (TOB) within CPO. The ethics counselors used these lists to record attendance at initial ethics orientation. The lists consisted of, but did not distinguish between, employees who had transferred to Kirtland and those who were first-time hires. (Those employees who were transferred had presumably received initial ethics orientation at previous assignments.) The lists clearly show many employees did not attend initial ethics orientation. However, there was no way to determine which employees were transferees who were not required to receive initial ethics orientation and which were first-time hires who were required to attend. If an employee failed to attend the initial ethics orientation, there was no follow-up to ensure the training was eventually provided. Now TOB provides a list consisting only of the first-time hires, which the Wing's ethics counselors use to track completion of initial ethics orientation. Any employee on the list who fails to attend is contacted by an ethics counselor and rescheduled for training.

Prior to implementation of the new procedures, AFIA's and AFSC's in-processing procedures already required new employees to check in with the activities' respective SJAs. Any AFIA or AFSC first-time hires who do not attend initial ethics orientation as part of general in-processing would be trained at the time they in-process through their respective SJA's office. This ensures that all new

employees in these two activities receive the required training and allows ethics counselors to address issues specific to their activities

The materials used to provide initial ethics orientation by the Wing's ethics counselors during the quarterly orientation briefings, and by AFIA for employees who did not attend a briefing, met the relevant content requirements. There were no new employees at AFSC who did not receive initial ethics orientation as part of their in-processing through CPO. The AFSC ethics counselor was aware of the content requirements, and we are confident he would provide the required materials as necessary.

#### ANNUAL ETHICS TRAINING

All four activities met or exceeded the annual training requirements as defined in 5 C F R §§ 2638 704 and 2638 705. All of the covered employees required to receive annual training in 2003 were trained. We confirmed that the materials used to conduct training met the relevant content requirements. All of the activities have effective means of positively affirming attendance at training sessions.

AFIA, the Wing, and AFSC actually exceeded annual training requirements. AFIA has only four individuals who are required by 5 C F R § 2638.705 to receive annual ethics training, yet the ethics counselor provides in-person annual ethics training to all military personnel and civilian employees twice a year. He feels it is appropriate in view of the nature of AFIA as an inspection agency. Additionally, the Wing provides tailored ethics training to some contractor employees to complement the training they receive concerning the Procurement Integrity Act. The ethics training gives them an understanding of the rules in effect for Government employees which may help prevent them from inadvertently creating potential conflicts for Government employees. AFSC provides in-person training to covered employees and encourages non-covered employees to review training materials stored on a local computer network drive. Those who access the materials are asked to sign a log documenting their review of the information. According to the log, maintained by an administrative assistant, many non-covered employees did review these materials, effectively completing annual ethics training.

#### ADVICE AND COUNSELING SERVICES

Ethics advice and counseling services meet the requirements of 5 C F R § 2638 203(b)(7) and (8). We examined a sample of ethics-related advice and counseling rendered by ethics counselors from the four activities we reviewed. We concluded that all of the written advice, which covered a variety of subjects, complied with applicable ethics statutes and regulations. It was provided in a timely manner and was comprehensive in addressing the relevant issues. Ethics counselors provided complete analyses of the issues raised, identified the relevant authorities, and, on occasion, cautioned that even if an activity was permitted, it may not be prudent.

#### PUBLIC FINANCIAL DISCLOSURE

In 2003, 17 public financial disclosure reports were required to be filed by the General Officers and Senior Executive Service members assigned to 3 of the activities. AFIA has no positions whose incumbents are required to file public reports. All of the reports were filed, reviewed, and certified timely. There were no substantive deficiencies, and only minor technical issues which were resolved through discussions with ethics officials.

## CONFIDENTIAL FINANCIAL DISCLOSURE

The Wing had difficulty in collecting 3 reports from annual confidential report filers, and reports for 11 new entrant filers were filed well beyond the required filing deadline. AFIA, AFSC and AFOTEC appear to have met all relevant requirements.

We examined a sample of 75 of the 493 reports required to be filed within the Wing in 2002.<sup>1</sup> Three of the reports required to be filed had not been filed at the time of our site visit. One filer stated his financial records are stored out of state and, as soon as they can be retrieved, he will complete and submit a report for 2002. Ethics officials will continue to follow up to ensure the report is filed. The remaining two filers have submitted their reports since our visit. The Wing's ethics counselors stated that administrative action would probably not be taken against any of the delinquent filers. The three reports which had not been filed at the time of our visit represent a very small fraction of the 493 reports required to be filed. We do not consider this to be indicative of a systemic problem or a serious deficiency.

There were 23 new entrant reports in the sample of reports from the Wing. Of those, 11 were filed between two and a half and nine months late. Until recently, ethics counselors have had difficulty identifying individuals entering covered positions. They have made extensive efforts to coordinate with personnel officials to ensure position descriptions are annotated to identify positions whose incumbents are required to file confidential financial disclosure reports. The CPO has been developing a new automated personnel database system which can generate reports of individuals entering covered positions. These reports will allow for the timely identification of new entrants so they can be notified of the filing requirements. This should greatly improve the timeliness of new entrant filing.

AFIA, AFSC, and AFOTEC have small numbers of filers who are easy to identify. We examined all of the reports required to be filed within these activities in 2003 and noted no systemic problems. Except for one report filed within AFSC, all reports were filed, reviewed, and certified timely. The report filed in AFSC was a new entrant report that was filed late because the ethics counselor was on extended leave and was not available to notify the filer of the filing requirements.

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<sup>1</sup>We examined the 2002 reports filed within the Wing because our review was originally scheduled to take place in 2003 and we had previously requested that the 2002 reports be made available. We decided not to ask ethics officials to provide the 2003 reports since they had already pulled the 2002 reports from their files and it would have created an additional burden to gather the 2003 reports. We reviewed the 2003 reports filed within AFIA, AFSC, and AFOTEC because there were few reports and little effort was required to provide them.

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31 U S C § 1353 TRAVEL PAYMENTS

We examined two of the Wing's semiannual reports of travel acceptances from non-Federal sources of more than \$250 per event, covering the period April 1, 2002 through March 31, 2003, which were forwarded to the Department of the Air Force headquarters for submission to OGE. There were six acceptances of travel payments which were reported, all appeared to comply with the statute, the implementing regulation at 41 C F R Chapter 304, and the JER AFIA, AFSC, and AFOTEC ethics counselors did not have any acceptances of such travel payments to report

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In closing, I would like to thank everyone involved in this review for their cooperation on behalf of the ethics program. No six-month follow-up is necessary in view of the fact that we have no recommendations for improving the ethics program at this time. We are sending a copy of this report by transmittal letter to the Inspector General of the Air Force. Please contact Douglas L. Chapman at 202-482-9223 if we may be of further assistance.

Sincerely,



Jack Covaleski  
Deputy Director  
Office of Agency Programs

Report Number 04-<sup>016</sup>~~013~~