



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

National Security Agency

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Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the ethics program in March 2011 at the National Security Agency (NSA). A follow-up discussion was held in April 2012 to gather additional, updated information regarding the ethics program. The results of our review found NSA's overall ethics program sound with respect to relevant ethics laws and regulations. However, certain improvements could be made to strengthen the program further, particularly in the areas of financial disclosure and education and training. While OGE is making no formal recommendation in the area of financial disclosure, we are recommending that NSA ensure that all covered employees receive annual ethics training by the end of 2012.

Highlights

- The Ethics Office provides in-person, IEO briefings to all new employees.
- The Ethics Office requires supervisors to complete a designation worksheet when making a determination on whether a newly hired employee should file a confidential report.
- The Ethics Office's intranet ethics website is a very useful and comprehensive ethics tool for all employees.
- The Ethics Office has an organized process for rendering ethics counseling to its employees to help facilitate timely, uniform responses, particularly when ethics counseling is rendered by more than one ethics official.
- In-person, post-employment briefings are provided to those employees departing from Federal service as part of NSA's employee check-out process.

Concerns

- The financial disclosure report certification process was not completed timely.
- Annual ethics training was not provided to all NSA covered employees.

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

Program Administration

The ethics program is located within the Ethics and Fiscal Law Office within NSA's Office of General Counsel (OGC). The Ethics and Fiscal Law Office, hereafter referred to as the Ethics Office, is headed by the Associate General Counsel who serves as the agency's Designated Agency Ethics Official (DAEO). Assisting the DAEO in the day-to-day management of the program is a full-time ethics staff that consists of four attorneys and two legal program managers. Of the four attorneys, one serves as the agency's Alternative DAEO while the other three serve as Deputy DAEOs.

Financial Disclosure

The public and confidential financial disclosure reports OGE examined were generally filed and initially reviewed timely. However, delays in the final review and certification process were identified.¹ In some cases it took up to eight months after the supervisor's initial review for reports to be reviewed and certified by the Ethics Office even though it did not appear that these delays were due to ethics officials seeking additional information from filers.

OGE was advised that some of these delays had been due to staffing limitations within the Ethics Office. However, the DAEO felt confident that timely review and certification would improve in future filing cycles due to recent staffing increases and responsibilities. Given the fact that the Ethics Office devotes full-time attention to the day-to-day functions of NSA's ethics program,

¹ NSA has a three-level review process, whereby supervisors conduct an initial review for conflicts; Program Managers conduct a review for technical and substantive deficiencies; and the DAEO (for public reports) and the Deputy DAEOs (for confidential reports) provides the reports' with a final review and certification.

OGE is confident that the DAEO will continually monitor and improve internal processes to ensure that final review and certification is done timely. As a result, OGE is not making a formal recommendation for improvement at this time.

OGE notes that during the review, the DAEO indicated an interest in pursuing an electronic filing system (e-filing) for NSA's financial disclosure program to help with the administration of the financial disclosure program. OGE supports NSA in the pursuit of this endeavor. Agencies that have implemented such systems have been able to save time and resources, and the resources saved were moved to other essential aspects of the financial disclosure system.

Despite the timeliness issue, OGE did find elements of NSA's financial disclosure program that we consider to be model agency practices. These include:

- **OGE Form 450 Filer Designation Worksheet:** To help supervisor's determine whether or not new employees are required to file a confidential report, the Ethics Office requires them to complete a designation worksheet. The worksheet requires supervisors to answer a series of "yes or no" questions that results in a more appropriate application of the confidential filing criteria.
- **Evaluation Form for Supervisors:** To help supervisor's detect real or apparent conflicts of interest during their review of financial disclosure reports, the Ethics Office developed an evaluation form to help supervisors with their conflict of interest analysis. This form provides the Ethics Office with assurances that supervisors have considered all relevant factors when reviewing a financial disclosure report for potential conflicts.

Special Government Employees

NSA's Advisory Board (Board) consists of 20 members, all of whom are considered to be special Government employees. The Board meets at least quarterly and is responsible for providing advice to the NSA Director and senior management on matters related to the mission of NSA. The Board's Executive Director, an NSA employee, serves as the Board's Designated Federal Officer.

To assess the collection and review of confidential reports filed by NSA Board members OGE examined 18 of the 20 confidential reports that were required to be filed in 2010.² During the examination of these reports, OGE noticed that none of the Board members indicated their reporting status on the first page of the confidential report as "New Entrant" in accordance with 5 CFR § 2634.903(b). Beyond this being important for technical compliance, a new entrant report changes the information that has to be reported. Specifically a new entrant filer, unlike an annual filer, does not have to report gifts and travel reimbursements. OGE was assured that during future filing cycles SGE reports would be categorized correctly.

² OGE did not examine the financial disclosure reports there were required to be filed by two board members. One member no longer serves on the board due to health reasons and the Chairman files a public report.

During our examination of the training services provided to SGEs, OGE found that Board members were being provided with an initial ethics orientation. The orientation includes information on the conflict-of-interest laws and ethics regulations that apply to them when they first come on board and annually thereafter in accordance with 5 CFR § 2638.703 and the exception at 5 CFR § 2638.705(d)(2).

Education & Training

NSA exceeds OGE's initial ethics orientation (IEO) requirements. All new employees receive an IEO in-person briefing by the Ethics Office as part of NSA's two-week new employee orientation. During the on-site portion of our review, OGE observed a live training session and found it informative and well-g geared to the variety of ethics issues that new NSA employees may face while on the job. The instructor's use of creative elements within the presentation and a question-and-answer format was also useful and effective in engaging employees. Training completion is tracked using a sign-in sheet that is collected by the instructor at the end of each class.

The only issue discussed with the Ethics Office after observing the IEO presentation dealt with the fact that neither the Standards of Ethical Conduct for Employees of the Executive Branch nor DOD's supplemental standards of conduct regulation were provided or highlighted by the instructor to help satisfy the compliance-based requirements of 5 CFR § 2638.703. After bringing this to their attention, the Ethics Office quickly resolved this issue by updating the existing IEO material. Employees are now informed about where these documents can be found on the Ethics Office's ethics Intranet page.

Annual Ethics Training

At the time of OGE's fieldwork in March 2011, annual ethics training for 2010 had not been completed. OGE was advised that annual training had been delayed due to technical difficulties related to scripting the annual ethics training and providing it to NSA's Associate Directorate for Education and Training to automate and deliver to the agency. During our recent follow-up discussion, OGE found that while some technical problems still continued to exist in satisfying the 2011 annual training requirement, 76 percent of those employees required to receive annual training had been trained by the end of 2011.

OGE is hopeful that compliance with the annual training requirement will improve once all technical difficulties have been resolved. By allowing the Associate Directorate for Education and Training the ability to announce, remind, and track training completion throughout the year the Ethics Office should be able to make gradual and measurable progress in meeting the annual training requirement in the future. As the Ethics Office prepares to satisfy the annual training requirement for 2012, OGE is recommending that the Ethics Office ensure that all covered employees receive annual ethics training by the end of the year.

NSA's Intranet Page

OGE found the Ethics Office doing a good job keeping NSA employees aware of ethics-related issues throughout the year via its internal ethics Intranet page. OGE's content examination found the ethics coverage to be extremely useful and informative. This resource features separate modules for financial disclosure filing, links to ethics briefings for new employees, out-briefings for departing employees, information about the post-employment restrictions, and helpful ethics resource links. Immediate access to both OGE regulations and agency specific regulations, along with points of contact information for NSA ethics officials, are also provided.

Advice & Counsel

The Ethics Office has an organized process for rendering ethics counseling to its employees to help facilitate timely, uniform responses, particularly when ethics counseling is rendered by more than one ethics official. Written counseling files are stored by topic on a shared electronic drive to which all ethics officials within the Ethics Office have access. OGE considers the organized process for rendering ethics counseling to be a valuable resource to ethics officials and a model agency practice. OGE also found NSA's advice and counseling services to be timely, which is important in preventing conflicts of interest and other ethics violations from occurring. Employees are encouraged to contact the Ethics Office via all forms of communication, including e-mail, telephone, and in-person. However, most inquiries are made and advice rendered via e-mail correspondence.

As it relates to post-employment counseling, the Ethics Office provides in-person post-employment briefings to those employees departing from Federal service as part of NSA's employee check-out process. In addition to the briefing, employees are provided with written materials that outline the basic post-employment restrictions. Should an employee have specific questions or request a formal ethics opinion, a post-Government service ethics questionnaire is required to be used. The questionnaire provides the Ethics Office with the pertinent information needed to provide written counseling to the employee on the post-Government service restrictions.

Model Practices

- Ethics Office has an organized process for rendering ethics counseling.
- In-person, post-employment briefings are provided to employees departing from Federal service as part of NSA's employee check-out process.

Enforcement

Consistent with 5 CFR § 2638.203(b)(12), it appears that an effective working relationship has been established between the Ethics Office and NSA's Office of the Inspector General (IG). Based on our discussion with both parties, we are satisfied that procedures are in place to effectively exchange ethics-related information and to resolve ethics issues.

During the period covered by OGE's review, there was one potential violation of the criminal conflict-of-interest laws referred for prosecution to a U.S. Attorney's Office. OGE was concurrently notified in accordance with 5 CFR § 2638.603.

1353 Travel Acceptances

NSA accepts payments from non-Federal sources for travel, subsistence, and related expenses incurred by agency employees on official travel under the authority of the General Services Administration (GSA) regulation at 41 C.F.R. chapter 304, implementing 31 U.S.C. § 1353. To meet the semiannual reporting requirement, the Ethics Office is responsible for collecting the information to be reported, drafting NSA's semiannual report of payments of more than \$250 per event, and forwarding it to OGE.

Generally, NSA has been timely in forwarding the semiannual travel reports to OGE. However, there was one semiannual report covering the period of April 1, 2011 through September 30, 2011, that had not been reported to OGE. Prior to the issuance of this report, the Ethics Office submitted this report using the appropriate GSA Standard Form 326. Therefore, OGE is making no formal recommendation.

Agency Comments

A draft of this report was sent to the Ethics Office for review and comment. No objections or technical corrections were provided to our written findings.