



United States
Office of Government Ethics
Suite 500, 1201 New York Avenue, N.W.
Washington, D.C. 20005-3917

August 12, 1992

The Honorable C. Boyden Gray
Counsel to the President
The White House
Washington, DC 20500

Dear Mr. Gray:

The Office of Government Ethics (OGE) recently completed its review of the White House Office's (WHO) ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objective was to determine the ethics program's effectiveness and compliance with applicable ethics laws and regulations. To achieve our objective, we examined the following program elements: the standards of conduct, the ethics officials' duties and responsibilities, the public and confidential financial disclosure systems, ethics education and training, and the counseling and advice services. This review was conducted during January and February 1992.

WHO has developed a program which includes most of the elements necessary for an effective ethics program. The continuing emphasis on counseling and advice services, as well as education and training, are the strong points of the program. Although these program elements are effective, some improvements are needed to maintain the integrity of the ethics program. Public financial disclosure procedures, for example, should be improved in terms of the timeliness in collecting new entrant reports and the review of new entrant and termination reports. The implementation of a confidential financial disclosure system also needs to be addressed.

Background

The Counsel to the President is the Designated Agency Ethics Official (DAEO). The Alternate DAEO and Deputy Ethics Official administer the day-to-day operations of the program, serving employees of WHO, the Office of Policy Development (OPD), the Executive Residence, the President's Foreign Intelligence Advisory Board, and the President's Intelligence Oversight Board. These employees are subject to the Executive Office of the President (EOP) standards of conduct at 3 C.F.R. part 100.

In addition to administering WHO's ethics program, the Alternate DAEO and Deputy Ethics Official, on occasion, receive referrals for ethics advice from, and disseminate advice to, ethics officials at other EOP components and executive branch agencies and

departments. They also provide information and guidance to interested parties of non-Federal entities. Moreover, WHO ethics officials are responsible for reviewing public financial disclosure reports of individuals nominated to positions in the executive branch as Presidential appointments (PA) and Presidential appointments by and with the advice and consent of the Senate (PAS). In 1991, the Office of the Counsel to the President was responsible for reviewing approximately 250 PA and PAS nominee public financial disclosure reports.

Public Financial Disclosure System Has Minor Problems

Seventy-seven employees were required to file public financial disclosure reports during the 1991 filing cycle. We examined 37 public reports which consisted of 9 new entrant, 23 incumbent, and 5 termination reports. Our examination disclosed that a total of 33 reports were filed in a timely manner and 4 new entrant reports were filed late. Of the four late reports, three were from employees who were promoted to covered positions in 1991. According to the Alternate DAEO, the collection of the \$200 late filing fee authorized by the Ethics Reform Act of 1989 was not enforced because ethics officials had not apprised the filers of the requirement to file financial disclosure reports within 30 days of their date of promotion, as required at 5 C.F.R. § 2634.201(b). The remaining new entrant report was filed five and a half months after the employee's entrance on duty. At the time of our review the filer had not been notified in regard to paying the \$200 late filing fee nor advised to request a waiver of the late filing fee.

The provisions of 5 C.F.R. § 2634.605(a) require the DAEO to review public reports within 60 days after filing. (See 57 Federal Register 11800 and 11823 [April 7, 1992]). Of the 37 public reports examined, 28 reports (76 percent) were reviewed within 60 days. The Alternate DAEO stated that the late review of some reports occurs because the review of new entrant and termination reports does not receive the same priority as the review of incumbent reports. He also stated that the timeliness of public report review was being addressed. During our examination, we saw evidence of ethics officials conducting more timely reviews. We identified only a few technical deficiencies in the reports we reviewed and, moreover, no conflict of interest issues.

A Confidential Financial Disclosure System Has Not Been Implemented

WHO has not established a confidential financial disclosure system, as required by 5 C.F.R. § 735.403. Based on our discussions with ethics officials, a small number of GS 13 - 15

The Honorable C. Boyden Gray
Page 3

employees would probably be required to file confidential reports under the new confidential financial disclosure regulations at subpart I of 5 C.F.R. part 2634 which are effective October 5, 1992. (See 57 Federal Register 11800, 11826-11829 [April 7, 1992]). All other employees that hold significant policy-making positions are required to file public financial disclosure reports.

Given the Government-wide trend toward uniformity in ethics regulations and the standardization of financial disclosure reporting, WHO will be required to establish a confidential reporting system under the new standardized confidential financial disclosure regulation. This would strengthen the ethics program and enhance WHO's ability to identify and resolve any potential or actual conflicts of interest.

DAEO Maintains an Active Ethics Education and Training Program

Section 2638.203 of title 5, Code of Federal Regulations, outlines the responsibilities and duties of the DAEO. Specifically, the DAEO shall ensure that an education and training program for agency employees concerning ethics laws, regulations and standards of conduct including post-employment restrictions is developed and conducted in coordination with OGE.

In 1991 WHO conducted no formal ethics training. In September 1990, annual ethics training was made available to all WHO employees, including employees of the President's Foreign Intelligence Advisory Board and the President's Intelligence Oversight Board. The training consisted of approximately three one and one half-hour sessions. The course syllabus indicates that this training was comprehensive and tailored to the needs of WHO's various types of employees. The files also indicate that ethics officials made themselves available to provide briefings to the 12 Assistants to the President and their staff as an alternative to attending the regular briefings.

Although there are currently no structured standards of conduct briefings given to new employees, each new employee receives a packet of ethics related materials upon their arrival. One of four different packets is provided to a new employee depending on his or her pay grade or appointment (i.e., GS-16 and above, detailee, etc.). The packets include financial disclosure forms/personnel data sheets, instructions, and ethics memoranda on topics such as outside earned income, post-employment, acceptance of meals, and conflicts of interest. The packets also include the EOP standards of conduct regulations. We examined the information contained in these packets and believe that it satisfactorily apprises new WHO employees of the basic ethics requirements.

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In addition to including ethics memoranda in the new employee packets, the DAEO periodically circulates memoranda to all employees throughout the year, in order to keep them informed of current executive branch-wide ethics regulations. We obtained 18 memoranda issued during 1989 through 1991. These memoranda covered issues such as reimbursement for travel expenses, political activities, gift acceptance, and the mixing of political and official travel. The memoranda covered the various ethics issues WHO employees may encounter. For example, on December 11, 1990, the DAEO issued policy guidance on Holiday Season Gift Acceptance and on November 27, 1991, he issued policy guidance on Political Activity (as it relates to WHO employees' individual political activities on behalf of the Bush/Quayle campaign).

We believe WHO ethics officials have made substantial efforts in providing ethics education and training. WHO's current education and training program should provide a solid foundation for implementing the requirements of the new ethics training regulations issued as a final rule by OGE at subpart G of 5 C.F.R. part 2638.

Ethics Counseling and Advice Services
Appear Consistent with Ethics Laws
and Regulations

Pursuant to 5 C.F.R. § 2638.203(b)(7) the DAEO has developed and maintains a counseling program to meet the needs of WHO employees. The majority of the advice rendered is verbal and informal. To evaluate the effectiveness of the agency's counseling services, we examined all of the written advice provided during 1990 and 1991. This amounted to 157 written determinations. Eighty-four determinations pertained to accepting reimbursement for travel expenses from non-Federal sources, accepting foreign gifts, and accepting gifts from prohibited sources. The written determinations were consistent with applicable ethics laws and regulations.

The Alternate DAEO provides departing senior and very senior employees a tailored 30-minute briefing on the post-employment restrictions, emphasizing particular statutes and regulations of which employees need to be aware with respect to their former positions and official duties. In addition to the briefing, an individualized post-employment restriction memorandum is prepared for each terminating official subject to the one year "cooling off" period.

In addition to providing advice to WHO employees, ethics officials provide ethics advice to other EOP components, and executive branch agencies, as well as non-Federal entities. For example, our review disclosed that two EOP components, and seven

executive branch agencies received written determinations from WHO, or confirmations of their own determinations, on issues such as outside earned income, outside activities, gift acceptance, participating in widely-attended functions, and travel. Additionally, six non-Federal entities requested advice on issues such as interaction with Federal employees in the procurement process, and whether Federal employees can accept awards or participate on an award nominating committee.

WHO granted 14 waivers under 18 U.S.C. § 208 during 1990 and 1991. All waivers were issued in accordance with Executive Order 12731, section 301(d), whereby agencies are required to consult with OGE, where practicable, prior to granting any waivers. According to the Alternate DAE0, WHO ethics officials have an ironclad rule to consult with OGE before issuing any waivers.

Conclusions

WHO ethics officials have developed the structural foundation for an effective ethics program. The ethics education and training program ensures that WHO employees are aware of Federal conflict of interest statutes and the principles of ethical conduct. WHO's counseling and advice to employees, other EOP components, executive branch agencies, and non-Federal entities is consistent with applicable regulations. Supplemental written guidance and ethics officials' frequent contact with WHO employees are very responsive and address ethics issues and questions as they arise.

In addition to the need to establish a confidential financial disclosure system, we found deficiencies in some aspects of the public financial disclosure system. Improvements are needed in the system to identify and notify employees who have been promoted to covered positions to file new entrant public reports. Also, new entrant and termination reports should be reviewed and certified in a timely manner.

Recommendations

We recommend that you:

1. Improve the procedures for identifying and notifying new entrant public report filers of the filing requirements and monitoring the filing of reports. For example, ensure that your office is notified of all promotions to covered positions throughout the year for public filing requirements.

The Honorable C. Boyden Gray

Page 6

2. Ensure that new entrant and incumbent public filers are aware of and comply with : a) the appropriate filing deadline, b) the procedures to request a filing extension, if appropriate and c) the procedures to request a waiver of the \$200 late filing fee, if appropriate.
3. Review all public financial disclosure reports within 60 days. In cases where certification has been delayed because additional information requested from the filer is pending, make a notation to this effect on the disclosure report and follow-up as appropriate with the filer.
4. Establish a confidential financial disclosure system that will meet the requirements of the confidential financial disclosure regulations issued as a interim rule by OGE at subpart I of 5 C.F.R. part 2634 (effective October 5, 1992).

In closing, we wish to thank you for your efforts on behalf of the ethics program. Please advise OGE within 60 days of the actions you have taken or plan to take concerning these recommendations. A brief follow-up review will be scheduled within six months from the date of this letter 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 Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that WHO implement action to correct deficiencies in a timely manner. If we can be of any further assistance, please contact DeEtte Spencer at 523-5757, extension 1154.

Sincerely,



Stephen D. Potts
Director

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