



United States
Office of Government Ethics

1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

July 8, 2003

Edgar M. Swindell
Associate General Counsel for Ethics and
Designated Agency Ethics Official
Department of Health and Human Services
700-E Humphrey Building
200 Independence Avenue, SW.
Washington, DC 20201

Dear Mr. Swindell:

The Office of Government Ethics (OGE) has recently completed a review of the Indian Health Service's (IHS) ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (Ethics Act). Our objective was to determine the ethics program's effectiveness, as measured by its compliance with applicable ethics laws and regulations. Our current review focused primarily on the ethics program at headquarters (HQs)¹ and was conducted intermittently between December 2002 and February 2003.

HIGHLIGHTS

The ethics program is well served by a professional, highly organized, and dedicated Program Integrity and Ethics Staff (PIES) Director and an ethics staff that is dedicated and committed toward maintaining a strong and viable ethics program. It is apparent that IHS ethics officials take their duties and responsibilities seriously and that they are dedicated to providing the highest standards of integrity for IHS and its employees.

¹ IHS has approximately 15,000 employees located throughout its headquarters in Rockville, MD; its 2 Engineering Services located in Seattle, WA and Dallas, TX; and its 12 administrative units, called Area Offices, located in Aberdeen, SD; Anchorage, AK; Albuquerque, NM; Bemidji, MN; Billings, MT; Nashville, TN; Oklahoma City, OK; Phoenix, AZ; Portland, OR; Sacramento, CA; Tucson, AZ; and Window Rock, AZ.

Mr. Edgar M. Swindell

Page 2

Though the essential ethics program requirements are currently being met at IHS, this report also highlights the current Department of Health and Human Services (HHS) restructuring initiatives and our suggestions to ensure that adequate resources are provided to IHS to continue the program's effectiveness. Although we were unable to assess the impact of any of the current restructuring initiatives on the IHS ethics program during our current review, we remind you that it is vitally important that the IHS ethics program receive adequate support to effectively sustain and monitor the ethics program outside of HQs. Our suggestions are included within the body of this report.

ADMINISTRATION OF THE PROGRAM

As the Associate General Counsel for Ethics, you currently serve as HHS' Designated Agency Ethics Official (DAEO), in the Office of the General Counsel's Ethics Division (OGC-Ethics Division), and have oversight responsibility for the HHS-wide ethics program. While general responsibility for all ethics matters rests with the OGC-Ethics Division, Deputy Ethics Counselors (DEC), generally senior-level officials within the various HHS components, assist you in administering the HHS-wide ethics program as ethics liaisons for their respective component.

The IHS ethics program is currently administered by the Director, Office of Management Support, who was appointed as the IHS DEC on February 4, 2002. The day-to-day operation of the program is carried out by PIES which is comprised of a Director and three analysts.² An Attorney-Advisor from your staff also assists PIES on a weekly basis with the dispensing of legal advice, the rendering of ethics training, and other ethics matters.³

² A support staff position was vacant during our on-site review.

³ In addition to managing the IHS ethics program, PIES is also responsible for 1) formulating plans and providing leadership, guidance, and evaluations for the IHS Personnel and Physical Security programs; 2) providing management focus and guidance for the IHS-wide employee drug testing program; 3) providing focus for IHS-wide management investigative capability for hotline cases; 4) directing the investigation and resolution of allegations of impropriety, mismanagement of resources, abuse of authority, violations of Standards of Conduct, or other forms of wrongdoing or mismanagement; and 5) advising IHS management of appropriate corrective and remedial actions to be taken on investigatory findings and recommendations.

Additionally, the ethics program is supported by Area Directors, or more specifically their designees who serve the IHS ethics program as Area/Field Ethics Contacts (AECs). These AECs serve on a collateral-duty basis and are located within each Area Offices' personnel office and are responsible for notifying confidential financial disclosure filers and collecting and performing the final review of the reports (OGE Form 450s); providing administrative support and coordinating ethics training; dispensing of ethics advice; and other related matters. Direction is provided to AECs throughout the reporting and training cycles by PIES.

RESTRUCTURING INITIATIVES

In response to Government-wide management initiatives set forth in The President's Management Agenda,⁴ HHS-wide restructuring efforts are currently underway to make HHS more citizen-centered, results-oriented, and market-based. To improve efficiencies and streamline and build cohesion among all HHS components, a series of cross-cutting restructuring initiatives will consolidate and move some functions traditionally carried out within HHS components into the Departmental level. One major cross-cutting initiative will consolidate the number of HHS-wide personnel offices from its current 40 to 6 by the end of 2003 and then again to 4 by 2004. These four personnel offices will be located in Baltimore, Atlanta, Bethesda, and Rockville and will provide on-site services for the major employment centers of HHS.

For IHS, the consolidation of its personnel offices will eliminate the current 12 AECs who administer the ethics program within each Area Office. Because of the uniqueness of IHS and the specialized local expertise and skill needed to support the dispersed and remote locations of the IHS workforce, the Director expressed concern about whether any realigned ethics staff will adequately ensure the continual quality and effectiveness of the ethics program outside of HQs. Since IHS' internal restructuring plans were still being developed during the time of our on-site review, we were unable to assess what impact a realignment would have on the ethics program. However, as we discussed with the Director, we believe it imperative for the IHS leadership to recognize this issue and ensure that IHS' ethics program, outside of HQs, receives the proper resources and assistance needed to administer the program in a positive and effective manner.

⁴ The President's Management Agenda is a strategy for Government-wide reform to improve the management and performance of the Federal Government.

EDUCATION AND TRAINING

IHS' education and training program exceeds the minimal training requirements found at subpart G of 5 C.F.R. part 2638, as evidenced by PIES' commitment to providing live initial ethics orientation briefings to all new HQ employees. In addition to conducting the requisite annual ethics training, we were also impressed with the host of discretionary training provided throughout the year to keep employees knowledgeable of ethics laws and regulations.

Initial Ethics Orientation

PIES provides all new HQs employees with live initial ethics orientation briefings. When employees are unable to attend a live session, make-up sessions are held or written materials are distributed that satisfy the requirements found at 5 C.F.R. § 2638.703. Sign-in sheets are used to track employee attendance. According to PIES' training records, 18 new HQs employees were provided an initial ethics orientation in 2002. PIES provides the AECs with written guidance along with an ethics training program package to assist in ensuring that orientations are completed. An in-person ethics orientation is provided by your office when a new IHS Director enters on duty.

Annual Ethics Training

IHS' public and confidential filers, as well as contracting officers and those employees designated for training by the IHS Director, are required to participate in annual ethics training. To satisfy the annual training requirements in 2002, live training sessions were provided. Training certificates were used to acknowledge completion of the requisite training. The Director assured us that all covered employees completed annual ethics training in 2002.

Additional IHS Ethics Training Efforts

Our examination of the IHS Web site's contents found the ethics coverage to be very useful and informative, and to feature immediate access to both OGE regulations and the HHS supplemental regulation. The site also featured immediate access to general guidance on areas governing ethics in Government, ethics alerts regarding prevalent ethics topics, computer-based training links for incumbent employees, and point of contact information for all IHS ethics officials.

Throughout the year, by request, PIES and the Attorney-Advisor from your staff provide ethics briefings to senior contracting officials and other IHS groups. Biennially, PIES conducts a three-day Area Ethics Contact Ethics Conference to discuss pertinent ethics-related topics with the AECs and other representatives. The most recent conference was held in April 2002 and included workshops provided by the Office of Special Counsel (OSC), OGE, and PIES. Additionally, we were impressed with PIES' creative and innovative training approaches used to bring attention to the IHS ethics program. We were particularly impressed with an ethics briefing that was given during a Halloween "Trick or Treat" event, which resulted in increased employee enthusiasm over the training material rendered.

ADVICE AND COUNSELING SERVICES

Our current examination of the advice and counseling services found that IHS has complied with 5 C.F.R. § 2638.203(b)(7) and (8) by developing and conducting a counseling program for employees concerning all ethics matters, including post employment, with records being kept, when appropriate, on the advice rendered.

We examined the advice dispensed electronically by both PIES and the AECs for the 11-month period preceding the commencement of our fieldwork. We found the advice covered a number of ethics issues concerning outside activities, fundraising, commissioned officers, gifts, award/prizes, contracting/partnering, and gaming on Federal property. The advice was responsive to the employees' needs in terms of timeliness, as responses were generally rendered promptly to the questions that were posed. Moreover, the advice completely and accurately applied the ethics statutes and regulations.

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

Our current examination of the confidential system found IHS to be administering a well-run, decentralized system, with sufficient written guidance and direction provided to PIES by the OGC-Ethics Division. To evaluate the system's effectiveness, we examined a sample of 95 of the 325 IHS confidential reports required to be filed by both HQs and Area Office employees in 2002. Of these 95 reports, there were 4 new entrant and 36 annual confidential financial disclosure reports (OGE Form 450s) and 55 OGE Optional Form 450-As (Form 450-As). With the exception of eight reports, including the four new entrant reports, all were filed and reviewed timely and certified soon after review. We found reviewing officials to have knowledge of the circumstances

Mr. Edgar M. Swindell

Page 6

surrounding the approval of each report questioned by the review team. There were no conflicts of interest or other substantive deficiencies revealed on the reports; only minor technical errors.

Notwithstanding the overall effectiveness of IHS' confidential system, we discussed with the Director several recurring reviewer errors noticed throughout our examination of the confidential reports filed within the Area Offices. The following information is provided to help emphasize training areas that PIES should address when training its reviewers:

- The date of receipt must be recorded immediately on all confidential reports, in accordance with 5 C.F.R. §§ 2634.909(a) and 2634.605(a). The date of receipt indicates whether reports are filed timely and is useful in ensuring that reports are reviewed timely. Delinquent or missing reports, or delayed reviews, diminish your ability to provide timely and specific conflict of interest advice, which is the fundamental purpose of the ethics program.
- The annual confidential reporting period ends on September 30 each year; employees are not permitted to file reports prior to that date. If early reports are received, reviewing officials should ensure that all time periods are accounted for by obtaining verification from filers that there were no changes in their holdings from the date of filing to September 30th.
- To safeguard the prevention of conflicts of interest, a Form 450-A filed in lieu of the annual Form 450 must be submitted in accordance with 5 C.F.R. § 2634.905(d).

PUBLIC FINANCIAL DISCLOSURE SYSTEM

IHS' public financial disclosure system is centrally administered and is well managed by PIES. To evaluate the system's effectiveness, we examined 2 new entrant, 25 annual, and 2 termination public reports that were required to be filed in 2002.⁵ Our examination revealed no technical errors or substantive deficiencies and each report was thoroughly reviewed for potential conflicts.

⁵ We did not examine the public report required to be filed by the DEC since your office is responsible for collecting, reviewing, and retaining this report.

Notwithstanding the overall effectiveness of the public system, we discussed with the Director two procedural issues that we noticed during our examination of the public reports:

First, although all examined reports were filed in a timely manner, the date on which PIES received the filers' reports was not always indicated, as required by 5 C.F.R. 2635.605(a). We advised the Director of this and were assured that this will be a consistent practice during next year's annual filing cycle.

Second, during our examination of filers' individual report files, we found several prior-year reports being retained longer than the required six-year period. We reminded the Director that pursuant to 5 C.F.R. § 2634.604(a), after the six-year period, public reports must be destroyed unless needed in an ongoing investigation. The Director confirmed that the appropriate reports would be destroyed.

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

PIES is appropriately authorizing the acceptance of payments for travel and related expenses from non-Federal sources incurred by agency employees on official travel, in accordance with General Service Administration's Interim Rule 4 at 41 C.F.R. part 304-1, implementing 31 U.S.C. § 1353. We examined the 72 travel acceptances reported on IHS' last 2 semiannual travel reports to OGE covering the 2 6-month periods from October 1, 2001 through September 30, 2002, and found all acceptances to have been appropriately authorized. We were impressed with the way PIES performs its conflict of interest analyses by directly verifying with each sponsoring organization the pertinent information needed to ensure that each payment is properly accepted.

In addition, although all examined acceptances were reported properly, we noticed several travel payments totaling less than \$250 per event included on each of the aforementioned travel reports. We reminded the Director that, in accordance with 41 C.F.R. § 304-1.9, agencies are only required to submit semiannual reports to OGE of travel payments totaling more than \$250 per event, including negative reports. We were assured that only payments meeting the required reporting threshold would be included on future semiannual travel reports.

OUTSIDE EMPLOYMENT

In accordance with HHS' supplemental standards of conduct regulation at 5 C.F.R. § 5501.106, which is intended to prevent ethics violations, IHS requires employees to obtain advance written approval for certain types of outside employment and/or other outside activities. This includes outside professional and consultative work, writing and editing, teaching and lecturing, and holding office or membership in professional societies. In addition, through internal procedures pursuant to § 5501.106(d)(5)(ii), IHS requires its employees to obtain advance approval when serving on tribal governing bodies.

During our examination of the financial disclosure reports, one filer reported outside employment for which prior approval had not been obtained. The filer obtained written approval prior to the conclusion of our on-site review work.

TRIBAL OR ALASKA NATIVE GIFTS

In accordance with HHS' supplemental regulation at 5 C.F.R. § 5501.103, an employee may accept unsolicited gifts of native artwork or crafts, from Federally recognized Indian tribes or Alaska Native villages or regional or village corporations, valued up to and including \$200 per source in a calendar year. A written approval is necessary if the donor is a tribe or village that has interests that may be substantially affected by the performance or nonperformance of the recipient's official duties. Our current review found no instances of gift acceptance under this authority.

COORDINATION WITH THE OFFICE OF INSPECTOR GENERAL

PIES is meeting the requirements of 5 C.F.R. § 2638.203(b)(12) pertaining to coordination with HHS' Office of Inspector General on ethics-related matters. We have determined that the offices have established a good working relationship with each other. We were advised that there have not been any recent violations of the criminal conflict of interest laws referred for prosecution to the Department of Justice.

Mr. Edgar M. Swindell

Page 9

In closing, we wish to thank you and all PIES personnel involved in this review for your efforts on behalf of IHS' ethics program. A copy of this report is being forwarded to the IHS Interim Director. Please contact David A. Meyers at 202-208-8000, extension 1207, if we can be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs

Report number 03- 014