



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

Defense Commissary Agency

Report No. 12-15
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Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Defense Commissary Agency's (DeCA) ethics program between October and November, 2011. The results of the review indicated that DeCA's ethics program generally appears to be effectively administered and in compliance with applicable laws, regulations, and policies.

Highlight

- DeCA's Director visibly demonstrated support of the ethics program by issuing individually addressed letters to senior officials expressing his expectations regarding ethics.

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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 DeCA's ethics program, OGE examined a variety of documents provided by DeCA ethics officials such as training materials and policies and procedures governing elements of the program. OGE also examined public financial disclosure reports and a sample of confidential financial disclosure reports and ethics advice and counsel. In addition, the OGE review team met with several DeCA officials to obtain additional information on the ethics program, seek clarification on issues, and verify data collected. These officials included the Designated Agency Ethics Official (DAEO), the Alternate DAEO (ADAEO), the Deputy DAEO, an Assistant General Counsel, the Director of Human Resources, and the Inspector General.

Program Administration

The DeCA Director has demonstrated visible support of the agency's ethics program. At the beginning of his tenure in early 2011, the Director sent individually addressed letters to senior officials within the agency stating his expectation that officials set the proper example for subordinates by scrupulously adhering to the laws and ethical standards that apply to all Executive Branch employees as well as avoiding any appearance that honesty, integrity, or fairness may be questioned. OGE considers this direct, high-level support of the ethics program to be a model practice.

DeCA's ethics program is administered within the Office of the General Counsel. The General Counsel serves as the DAEO and the Deputy General Counsel (Commercial Law) serves as the Alternate DAEO. An Assistant General Counsel who serves as the Deputy DAEO is the principal administrator of the ethics program. At the time of OGE's review, the Deputy DAEO planned for retirement in December 2011. The agency was in the process of preparing another Assistant General Counsel to assume the ethics related duties of the Deputy DAEO. OGE reviewers suggested to the Deputy DAEO that he update standard operating procedures to include detailed steps, where necessary, that would assist his successor in the administration of the ethics program. During the course of OGE's review, the Deputy DAEO began updating standard operating procedures where necessary.

Financial Disclosure

DeCA utilizes the Department of the Army's Financial Disclosure Management System (FDM) for both its public and confidential financial disclosure programs.

OGE reviewed half of the 130 confidential financial disclosure reports that were required to be filed in 2011. Our examination found these reports to have been reviewed for conflicts and certified timely. However, a noticeable percentage of the confidential filers in our sample identified themselves as annual filers, but did not file a report the previous year. During our discussion with the Deputy DAEO, we were advised that generally these filers assumed new duties and were not required to file the previous year. Most of these employees were either promoted or transferred into filing positions and a few had an accretion of duties that required them to file in 2011. OGE reminded ethics officials that when employees assume new filing duties during the year requiring them to file, they must indicate their reporting status as new entrant and must submit their report within 30 days of assuming the new duties.

We noticed that ethics officials were only obtaining information from the human resources office on new hires and terminations and not on promotions and transfers. This affected the ability of ethics officials to timely identify employees who are promoted or transferred into covered positions. Prior to the conclusion of our review, the Deputy DAEO informed OGE that the human resources office will provide information on promotions and transfers for employees GS-12 and above; this is the population of employees most likely to move into covered positions. OGE believes that the additional information provided by the human resources office will assist ethics officials in promptly identifying new entrant confidential filers. To help identify employees that obtain new filing duties that do not result in a personnel action, OGE suggests that ethics officials send periodic reminders to managers reminding them of the filing requirement and requesting the names of any employees who have been assigned new filing duties.

Suggestion

- Ethics officials should send periodic reminders to managers reminding them of the filing requirement and requesting the names of any employees who have been assigned new filing duties.

Education & Training

DeCA's ethics training program meets all relevant requirements. Initial ethics orientation is provided at the DeCA store level. Initial ethics training modules are located under a mandatory training section on the agency Intranet. Employees and their supervisors are required to sign a checklist stating compliance with all the mandatory training requirements. Ethics officials do not collect information regarding compliance with this requirement; rather this information is kept at the store level. Until a reorganization of the compliance function in October 2011, the Office of the Inspector General conducted periodic reviews to verify compliance with the requirements of the checklist. The Inspector General indicated that the compliance function has been reassigned to the Executive Director for Sales, Marketing, and Policy. It is our hope that the periodic reviews regarding compliance with the checklist, including the requirement to complete initial ethics orientation, will continue to occur. In the absence of such reviews, OGE suggests that ethics officials periodically assess compliance with initial ethics orientation requirements.

Ethics officials reported that annual training was provided to all covered employees in 2010 and 2011. DeCA modifies annual training materials developed by the Department of Defense's Standards of Conduct Office. Filers are required to certify completion of the online training module when they sign their financial disclosure report. Filers are notified annually via email of the dual attestation requirement. OGE suggested to ethics officials that they track completion of annual ethics training by collecting training completion certificates from filers. The Deputy DAEO informed OGE during the course of its review that, in the next annual training cycle, filers will be required to send completion certificates to the ethics office. Upon receipt of the certificate, ethics officials will indicate compliance with the annual training requirement in FDM.

Suggestions

- In the absence of ongoing compliance reviews, ethics officials should periodically assess compliance with initial ethics orientation requirements.
- Ethics officials should track completion of annual ethics training by collecting training completion certificates from filers.

Advice & Counsel

Written advice and counsel samples reviewed by OGE were substantively accurate and appeared to be issued in a timely manner. To ensure consistency, responses are discussed and shared among ethics staff. The Deputy DAEO stores a copy of written advice and counsel in category files for historical reference.

Agency-Specific Ethics Rules

Based on DoD supplemental regulations at 5 CFR § 3601.107 and Subsection 2-206 of the Department of Defense (DoD) Joint Ethics Regulation (JER), DeCA requires that filers of financial disclosure reports receive prior approval before engaging in a business activity or compensated outside employment with a prohibited source. Filers are required to submit requests to the DAEO through their chain of command.

Enforcement

In 2010, DeCA reported four disciplinary actions based wholly or in part upon violations of the standards of conduct provisions. For this period, DeCA reported no disciplinary actions based upon violations of the criminal conflict of interest statutes, and no referrals to the Department of Justice (DOJ) of potential violations of the criminal conflict of interest statutes.

The DeCA Office of the Inspector General is responsible for investigating administrative matters, including potential violations of the standards of conduct provisions. DeCA refers matters involving potential violations of the criminal conflicts of interest statutes to the Defense Criminal Investigative Service (DCIS). DCIS is responsible for any referrals to DOJ. The Inspector General indicated a close working relationship with DCIS.

The DAEO holds the responsibility to notify OGE of any referrals to DOJ and the disposition of cases. Both ethics officials and the Inspector General indicated a good working relationship with each other regarding ethics matters.

1353 Travel Acceptances

The required semi-annual reports of payments accepted from non-Federal sources were submitted to OGE in a timely manner. The DAEO has been delegated authority to approve the agency's acceptance of travel payments from non-Federal sources.

Agency Comments

OGE provided DeCA ethics officials an opportunity to comment on the draft version of this report. The DAEO commented that he concurred with the draft report.