



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

December 15, 2011

George A.B. Peirce
Defense Intelligence Agency
Building 6000
Office of the General Counsel
Washington, DC 20340

Dear Mr. Peirce:

The United States Office of Government Ethics (OGE) conducted an on-site follow-up review of the ethics program at the Defense Intelligence Agency (DIA) to determine whether the improvements recommended or suggested in our December 2010 report have been achieved.

During its initial review, OGE identified two significant areas of concern that could affect DIA's ability to prevent and detect ethics violations. First, there were weaknesses within the financial disclosure systems: delayed certification of public and confidential financial disclosure reports; certified reports that lacked adequate disclosure of assets; and delayed identification of new entrant confidential financial disclosure report filers. Second, OGE found weaknesses in the ethics education and training component of DIA's ethics program. Specifically, it was unclear if initial ethics orientation (IEO) was provided to all new employees, the content of initial ethics orientation and annual ethics training did not cover all required subjects, and DIA could not affirm that verbal training was provided to confidential filers at least once every 3 years. OGE made five recommendations regarding these issues designed to help DIA fully comply with applicable ethics statutes, regulations, and policies. OGE also made three suggestions for enhancing the structure of DIA's ethics program. Each of the recommendations and suggestions are provided below along with a summary of the initial review's findings, a description of the actions DIA has taken to address the respective issues and OGE's determination as to whether the issue is closed or requires further action/follow-up.

Recommendations:

1. OGE recommends that DIA certify all public and confidential financial disclosure reports within 60 days of the date they are filed unless a delay is required in order to obtain additional information or take remedial action.

Financial disclosure reports are to be reviewed and certified within 60 days of the date of filing. Final certification may, of necessity, occur later where additional information is being sought or remedial action is being taken. (See 5 CFR § 2634.605(a) and OGE's DAEOgrams DO-10-006 and DO-09-018, dated April 27, 2010, and May 14, 2009, respectively.)

During its initial review, OGE examined 127 of the approximately 240 public financial disclosure reports required to be filed in 2009 for timeliness of filing, review, and certification.

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OGE found that 110 public reports were not certified until 9 months or more after they had been filed. In addition, while examining public reports filed in 2009, OGE found 29 reports filed in 2008 that had also not yet been certified. OGE also examined 123 of the confidential financial disclosure reports required to be filed in 2009. OGE found that 89 of those reports were also certified more than 60 days after they had been filed. Some reports were not certified until 8 months after they had been filed. There was no indication that the delay in certification for either public or confidential reports was the result of the need to obtain further information or take remedial action.

In 2011, DIA tasked 10 attorneys embedded in the various DIA Directorates and Special Offices to review and certify public financial disclosure reports. As of August, 2011, about 200 of the approximately 250 public reports required to be filed had been certified. The remaining reports were not certified because additional information from filers was required. As of December, 2011, all but 10 reports had been certified.

To ensure the timely certification of confidential reports in 2011, DIA tasked all available attorneys to serve as reviewing officials. The former Ethics Program Manager certified all confidential reports prior to her departure. Of the 25 confidential reports examined during the follow-up, all were certified on June 29, 2011. Some of the reports were new entrant reports filed in 2010. While additional information was requested from some filers, the requests were not so extensive as to justify the delay in certification of the reports. Having tentatively determined that DIA requires too many employees to file reports, the DAEO has directed ethics officials to prepare detailed guidance for all DIA managers and supervisors describing the criteria for determining who should be designated as a confidential report filer. DIA believes this will greatly reduce the number of filers. This would assist in ensuring reports are timely certified.

It appears that DIA has taken appropriate action to resolve the issue of timely review and certification of public financial disclosure reports. OGE has determined that the issues relevant to public financial disclosure addressed in recommendation number one are closed. However, OGE remains concerned regarding the timeliness of certification of confidential reports. As discussed below, there also remains an issue of timely identification of new entrant reports. OGE will re-examine DIA's processes and procedures for the timely filing, review, and certification of confidential reports after the 2012 annual filing cycle is complete, approximately six months from the date of this report.

2. OGE recommends that DIA provide training to all personnel who review or certify financial disclosure reports. The training should reinforce how to identify conflicts of interest and prepare personnel to adequately conduct technical reviews of reports. Further, OGE also recommends this training provide familiarization with the available reference materials for reviewing public financial disclosure forms.

A financial disclosure report filer is required to disclose financial interests in accordance with 5 CFR part 2634. Ethics officials are obligated to obtain any required information that the filer fails to include on their report. Complete information allows ethics officials to determine whether the filer's personal financial interests conflict with their official duties.

During its initial review, OGE reviewed 69 public and 123 confidential financial disclosure reports for technical completeness and evidence that ethics officials had conducted conflict of interest analyses. OGE found 7 instances where holdings of underlying assets were not reported as required, 1 instance in which a filer indicated there was a reportable outside position but did not include the part of the report where that information would be disclosed, and 15 instances where either value or income or both was not identified. In one case, a report missing an entire schedule was reviewed by a supervisor and certified by an ethics official despite making note of the missing schedule.

In February 2011, DIA's General Counsel along with the former Ethics Program Manager conducted live training for all DIA attorneys. Twenty-nine attorneys attended in preparation for the 2011 public and confidential disclosure cycles. The training did focus on technical review and identifying conflicts of interest. OGE conducted a very limited examination of financial disclosure reports during its on-site follow-up. Reports examined during the follow-up review were technically complete and there was evidence that conflict of interest analyses were conducted. Additionally, DIA has made tentative arrangements for OGE to conduct training for financial disclosure report reviewers and certifiers in 2012. OGE is satisfied that DIA had adequately addressed the issues raised in recommendation number two; therefore, this recommendation is closed.

3. OGE recommends that DIA implement procedures to ensure new entrant confidential financial disclosure reports are filed timely.

A new entrant financial disclosure report is required to be filed within 30 days after a filer assumes a covered position or office. During its initial review, OGE examined all of the 66 confidential new entrant reports ethics officials indicated were filed throughout DIA in 2009 and 2010. OGE found that 40 (approximately 61 percent) of the 66 new entrant reports examined during the review were not filed timely. Filing timeliness of six additional reports could not be determined because there was no clear indication of when the reports were filed.

The majority of confidential filers within DIA work in DIA's Office of the Acquisition Executive. According to ethics officials, employees within that component are now notified upon assignment of the requirement to file, as appropriate. However, DIA acknowledged a gap in the process of identifying new entrant confidential filers in other DIA components. This is true for both newly hired employees and employees who are promoted, transferred, or otherwise enter a covered position subsequent to their initial employment with DIA. To address this gap, DIA ethics officials included in their detailed guidance to managers and supervisors (see recommendation 1) directions regarding the timely identification of employees who enter into covered positions. Ethics officials also provide periodic reminders to supervisors and managers regarding the need to promptly identify filers so that filers can file reports timely. Additionally, DIA has undertaken "aggressive" ethics training for DIA's workforce that will highlight the need for people who enter covered positions to file timely reports. Finally, ethics officials will work with DIA's Directorate of Human Capital to institute procedures which make identification of employees entering covered positions part of DIA's in-processing procedures for all new employees.

The steps DIA has taken would appear to be effective in helping to resolve the issue of timely identification of confidential filers and new entrant report filing. However, OGE has decided to leave this issue open and review the effectiveness of the actions taken when it conducts its next follow-up in approximately six months. This will be in conjunction with OGE's review of the timeliness of certification of confidential reports as discussed in recommendation number one.

4. OGE recommends that the content of initial and annual ethics training be amended to meet the requirements set forth in 5 CFR § 2638 Subpart G.

In its initial review, OGE examined the training materials used to provide both initial ethics orientation (IEO) and annual ethics training. OGE found that neither IEO nor annual ethics training met respective content requirements.

DIA has incorporated the required subject matter into both IEO and annual ethics training. OGE reviewed the revised training materials and determined that they now meet content requirements; therefore, this recommendation is closed.

5. OGE recommends that DIA provide verbal training to all confidential financial disclosure report filers prior to OGE's 6 month follow-up review.

During its initial review, DIA was unable to identify when the last time verbal training was provided to non-public financial disclosure filers or provide evidence that such training would be impractical. Per 5 CFR § 2638.705(c)(1), a minimum of 1 hour of official duty time should be provided for verbal training at least once every 3 years, unless the DAEO or designee has made a written determination that verbal training would be impractical. The EPM underscored that the ethics program lacked organization and continuity of operations when she assumed her position in 2009. These circumstances may have precluded the accurate tracking of the annual training provided to confidential financial disclosure filers.

DIA ethics officials have conducted two live annual training sessions in 2011 and have scheduled four additional live training sessions before the end of the year. Ethics officials will also be conducting live annual ethics training in 2012 to ensure all filers have received live training at least once every three years, as required. Training sessions are held in an auditorium with video-teleconferencing capability to allow for large audiences. The video-teleconferencing capability has also allowed DIA to provide training to geographically dispersed employees. DIA appears to be on track to provide live annual ethics training to all filers, as contemplated in the recommendation; therefore, this recommendation is closed.

Suggestions:

1. OGE suggests that DIA amend financial disclosure review procedures to include an intermediate review by filers' supervisors and review/certification by attorneys embedded within filers' respective functional areas.

DIA addressed this issue in its 60 day response to OGE's December report. DIA noted that the Department of Defense requires that each financial disclosure report receive an intermediate review by the filer's supervisor. The DIA response stated that DIA complies with this requirement. DIA's 60 day response also stated that the review and certification of financial disclosure reports by attorneys embedded within filers' respective functional areas was a process adopted in 2010 and that the process would continue. OGE considers DIA's actions in regard to this suggestion to be responsive and the issues raised are closed.

2. OGE suggests that DIA adopt a more formal method of documenting advice and counseling using a standard template and maintain that advice in a repository accessible by all ethics officials.

DIA has organized ethics advice by topic and posted it in the General Counsel's shared directory. DIA also posted general ethics information to DIA's internal website which is available to all employees. The posted information includes post-employment guidance, annual ethics training material, and contact information for ethics officials. OGE considers DIA's actions in regard to this suggestion to be responsive and the issues raised are closed.

3. OGE suggests that DIA establish a stable structure for the ethics program.

In its 60 day response to OGE's report, DIA stated that it had requested a quota at the 2011 Ethics Counselors Course and would send a civilian attorney to the class. Additionally, DIA intended to hire a paralegal to support the ethics program. DIA's plan further called for functional aspects of the ethics program to be shared by an Assistant General Counsel permanently assigned to the DIA General Counsel's Office. Actions have been completed. Additionally, the day-to-day functions of the ethics program are performed by a civilian attorney who is not subject to the same periodic transfers military personnel experience. This should help establish stability in the ethics program. OGE considers DIA's actions in regard to this suggestion to be responsive and the issues raised are closed.

Based on our follow-up, we have determined that DIA has adequately implemented recommendations 2, 4, and 5. OGE will conduct additional follow-up regarding recommendations 1 and 3 in approximately six months as outlined above. Thank you for your assistance during the follow-up process. Please contact me at 202-482-9317 if you require any additional information.

Sincerely,



Rashmi Bartlett
Associate Director