



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

Defense Information Systems Agency

Report No. 12-03
October 2011

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Defense Information Systems Agency's (DISA) ethics program in May and June, 2011. The results of the review indicated that DISA's ethics program generally appears to be in compliance with applicable laws, regulations, and policies. OGE also found that DISA has implemented several model practices that enhance the ethics program. However, there is room for improvement in the administration of the program.

Highlights

- DISA has implemented several model practices in the advice and counsel element of the ethics program, including encouraging peer and supervisory review of ethics legal opinions and issuing written cautionary memoranda to financial disclosure filers.
- An attorney is co-located within the ethics office and the Office of the Inspector General, supporting a good working relationship between the two entities.

Concerns

- DISA's ethics office performs minimal oversight over initial ethics orientation in regional/field offices.
 - DISA lacks a clear and consistent process for timely identification of new entrant confidential financial disclosure filers.
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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 DISA's ethics program, OGE examined a variety of documents provided by ethics officials; other documents that DISA forwarded to OGE, including the annual questionnaire; prior program review reports; and a sample of DISA's public and confidential financial disclosure reports and advice and counsel provided to DISA's employees. Members of OGE's Program Review Division met with the Designated Agency Ethics Official (DAEO), the Alternate DAEO (ADAEO), an ethics attorney, and an ethics program management analyst to obtain additional information about the strengths and weaknesses of DISA's ethics program, seek clarification on issues that arose from the documentation analysis, and verify data collected. In addition, the review team interviewed some filers of new entrant confidential financial disclosure reports, a Human Resources (HR) Office representative, and some supervisors of confidential filers.

Program Administration

DISA's ethics program is administered within DISA's Office of the General Counsel. The General Counsel serves as the Designated Agency Ethics Official (DAEO). The Deputy General Counsel serves as the Alternate DAEO (ADAEO). Eleven attorneys serve as ethics counselors. A management analyst assists in the day-to-day operations of the program.

Because the DAEO also holds the position of General Counsel, ethics officials consistently have a voice in matters affecting the agency. OGE believes this agency structure is advantageous in proactively addressing ethics concerns that could affect the agency.

Financial Disclosure

Public Financial Disclosure Reports

OGE reviewed all the public financial disclosure reports filed in 2010. The reports appeared free of major deficiencies and generally were reviewed and certified timely.

Confidential Financial Disclosure Reports

OGE reviewed a sample of confidential financial disclosure reports filed in 2011. In total, 35 percent of the sample was filed late: half of the new entrant reports and nearly a quarter of the annual reports.

DISA ethics officials stated that the main reason for late new entrant reports was that the filers were not aware of the filing deadline, but filers did file their reports when instructed to do so. The new entrant filers we spoke with indicated that they were notified of the requirement to file one month or in some cases several months after assuming new duties or entering a new position. These employees confirmed that they filed their report shortly after being notified.

DISA ethics officials expressed difficulty in notifying new filers and receiving their new entrant confidential financial disclosure reports. Perhaps the difficulty lies in a process that is unclear and inconsistent. For example, ethics officials, filers, and supervisors we spoke with appeared to have varied understanding of how new employees are informed of the requirement to file a confidential financial disclosure report. We do know, however, that while DISA's human resources function collects information about filing status on some position descriptions, it is not involved in notifying employees of the requirement to file financial disclosure reports. OGE recommends that DISA ethics officials develop a clear and consistent process to ensure new entrant filers are timely identified and notified. As this new process is developed, DISA ethics officials may wish to consider a larger role for the agency's human resources function. DISA should also ensure that every category of persons holding responsibility in the process is made aware of their respective roles.

DISA has adequate procedures for follow-up with delinquent annual confidential filers. Ethics officials indicated that despite those procedures, some filers still submitted annual reports late in 2010 and 2011. In 2011, ethics officials sent an "agency action item" to directorate leaders listing the delinquent filers for their office. Continued follow-up within the agency, particularly the involvement of agency leadership, should reduce the number of late annual filers. OGE reminds DISA ethics officials that extensions up to 90 days may be granted when good cause is shown.

While confidential reports were generally reviewed by supervisors in a timely manner, some confidential reports in OGE's sample had delayed final certification. As ethics officials noted and discussion with some supervisors revealed, supervisors serve as gatekeepers while final certifiers in the ethics office conduct a more thorough conflicts analysis. Thus, timely final certification is essential for ensuring that conflicts of interest are addressed as soon as possible. As the number of late certifications in the sample was not substantial and ethics officials indicated that the Defense Base Closure and Realignment Commission (BRAC) relocations affected the timely certification of some confidential reports, OGE is not making a formal recommendation in this area. However, OGE will follow-up with ethics officials to assess improvements regarding timeliness in the certification of confidential financial disclosure reports.

Recommendation

- Develop a clear and consistent process for timely identification and notification of new entrant confidential financial disclosure filers and inform each person that holds responsibility in the process of his or her duties.

Education & Training

The DISA ethics training program meets all relevant content requirements. Initial ethics orientation (IEO) is provided in-person to new employees at DISA headquarters, which OGE commends. DISA reported that all employees required to receive IEO in 2010 received the training. OGE matched IEO training records with a sample of new entrant filers and all within the sample received initial ethics orientation as required. However, when asked, the ethics office did not have a sense of how the initial ethics training requirement was being met at the regional and field office level. During the course of our review, ethics officials contacted regional and field offices and confirmed that IEO is being and has been conducted.

The DAEO is responsible for coordinating and managing the ethics program, including the initiation and maintenance of ethics education and training programs as specified in 5 CFR § 2638.203. To fully adhere to the maintenance requirement, OGE recommends that DISA's ethics office provide periodic oversight of the initial ethics orientation program at the regional and field level to ensure that employees are receiving training as required.

DISA reported that all but 3 of its public filers and 12 of its confidential filers received annual ethics training in 2010. OGE matched a sample of filers with annual training records and all but one of the filers in the sample received 2010 annual ethics training. During the verification process, OGE noticed that over 200 employees received annual training in early 2011 rather than in calendar year 2010 as required. DISA ethics officials stated that they usually initiate annual ethics training in August or September of every year and send out several reminders to filers to complete the training by December 31. OGE suggests that DISA initiate annual ethics training earlier in the year to provide filers more time to complete the training by the end of the calendar year. The online training system that DISA uses for annual training is not currently linked to its financial disclosure management system. Thus, verification of whether a filer received annual ethics training is currently a manual process. The agency is planning to link the two systems so that verification will be automatic.

Recommendation

- Provide periodic oversight of the initial ethics orientation program at the regional and field level.

Suggestion

- Initiate annual ethics training earlier in the calendar year.

Advice & Counsel

OGE reviewed a sample of DISA's written advice and counsel issued to agency employees and found that it appeared to be accurate. The DAEO, ADAEO, and eleven ethics counselors are authorized to provide advice and counsel. Ethics counselors typically provide advice and counsel to the filers of the confidential financial disclosure reports that they review. DISA provides advice and counsel both verbally and in written form. Written advice and counsel is stored in a shared drive or in the financial disclosure management system (FDM).

Supervisory and peer review of legal opinions is encouraged to ensure consistency and accuracy. Additionally, DISA assigns one ethics counselor to provide advice and counsel during the Combined Federal Campaign to ensure consistency. DISA also uses cautionary memos and provides advisories on current ethics issues via the agency's intranet. DISA ensures departing employees receive post-employment counseling by including the requirement on the checkout list. OGE considers these practices to be model practices.

Agency-Specific Ethics Rules

In accordance with DoD supplemental regulations at 5 CFR § 3601.107 and Subsection 2-206 of the Department of Defense (DoD) Joint Ethics Regulation (JER), DISA requires that filers of financial disclosure reports receive prior approval before engaging in a business activity or compensated outside employment with a prohibited source. Public financial disclosure report filers submit their requests to both the ethics office and to their supervisors.

Supervisors of confidential financial disclosure report filers are solely responsible for approving and denying the requests for prior approval of outside activities and employment. The DISA ethics office reports that supervisors seek its guidance on many approval requests. However, some supervisors interviewed by OGE did not seem aware that they should be checking outside activities or employment for potential conflicts of interest and other potential regulatory violations and were either unaware of requirements for approval or thought approval solely involved making sure that the outside employment or activities would not interfere with the employee's regular duty. Additionally, ethics attorneys do not consistently cross-reference approvals when reviewing confidential financial disclosure reports to ensure that filers have been granted approval, when required.

Suggestions

- Ensure those approving outside employment and activity requests are trained in evaluating the requests for potential conflicts of interest and potential regulatory violations and are aware of when and how to seek guidance from the ethics office.
- As an internal control measure, develop a mechanism to ensure that outside positions listed on confidential financial disclosure reports have been approved, when required.

Enforcement

DISA reported no disciplinary actions based wholly or in part upon violations of the standards of conduct provisions (5 CFR part 2635) in 2010. There were also no disciplinary actions based wholly or in part upon violations of the criminal conflict of interest statutes (18 U.S.C §§ 203, 205, 207, 208, and 209) in 2010. Additionally, DISA made no referrals to the Department of Justice of potential violations of the criminal conflict of interest statutes.

OGE found that DISA ethics officials have a good working relationship with the Office of Inspector General (IG). An ethics attorney is co-located in the IG office and communicates information about investigations between the two offices.

1353 Travel Acceptances

DISA submitted the required semi-annual reports of travel payments accepted from non-Federal sources to OGE in a timely manner. DISA requires that requests for acceptance of such payments be submitted to an employee's approving authority as well as the ethics office for review.

Agency Comments

On October 5, 2011, OGE provided a draft of this report to DISA ethics officials for comment. DISA responded with the following comments on October 12, 2011:

“The following is the agency response to the recommendations and suggestions contained in the draft report of the 2011 Ethics Program Review of the Defense Information Systems Agency.

Page 4 Recommendation

- Develop a clear and consistent process for timely identification and notification of new entrant confidential financial disclosure filers and inform each person that holds responsibility in the process of his/her duties.

Agency Response:

As explained during the program review, DISA utilizes a computer-based process to identify which new employees are required to file a new entrant OGE Form 450. All new DISA employees are required to log into a mandatory on-line “Initial Ethics Orientation”. At the end of this training session, employees required to file a new entrant OGE Form 450 are provided system-generated instructions detailing the filing requirements. This system was temporarily off-line during the reporting period under review. Repairs have been made and the system is back on-line and working as designed.

In addition, we have instituted a separate, non-computer based process for identifying and notifying new employees that are required to file an OGE Form 450. Every two weeks, the Agency's Human Resource Office will provide the DISA Ethics Program Office a list of new employees who are scheduled to report to DISA. When the list is received, the Ethics Program Office will contact new employees within 7 days to determine whether an OGE Form 450 is required. Filers will be notified of the 30-day filing requirement and compliance will be monitored. Similarly, staffing personnel will provide the Ethics Program Office a list of reassignments and promotions, thereby enabling the identification and notification of covered employees about the new entrant filing requirements. Compliance will be monitored.

Page 5
Recommendation

- Provide oversight of the initial ethics orientation program at the regional/field level to ensure that regional/field employees are receiving the required training.

Agency Response: Our review indicates that initial ethics orientation training is being, and has been, conducted in our regional offices. We will more closely monitor and do periodic checks to confirm that these orientations continue to be conducted.

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Suggestion

- Initiate annual ethics training earlier in the year to facilitate filers completing the training by the end of the calendar year.

Agency Response: We will increase our efforts to inform supervisors and higher management officials to require employees to complete training before the end of the year. Ethics training has been added to the agency's mandatory training website that tracks completion of all agency training. We expect this will spur prompt completion.

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Suggestion

- Ensure those approving outside employment and activity requests are trained in evaluating the requests for potential conflicts of interest and potential regulatory violations and are aware of when and how to seek guidance from the ethics office.

Agency Response: In addition to the training we already provide on this issue in our annual ethics training, we will periodically inform employees through our "Dateline DISA" website of the requirement to obtain approval for outside employment and the standards for approval.

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Suggestion

- As an internal control measure, develop a mechanism to ensure that outside positions listed on confidential financial disclosure reports have been approved, when required.

Agency Response: When outside positions that require approval are listed on financial disclosure reports, we will ask for a copy of the approval and include it as an attachment to the form in FDM.”