



United States
Office of Government Ethics
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October 13, 1995

Stewart R. Darrow
Associate General Counsel and
Designated Agency Ethics Official
National Security Agency
Fort George G. Meade, MD 20755-6000

Dear Mr. Darrow:

The Office of Government Ethics (OGE) has completed its third review of the National Security Agency's (NSA) ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objectives were to determine the ethics program's effectiveness and compliance with applicable laws and regulations. To achieve our objectives, we examined the following program elements: the public and confidential financial disclosure systems, counseling and advice services, the ethics education and training program, and coordination with the Inspector General. The review was conducted during August 1995.

PRIOR OGE REVIEWS

OGE previously reviewed NSA's ethics program in February 1984 and March 1989. During these reviews, OGE found that NSA had a generally sound ethics program. However, during these reviews it was revealed that the public and confidential financial disclosure systems were in need of improvement. The management of the public financial disclosure system needed to be strengthened with regard to the timeliness of filing, the review process, and the elimination of minor technical deficiencies. The confidential disclosure system was found to have deficiencies in the monitoring of new entrant confidential disclosure reports from newly hired or promoted employees. Further, attention needed to be directed at correcting technical deficiencies in reported information.

ADMINISTRATION OF THE ETHICS PROGRAM

The NSA's newly appointed Designated Agency Ethics Official (DAEO), the Associate General Counsel for Acquisition and Technology, is in the process of familiarizing himself with the NSA ethics program. The day-to-day administration of the NSA ethics program for the past two to three years has been the responsibility of an attorney in the NSA General Counsel's Office whose duty title is Deputy DAEO.

PUBLIC FINANCIAL DISCLOSURE SYSTEM

A sample consisting of 51 public financial disclosure reports filed by NSA employees during the 1995 filing cycle was examined. Our examination revealed minor technical errors such as providing incomplete administrative information. Three of the reports had not been certified. On each of these reports were notations of pending questions in need of resolution before the reports could be certified. Further, our examination revealed 13 reports disclosed mutual fund holdings which appeared to meet the definition of an "excepted investment fund" (EIF) as defined at 5 C.F.R. § 2634.310(c)(2); however, none of the filers indicated the holdings to be EIFs. This apparent error suggests that NSA ethics officials should make an effort to ensure that public filers understand what constitutes an EIF and ensure that the reports are appropriately marked. Moreover, in the absence of any indications that the mutual fund holdings were EIFs, NSA ethics officials should have requested that these filers provide the underlying assets of the listed mutual funds in accordance with § 2634.301(a).

It was also noted during the review that three of the reports indicated the filers were engaged in outside activities with a contractor reflected on the NSA Contractor List. Specifically, three of the public filers were adjunct professors at the University of Maryland, but there was no record that any of the filers had obtained written approval prior to engaging in such employment. Through discussions with the Deputy DAEO, it was determined that these three individuals were not involved with or assigned to any function that was related to the contract work being done by the University of Maryland for NSA. Notwithstanding the fact that these filers were not involved in the work of the contractor, the Department of Defense (DOD) Joint Ethics Regulation (JER) requires that written approval be obtained before engaging in outside employment with a prohibited source by all DOD employees required to file a financial disclosure report. Further, the JER requires that any DOD employee, who was so employed on the effective date of the JER, shall have 90 days from the effective date of the JER to obtain such approval (reference subsections 3-306.a. and 3-306.d). NSA ethics officials should ensure compliance with the JER, as well as the requirements of DOD's supplemental standards of conduct regulation at 5 C.F.R. § 3601.107.

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

We also examined a sample consisting of 112 of the confidential reports filed by NSA employees during the 1994 filing cycle. The examination disclosed no substantive issues and only a limited number of technical errors. These included the failure to list the underlying assets of mutual funds which were not indicated as being EIFs, and the underlying assets of IRAs, reporting

investments in the Thrift Savings Plan, and the failure to note the date the agency received the report from the filer. In fact, 64 of the reports examined did not indicate the date on which the report was received by the agency. While there is no requirement to certify confidential disclosure reports within a given number of days, it appeared that the certification of some reports, including reports in which no holdings, gifts, or outside activities were disclosed, was protracted. The Deputy DAE0 indicated that in the future reports which disclose no information concerning holdings or interests will be processed for expeditious certification.

The Deputy DAE0 stated that there is currently no effective way to track the filing of new entrant confidential disclosure filers. The Deputy DAE0 advised that supervisors are supposed to inform the ethics officials when new entrants are assigned, but that this procedure does not function as it should. The OGE reviewers suggested that the Deputy DAE0 ensure that the procedures described in subsection 7-301 of the JER concerning the notification of the DAE0 regarding new entrant confidential filers are carried out.

SPECIAL GOVERNMENT EMPLOYEES

NSA employs a number of individuals who serve as experts and consultants to various agency components. In addition, NSA has an advisory board known as the NSA Scientific Advisory Board (NSASAB), which consists of a Chairperson and board members. According to the Deputy DAE0, all of these experts/consultants and board members are special Government employees (SGE) and are required to file confidential disclosure reports as a condition of their being appointed/reappointed.

We examined 48 of the confidential disclosure reports filed by SGEs during 1994. We found no substantive issues during the examination of the reports. We did, however, note some technical issues which need to be addressed. These technical issues included incomplete administrative data such as appointment/reappointment dates, and the non-reporting of underlying assets of mutual funds not indicated to be EIFs. Also, all confidential reports filed by SGEs should reflect a filing status as a new entrant. Twenty of the reports examined were filed as incumbent reports and 19 of the reports did not reflect a filing status.

SGEs receive their appointment/reappointment paperwork well in advance of their appointments/reappointments. The majority of the SGE appointments/reappointments are processed to coincide with the beginning of the fiscal year. Most of the SGE confidential disclosure reports we examined were filed by individuals who were being reappointed. These filers were incorrectly noting the date of their previous appointment/reappointment on the form, rather than the date on which they expected to be reappointed. Since

their reports were technically new entrant reports, they should have noted the date on which they expected to be reappointed. Further, many of the SGEs also held positions or had financial interests in NSA contractors. The OGE reviewers suggested that it might be appropriate for ethics officials to issue cautionary memorandums to SGEs regarding their interests and outside positions.

COUNSELING AND ADVICE

Our review of a sample of the available written counseling and advice documents revealed that NSA ethics officials have made an exceptional effort to provide highly responsive advice to NSA personnel. We examined a number of written determinations concerning a variety of issues. The issues addressed included post employment, negotiating for employment, use of Government property, gift acceptance, and outside activities and employment. Additionally, we determined there were two 18 U.S.C. § 208(b)(1) waivers in effect. The high quality and comprehensiveness of the advice given indicates that ethics officials exert a great deal of effort to ensure NSA personnel receive the most appropriate guidance possible. In all cases we found the counseling and advice to be consistent with applicable laws and regulations.

Of particular note is the use of a computerized system, developed by the current Deputy DAEO, which provides an effective means of recording ethics advice rendered over the telephone. The system is built around an electronic form called Report of Ethics-related Legal Instruction (RELI). Each time advice is rendered, the ethics counselor who receives the call and provides advice completes the RELI form. The electronic form is then stored under an appropriate file directory based on the subject matter of the request (e.g., post employment, non-Federal travel, outside employment, etc). A copy of the completed form is also printed and forwarded to the Deputy DAEO. The RELI form includes identifying data on the caller, a brief synopsis of the question, a description of the advice given, and a checklist of the ethics issues or areas the caller was counseled on. The OGE reviewers were impressed with the quality and quantity of the advice provided through the RELI system.

Further, ethics officials at NSA have developed a pamphlet concerning post employment entitled Standards of Conduct Relating To Post-Government Employment, which is provided to departing employees. The pamphlet provides guidance as well as a brief description of all applicable laws and the associated penalties for violations. At the end of the pamphlet, the employee is advised to contact the NSA General Counsel for additional information and is provided a telephone number.

ETHICS EDUCATION AND TRAINING

The Deputy DAEO advised that NSA held 39 sessions in 1994 for employees required to receive annual training. However, of those required to receive the training, ethics officials estimated that 545 were not trained. Of these, 91 were assigned to NSA field sites. Training for confidential financial disclosure filers in 1994 consisted of showing a 20-minute videotape concerning ethics laws and regulations, and a lecture/discussion with slides. Topics included gifts from outside sources, conflicts of interest, seeking employment, post employment, and gifts to superiors. Training for public financial disclosure filers was essentially the same, albeit with a more in-depth discussion of rules which affect senior personnel more so than others. Members of the NSASAB received a 45-minute ethics briefing during a meeting in September 1994; however, the Deputy DAEO stated the majority of NSA's SGEs received no training in 1994.

Annual training for 1995 was to begin around the end of September and go through November. The Deputy DAEO advised that they would try to coordinate with local military ethics officials to ensure employees at field sites receive training in 1995. They were also making plans to conduct training for all NSA SGEs. According to the Deputy DAEO, annual training for 1995 will be very similar to the training conducted in 1994.

The majority of the new employees hired in 1994 received the required initial ethics orientation which consisted of showing a videotape, a lecture with slides, and handouts summarizing ethics regulations and listing the names, titles, and telephone numbers of ethics officials. However, the Deputy DAEO acknowledged initial ethics orientation was not provided to all new employees within 90 days of their entrance on duty with NSA in 1994. According to the Deputy DAEO, arrangements have since been made to provide initial orientation training during the "Entrance on Duty" briefing that all new employees are required to attend within the first few weeks of employment with NSA. Orientation training in 1995 has included providing a synopsis of DOD's supplemental regulation in addition to the materials provided in 1994.

Finally, the Deputy DAEO demonstrated an interactive computer-based training/reference program designed to allow employees to find the answers to basic ethics questions. The program is in an advanced stage of development and is expected to be on-line soon. Since almost all NSA employees have access to computer terminals, we found this method of providing additional ethics information to have tremendous potential to benefit NSA employees. The system was innovative, easy to use, and practical. Ethics officials are to be commended for so notably exceeding the requirement to assist NSA employees in understanding ethics rules and regulations.

RELATIONSHIP WITH INSPECTOR GENERAL

Based on discussions with the NSA Inspector General it was apparent that there is a close working relationship between the Inspector General and the General Counsel's office. The information provided by the Inspector General demonstrated that the provisions of 5 C.F.R. § 2638.203(b)(12) are being implemented. There have been no referrals of matters to the Attorney General under the provisions of 5 C.F.R. § 2638.603(b).

CONCLUSIONS

NSA ethics officials administer an effective ethics program that generally exceeds requirements. The OGE reviewers were impressed by the advice and counseling program and the in-depth thoughtful analyses of issues and questions by knowledgeable and responsible ethics officials. It is apparent that every effort is made to provide complete and accurate guidance to NSA personnel. We were particularly impressed with the RELI form and the ability to track ethics advice and issues addressed by NSA ethics officials in a concise manner as well as document the prompt resolution of questions. Further, the quantity and varied nature of the issues addressed to the ethics officials by NSA employees is indicative of an effective and proactive ethics training and education program. The innovative interactive computer-based training/reference program currently being developed should prove to be a valuable tool in NSA's proactive ethics program. The Deputy DAEO and other ethics officials are to be commended for so notably exceeding the requirement to assist employees in understanding ethics rules and regulations. All other ethics program elements generally meet or exceed the requirements of relevant statutes and regulations.

The OGE reviewers became aware during the review that the Deputy DAEO would be leaving her position at NSA in the early part of 1996. It was apparent during the review that the Deputy DAEO plays a major role in and is largely responsible for the success of the overall ethics program at NSA. OGE would encourage the responsible officials at NSA to ensure that the ethics program continues to receive the same dedication and attention from the Deputy DAEO's successor.

RECOMMENDATIONS

We recommend that the DAEO ensure that the following recommendations are implemented in order to make the NSA ethics program even more effective:

1. Ensure that procedures are implemented to comply with subsection 7-301 of the JER, regarding notifying the DAEO when new entrant confidential filers enter covered positions.

Mr. Stewart R. Darrow
Page 7

2. Ensure that all NSA employees, including SGEs, receive the required annual training.

In closing, I wish to thank you for all of your efforts on behalf of the ethics program. Please advise me within 60 days of the actions you have taken or plan to take on each of the recommendations of our report. A brief follow-up review will be scheduled six months from the date of this report. In view of the corrective action authority vested with the Director of the Office of Government Ethics under subsection 402(b)(9) of the Ethics in Government Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that the NSA implement actions to correct these deficiencies in a timely manner. We are sending a copy of this letter report to the Director of NSA and the Inspector General. Please contact Charles Kraus at 202-523-5757, extension 1154, if we can be of further assistance.

Sincerely,



Jack Covalleski
Associate Director
Office of Program Assistance
and Review

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