



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

March 17, 2005

Gregory H. Friedman
Inspector General
Department of Energy
Room 5D-031
1000 Independence Avenue, SW.
Washington, DC 20585

Dear Mr. Friedman:

The Office of Government Ethics has completed a review of the Department of Energy's (Energy) ethics program. Our objective was to determine the program's compliance with applicable laws and regulations. We also evaluated Energy's systems and procedures for ensuring that ethics violations do not occur. The review was conducted in December 2004.

I have enclosed a copy of the report for your information. Please call me at 202-482-9300, extension 220, if I may be of assistance.

Sincerely,

A handwritten signature in cursive script that reads "Jack Covaleski".

Jack Covaleski
Deputy Director
Office of Agency Programs

Enclosure



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

March 17, 2005

Susan Beard
Designated Agency Ethics Official
Department of Energy
Room 6A-211
1000 Independence Avenue, SW.
Washington, DC 20585

Dear Ms. Beard:

The Office of Government Ethics (OGE) has completed a review of the Department of Energy's (Energy) ethics program. Our objective was to determine the program's compliance with applicable laws and regulations. We also evaluated Energy's systems and procedures for ensuring that ethics violations do not occur. The review was conducted in December 2004. The following summarizes our findings.

HIGHLIGHTS

Energy's ethics program continues to be sound and well managed by able ethics staff within Energy's Office of Assistant General Counsel for General Law. Since our last review reported in 1998, ethics officials appear to have sustained strong financial disclosure systems, an exemplary counseling and advice services program, and ongoing training initiatives that raise employee awareness of the ethics laws and regulations. We commend you and your staff for your continuing endeavor to ensure that the members of Energy's committees created under the Federal Advisory Committee Act (FACA) are properly designated and for taking immediate appropriate actions regarding issues that arose during this review.

PROGRAM STRUCTURE

Current staffing levels appear to be adequate. You, as Energy's Assistant General Counsel for General Law, serve as the Designated Agency Ethics Official (DAEO) for the over 14,000 Energy employees located in headquarters in Washington, DC and in operations, field, and site offices (field offices) around the country. At headquarters, you are assisted by the Alternate DAEO, three attorneys,¹ and three paralegals, and at the field offices you are assisted by a total of 56 attorneys. Field attorneys have comprehensive written procedures that document their duties and

¹ One attorney has retired since our fieldwork.

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responsibilities to the ethics program. We suggest that you develop similar procedures for your headquarters staff.

SUPPLEMENTAL REGULATION

Energy's supplement to the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), at 5 C.F.R. § 3301.102, requires an employee to provide written notice of disqualification to his supervisor and counselor (the DAEO or DAEO's delegate) upon determining that he will not participate in a matter under 5 C.F.R. §§ 2635.402(c), 502(e), and 604(a). Additionally, withdrawal of notification shall also be in writing. We found examples of 17 written disqualification agreements in 2004. The agreements generally included a screening arrangement which directed an employee (other than the disqualified employee) to route all matters to which the agreement referred to another employee for action. We also found one example of a written withdrawal of notification.

Additionally, Energy's supplement to the Standards, at 5 C.F.R. § 3301.103, also requires an employee to obtain prior written approval from his immediate supervisor and counselor before engaging in outside employment² whether or not for compensation. We found a few examples where employees reported activities on financial disclosure reports for which there were no approvals. Headquarters counselors subsequently approved their reported outside activities and sent copies of the approvals to the employees' supervisors. Field office counselors indicated in the confidential financial disclosure tracking system that there was no required approval and that notice would be sent to employees advising them to seek approval. As a further remedy to this problem, new employees are now required to sign an acknowledgement of this requirement and current employees were to receive a reminder of this requirement via Energy's broadcasting system (DOECAST). Since you have taken these measures to correct this deficiency, we are not making a recommendation at this time. We suggest that you continue to monitor this process and make the necessary changes to ensure Energy's employees are in compliance with this provision.

SPECIAL GOVERNMENT EMPLOYEES

Until recently, Energy had no special Government employees (SGE) for their 17 FACA committees. However, ethics officials are in the process of reevaluating the committees and their members to determine whether members have been properly designated as representatives. Member's whose terms expired during this reevaluation process have been granted interim appointments to ensure continuity of the committees' work. Ethics officials discussed the reason for any changes in designation with the committees' members. We want to commend you in your endeavor to ensure that the committees' members are properly designated.

At the time of our fieldwork, ethics officials had completed the reevaluation of only 1 of the 17 committees, the Environmental Management Advisory Board (EM Board). Using the guidance

² The definition of outside employment can be found at 5 C.F.R. § 3301.103.

provided in OGE's July 19, 2004 DAEOgram entitled "SGEs and Representatives on Federal Advisory Committees" and consulting with OGE, ethics officials determined that the membership was mixed: one of the five members appointed to the EM Board represents the view of his state's environmental protection agency and had been correctly designated as a representative; the remaining four members provide expert advice on particular subject matters and, therefore, are designated as SGEs.

Confidential financial disclosure reports had since been filed by the four SGEs and all were filed, reviewed, and certified timely. Moreover, all four SGEs were provided an initial ethics orientation and written advice regarding potential conflicts of interest disclosed on their confidential reports.

Since our fieldwork, ethics officials have completed the reevaluation of an additional nine committees and their members. As indicated by the table below, of the 17 committees: 6 committees' members are SGEs, 2 committees' members are representatives, and 9 committees consist of both SGEs and representatives. During March 2005, ethics officials planned to reevaluate the remaining seven committees' members. Ethics officials, in coordination with OGE, have developed an alternative reporting form to be filed by the committees' SGEs in lieu of filing an OGE Form 450.

Committee	Reevaluation	SGE	REP	MIXED
Advanced Scientific Computing Advisory Committee	Completed	X		
Basic Energy Sciences Advisory Committee	Completed	X		
Biological and Environmental Research Advisory Committee	Completed	X		
Biomass Research and Development Technical Advisory Committee	Completed			X
DOE/NSF Nuclear Science Advisory Board	Completed	X		
Electricity Advisory Board	Mar-05		X	
Environmental Management Advisory Board	Completed			X
Environmental Management Site Specific Advisory Board	Completed		X	
Federal Energy Management Advisory Committee	Mar-05			X
Fusion Energy Sciences Advisory Committee	Completed	X		
High Energy Physics Advisory Panel	Completed	X		
Methane Hydrate Advisory Committee	Mar-05			X
National Coal Council	Mar-05			X
National Petroleum Council	Mar-05			X
Nuclear Energy Research Advisory Committee	Completed			X
Secretary of Energy Advisory Board	Mar-05			X
State Energy Advisory Board	Mar-05			X

FINANCIAL DISCLOSURE SYSTEMS

Energy's public and confidential financial disclosure systems are well managed. Energy has two tracking systems to aid in the management of the financial disclosure reports: one that tracks the public reports that are maintained at headquarters, and one that tracks the confidential reports that are maintained at headquarters and the field. Reports are reviewed by ethics officials, who provide employees written reminders of the conflict-of-interest provisions applicable to them when they report financial interests in entities that have a financial relationship with Energy or that could be substantially affected by Energy's programs or policies.

Public Financial Disclosure System

Our examination of a sample of 111 of the 587 public reports required to be filed in 2004 by non-Presidentially-appointed, Senate-confirmed (PAS) employees consisted of 91 incumbent, 18 new entrant, and 2 termination reports. We found that the 111 reports examined were filed timely, including reports from 4 filers who were granted extensions. The reports were reviewed and certified timely, except for three reports still not certified pending the completion of their review. In addition, all 18 PAS reports required to be filed in 2004 were filed, reviewed, and transmitted to OGE timely. However, a public tracking system report generated on December 3, 2004 on all reports filed indicated a problem concerning timeliness of certification. Of the 605 reports required to be filed, 75 (12 percent) still had not been certified, of which 66 (11 percent) had been under review for more than 5 months. To expedite obtaining information from tardy respondents, you indicated that you would contact the headquarters filers directly and solicit help from field offices' chief counsels for the filers located in the field. We applaud your taking these more aggressive measures to obtain outstanding information so that reports are certified in a timely manner. We suggest that you continue this practice which should increase the time your staff has to work on other ethics issues.

Our examination of the 111 reports revealed that ethics officials had identified potential conflicts of interest on 46 reports and had provided appropriate written advice to the filers. However, one filer disclosed being an officer in two non-Federal organizations in his official capacity, which, according to Energy, there was no statutory authority to serve in such a capacity. OGE advised Energy that, absent statutory authority to serve in an official capacity, the employee would have to be granted an 18 U.S.C. § 208(b)(1) waiver to do so. Moreover, such positions are not required to be disclosed on a financial disclosure report. Almost immediately, you indicated that the employee ceased his activities with the outside organizations and, pending the granting of a waiver (one waiver addressing both positions), executed a written disqualification agreement. Energy has since drafted the waiver, forwarded it to OGE, and referred the matter to the Office of Inspector General (OIG) for investigation. Ethics officials also took appropriate measures to ensure that no other similar situations exist by requesting supervisors to survey their employees and provide ethics officials with the results.

Confidential Financial Disclosure System

Our examination of a sample of 100 confidential reports (OGE Form 450) of the approximately 2,696 reports required to be filed at headquarters in 2004 disclosed that the reports were filed, reviewed, and certified timely. Our examination of a confidential tracking system report generated on December 8, 2004 indicated that 5,106 (95 percent) of 5,394 headquarters and field confidential reports required to be filed, had been filed. Additionally, 2,859 (53 percent) of the 5,394 reports were already reviewed and certified, which means that 53 percent of the reports were reviewed and certified within 37 days of the requirement that reports be reviewed within 60 days after the date of filing.

EDUCATION AND TRAINING

Energy generally exceeds the requirements of 5 C.F.R. part 2638, subpart G by providing employees periodic ethics advice via DOECAST in addition to the training required under this provision. Generally, new employees complete their required initial ethics orientation using the Internet. Covered employees (non-PAS public and confidential financial disclosure report filers) accomplish the required annual training by completing at least three computer-based modules. (Ethics officials are available to answer questions.) However, ethics officials provide PAS employees with one-on-one initial ethics orientation and annual ethics training.

We examined the public and confidential tracking systems for 2004, which also track employees' annual ethics training. Our examination of a public tracking system report generated on December 3, 2004 indicated that 563 (93 percent) of the 605 public filers, including PAS filers, completed annual ethics training for 2004, leaving 42 not trained as of December 3. Our examination of a confidential tracking system report generated on December 8, 2004 indicated that 5,041 (93 percent) of the confidential filers completed their annual ethics training requirement for 2004, leaving 353 not trained as of December 8.

Energy's annual training plan for CY 2005 states that Energy plans to provide verbal ethics training to all public and confidential filers with a qualified individual present.

COUNSELING AND ADVICE

Ethics officials provide an extensive amount of counseling and advice to employees both orally and in writing. We examined a sample of 58 pieces of written advice gathered primarily from employee financial disclosure report files. We found that the advice appeared to be accurate and consistent with applicable laws and regulations. The advice sampled included potential conflicts of interest, financial disclosure, fundraising, gift acceptance, outside activity, misuse of position, post employment, disqualification agreements, speaking, travel, and waivers.

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ETHICS AGREEMENTS

Energy granted three 18 U.S.C. § 208 (b)(1) waivers in 2004. OGE was consulted on these waivers and was provided copies of the waivers. Moreover, there were 17 disqualification agreements, discussed above in the "SUPPLEMENTAL REGULATION" section.

ACCEPTANCE OF TRAVEL PAYMENTS

Ethics officials' approvals of the acceptance of travel payments from non-Federal sources under 31 U.S.C. § 1353 were in accordance with the law and 41 C.F.R. chapter 304. We examined 85 authorizations to accept travel payments that were reported on Energy's semiannual report to OGE of payments of more than \$250 for the period April 2004-September 2004 and all 22 authorizations for the period October 2004 through the end of our fieldwork. The types of travel consisted of attendance at award ceremonies, conferences, forums, meetings, seminars, summits, and workshops.

ENFORCEMENT

Employees who violate the Standards face administrative actions. We were provided documentation that indicated that 16 employees received disciplinary actions in 2004; 2 at headquarters and 14 at the field offices. The actions ranged from counseling to 30-day suspensions.

You referred three employees who terminated and failed to file public financial disclosure reports to the Department of Justice (DOJ) in 2004 and you concurrently notified OGE.

Based on our conversations with officials in your office and OIG officials, effective communication appears to exist between the two offices. One alleged criminal conflict of interest violation was referred to DOJ in 2004, about which OGE was concurrently notified. We were informed that the investigation is ongoing and that OGE would be notified of its disposition.

Ms. Susan Beard

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In closing, we wish to thank you and your staff for your efforts on behalf of the ethics program. Since no improvements to your program were recommended, we will not need to conduct a six-month follow-up review. A copy of this report is also being sent to Energy's Inspector General. Please contact Jean Hoff at 202-482-9246 if we may be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Covaleski". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Jack Covaleski
Deputy Director
Office of Agency Programs

Report Number 05-006