

United States Office of Government Ethics

Compliance Division

Ethics Program Review

Defense Intelligence Agency

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Defense Intelligence Agency's (DIA) ethics program intermittently between August 2013 and October 2013. OGE's review found DIA's ethics program to be generally sound. However, certain improvements can be made to strengthen the program. OGE makes two formal recommendations to address weaknesses in the education and training and enforcement elements of the ethics program.

Highlights

- Ethics officials have committed to providing in-person initial ethics orientation to new employees and in-person annual ethics training to all covered employees.
- Ethics Officials provide discretionary training throughout the year to emphasize specific ethics rules and requirements to various groups of employees within DIA.
- The DIA Director has committed to ensuring the ethics program receives a high level of leadership support.

Concerns

- Ensure that all confidential financial disclosure filers submit their reports timely.
- Although annual ethics training was made available to all employees, not all employees complied with the requirement to attend.
- OGE is not being concurrently notified of all criminal conflict of interest referrals or provided final disposition reports.

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Objectives, Scope, and Methodology

OGE provides overall leadership and oversight of the executive branch ethics program which is designed to prevent and resolve conflicts of interest. OGE's Program Review Branch (PRB)

carries out OGE's oversight responsibilities through onsite monitoring of agency ethics programs to ensure agencies are held accountable for compliance with applicable ethics requirements established by statutes, rules, regulations, and Executive Orders. PRB's oversight activities are also designed to mitigate program vulnerabilities, identify trends, and disseminate model practices as well as to advance OGE's overarching goals of uniformity, continuity and transparency. OGE has authority to evaluate the effectiveness of executive agency ethics programs pursuant to Title IV of the Ethics in Government Act and 5 C.F.R. part 2638.

To assess DIA's ethics program, OGE examined a variety of documents provided by DIA. These included: the 2012 and 2013 annual questionnaire; a sample of public and confidential financial disclosure reports filed in 2013, initial and annual ethics training material for 2012 and 2013, and a sample of advice and counseling rendered to DIA employees in 2013. In addition, OGE's Program Review Branch staff met with DIA ethics officials and DIA's Counsel to the Inspector General to obtain additional information about the strengths and weaknesses of the ethics program, seek clarification regarding issues that arose during OGE's analyses of the documents collected, and verify the source and accuracy of data collected.

Agency Background

DIA is a Department of Defense (DoD) combat support agency responsible for producing, analyzing, and disseminating military intelligence information to combat and non-combat military missions. As a member of the U.S. Intelligence Community, DIA serves as the Nation's primary manager and producer of foreign military intelligence as well as a central intelligence producer and manager for the Secretary of Defense, the Joints Chiefs of Staff, and the Unified Combatant Commands.

Headquartered in Washington D.C., with major operational activities at the Pentagon; Frederick, MD; Charlottesville, VA; and Huntsville, AL, DIA is led by a Director who is a three-star military officer. The position rotates among the services approximately every three years. The DIA Director serves as a principal advisor to the Secretary of Defense and to the Chairman of the Joints Chiefs of Staff on matters of military intelligence and chairs the Military Intelligence Board, which coordinates activities of the defense intelligence community. The Director is supported in leadership by a civilian deputy and a senior enlisted advisor. To help accomplish the agency's mission, DIA has a mixed workforce consisting of more than 16,500 military employees, including Army, Navy, Air Force, Marines, and DOD civilians.

Program Administration

DIA's ethics program is administered from within its Office of the General Counsel, hereafter referred to as the Ethics Office. The General Counsel (GC) serves as the agency's Designated Agency Ethics Official (DAEO); the Principal Deputy General Counsel serves as the Alternate DAEO (ADAEO). The day-to-day management of the ethics program is administered by two Assistant General Counsels who serve as Deputy DAEOs designated by the DAEO. Both report directly to the ADAEO regarding the ethics program. In addition to the two primary ethics officials, approximately 20 other DIA attorneys have also been designated by the DAEO to serve as Deputy DAEOs. These Deputy DAEOs have the authority to review and certify financial

disclosure reports and answer routine ethics questions as part of their collateral duties. As a DoD component, DIA adheres to the requirements of DoD's Joint Ethics Regulation (JER).

Prior OGE Report

OGE's last review of DIA's ethics program was conducted in 2010. During that review, OGE made five recommendations requiring agency action and provided three suggestions to further improve ethics program. To determine whether the improvements recommended or suggested in our December 2010 report had been achieved, OGE conducted its first follow-up review in December of 2011 and determined the steps taken by DIA were sufficient to close three of the five recommendations from the 2010 review. The two open recommendations pending further action by DIA pertained to delayed certification of public and confidential financial disclosure reports and delayed identification of new entrant confidential reports. In August 2012, OGE conducted its second follow-up review at DIA to determine what action had been taken to address the two open recommendations. The results of that review again found delays in certification and new entrant identification. Therefore, OGE determined that a full scope ethics program review would be conducted in 2013 following the public and confidential financial disclosure review and certification deadlines to revisit these open issues. DIA's progress on these two recommendations is addressed in the financial disclosure section below.

Financial Disclosure

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the federal government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level federal officials publicly disclose their personal financial interests using the OGE Form 278. Title I also authorizes OGE to establish a confidential financial disclosure system in which less senior executive branch personnel in certain designated positions may be required to complete the OGE Form 450. Financial disclosure serves to prevent, identify, and resolve conflicts of interest by providing for a systematic review of the financial interests of officers and employees. The financial disclosure reports assist agencies in administering their ethics programs and also assist in providing counseling to employees. *See* 5 C.F.R. part 2634.

To evaluate the administration of DIA's financial disclosure systems, OGE selected a judgmental sample of public and confidential reports that were required to be reviewed and certified in 2013. According to ethics officials, 256 public and 653 confidential reports were required to be filed in 2013. OGE selected for examination 51 public reports (3 new entrant and 48 annual reports) and 79 confidential reports (37 new entrant and 42 annual reports) to determine timeliness of filing, review, and certification. OGE also examined these reports to assess the overall quality of review conducted by DIA's reviewing officials. The Ethics Office uses the Financial Disclosure Management (FDM) system, a web-based electronic report filing system to administer the agency's financial disclosure program. This provides real-time filing, review, and certification status of DIA public and confidential financial disclosure filers.¹

¹ With the exception of 29 public and 97 confidential filers who filed hardcopy reports, all public and confidential filers were required to submit their reports electronically in 2013. Those filers who filed hardcopy reports either were deployed or otherwise had difficulties accessing FDM.

Written Procedures

DIA's public and confidential financial disclosure systems are administered in accordance with the financial disclosure procedures contained in Chapter 7 of the JER. These procedures comply with regulatory requirements mandating that agencies have written procedures governing the administration of financial disclosure systems.

OGE also notes that DIA has established written procedures for administering the public and confidential financial disclosures systems tailored to the needs of the agency. The procedures appeared to be effective and efficient. In creating tailored written procedures, DIA has exceeded minimal requirements.

Public Financial Disclosure

Of the 51 public reports OGE examined, 96 percent were timely filed and 94 percent were certified within the required 60-day timeframe. It was clear during our examination that ethics officials were appropriately following up with public filers to obtain additional information required to certify reports and recorded ongoing communication between the reviewer and filer. OGE did not detect any actual or potential conflicts of interest that the Ethics Office had not already addressed during its review. OGE was satisfied with the quality of the conflict of interest analyses DIA conducted.

OGE notes that the public report filed by the DAEO is the only report required to be forwarded to OGE for final review and certification. OGE confirmed that the DAEO's 2013 annual report had been timely forwarded pursuant to 5 C.F.R. § 2634.602.

Confidential Financial Disclosure

Of the 79 confidential reports OGE examined, 52 percent were filed timely. Nineteen of the 42 annual reports OGE examined were filed late. The late reports were filed between 4 and 62 days beyond the applicable due date. While not all confidential filers filed their reports timely, OGE recognizes that ethics officials took appropriate corrective action. Ethics officials told OGE reviewers that supervisors were notified when a subordinate filed a late report and advised them of recommended administrative actions that could be taken against the late filer. Supervisors relayed to ethics officials that verbal warnings were given to all late filers. While OGE acknowledges DIA took appropriate corrective action, this report includes a recommendation that DIA ensure that all confidential reports are filed timely.

Nineteen of the 37 new entrant reports also appeared to have been filed late. However, ethics officials informed OGE reviewers that these employees incorrectly listed on their confidential reports their dates of initial hire at DIA as their new entrant date, instead of listing the date they assumed duties and responsibilities that triggered the requirement to submit a confidential report. Ethics officials advised OGE reviewers that many new entrants file a confidential report as a result of collateral contracting or procurement responsibilities and not the primary duties for which they were initially hired. These collateral duties may be assigned at any time during employment and are subject to change. To rectify this matter, ethics officials stated that they

advised the supervisors and points of contact to instruct and educate employees to use the date triggering the requirement to file the report, not the date of the employee's initial hire. Ethics officials are hopeful that this will resolve the issue. OGE accepts that the apparent late filing of new entrant reports in this instance was due to filer error in reporting the wrong date of appointment. As a result, OGE makes no formal recommendation for improvement.

Regarding timeliness of certification, 89 percent of the reports OGE examined were certified within the required 60-day timeframe. This reflects a significant improvement from our last review in 2010 and subsequent follow-up examinations conducted in 2011 and 2012. OGE encourages ethics officials to continue their efforts to certify all reports within 60 days of the date they are filed unless a delay is required in order to obtain additional information or take remedial action.

As with the public reports, it was also clear that ethics officials were appropriately following up with confidential filers to obtain additional information required to certify reports and recorded ongoing communication between the reviewer and filer. OGE did not detect any actual or potential conflicts of interest that the Ethics Office had not already addressed during its review. OGE was satisfied with the quality of the conflict of interest analyses DIA conducted.

Recommendation

- Ensure that all confidential financial disclosure filers submit their reports timely.

Supplemental Ethics Regulation

Based on DoD's supplemental regulation at 5 C.F.R. § 3601.107 and subsection 2-206 of the JER, DIA requires that filers of financial disclosure reports receive prior approval before engaging in a business activity or compensated outside employment with a prohibited source. Filers are required to submit requests to the DAEO through their chain of command. DIA's Instruction 1100.003, establishes internal agency policy, assigns responsibilities, and provides procedures for DIA's outside employment reporting process. This instruction directs employees to request approval to engage in outside employment and provides guidance for the submission of the request and receipt of approval. Employees who seek prior approval are required to do so by submitting DIA form 780, Outside Employment Report.

To determine compliance with DIA's prior approval requirement, OGE reviewed the outside activities that were reported on both the public and confidential financial disclosure reports that were selected for examination. OGE identified 21 outside employment activities listed on the appropriate schedule/part of the public/confidential reports and confirmed that all filers who were required to obtain approval did so before engaging in the outside employment. Based on a review of documentation, all approvals were granted in accordance with the provisions of DIA's supplemental regulation.

Education and Training

An ethics training program is essential to raising awareness of ethics laws and rules among employees and informing them of agency ethics officials' contact information and availability to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation (IEO) for all employees and annual ethics training for covered employees. Agencies are required to develop a written plan each year for the agency's annual training program.

OGE found DIA's education and training program to exceed some of the requirements found at subpart G of 5 C.F.R. 2638. Ethics officials have committed to providing in-person initial ethics orientation (IEO) to all new employees and in-person annual ethics training to all covered employees. In addition to conducting the requisite initial ethics orientation and annual ethics training, the Ethics Office also provides ethics briefings throughout the year, by request, to senior-level management and executive officers and other groups of DIA employees to help raise employee's awareness of ethics laws and regulations. As an example, in 2013, in-person ethics briefings were provided to DIA contracting officials on the topic of contractors in the workplace and to other DIA offices which have interactions with non-Federal entities. OGE also found DIA satisfied the requirement at 5 C.F.R. § 2638.706 by documenting its annual ethics training plan.

The only instance of non-compliance OGE identified was that not all confidential filers were trained by the end of 2012 and 2013. As the Ethics Office prepared to satisfy the annual training requirement for 2014, OGE recommended that the Ethics Office ensure that all covered employees receive annual ethics training by the end of the year.

Initial Ethics Orientation

Agencies must provide new employees with an initial ethics orientation (IEO) that includes the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards), any agency supplemental standards, contact information for the agency's ethics officials, and one hour to review the materials. This training must be provided within 90 days from the time an employee begins working for an agency. See 5 C.F.R. § 2638.703.

The Ethics Office is committed to providing in-person IEO to new employees. During 2013, all of DIA's 712 new employees, both civilian and military, received a one-hour in-person briefing that met the requirements for initial ethics orientation.

Annual Ethics Training

Agencies are required to provide public and confidential financial disclosure filers with annual ethics training. The training must include a review of the Principles, the Standards, any agency supplemental standards, the Federal conflict of interest statutes, and the names, titles, office address, and telephone numbers of the DAEO and other agency ethics officials available to advise the employee of ethics issues. See 5 C.F.R. § 2638.704 and 5 C.F.R. § 2638.705. Annual ethics training is a vital component of an agency's ethics program and is intended to assist

employees in carrying out their official responsibilities in a manner consistent with ethics-related statutes and regulations. Additionally, annual training helps to prevent violations and maintain the public's confidence that Government officials act impartially and free of conflicts of interest.

Annual Training for Public Filers

Annual ethics training for 2013 had not been completed at the time of OGE's onsite examination. Therefore, compliance with OGE's annual training requirement for 2012 was assessed. To satisfy the annual training requirement for 2012, the DIA Director, along with ethics officials, led a discussion at the Director's mandatory Town Hall Meeting to address ethics laws, regulations and current issues with senior officials. This discussion was intended to meet the annual ethics training requirement for those present. OGE found the training content to satisfy the relevant requirements. Those unable to attend the Director's meeting in 2012 were required to attend an in-person make-up training session provided by the DAEO. OGE confirmed through training records that all public filers were trained in 2012.

Regarding annual training for 2013, OGE was advised that the Director was unable to participate in the ethics training session held with DIA public filers due to a scheduling conflicts. In-person training was instead led by the DAEO, assisted by two deputy DAEOs, to satisfy the annual training requirement for 2013. OGE found the training content in 2013 to satisfy the annual training requirement and confirmed with ethics officials that all public filers were trained.

OGE considers leadership involvement in an agency ethics program to be a model practice and encourages the Director to continue his commitment and support of the DIA ethics program. In particular, OGE encourages the Director to become personally involved in the 2014 annual ethics training.

Annual Training for Confidential Filers

At the time of OGE's examination, annual ethics training for confidential filers was still ongoing for 2013. Therefore, OGE initially assessed compliance with OGE's annual training requirement for 2012. To satisfy the annual training requirement in 2012, the Ethics Office provided multiple opportunities for confidential filers to attend live ethics training from September through mid-December. These sessions were also available for viewing via video teleconferencing. Completion of annual ethics training was tracked through sign-in sheets or self-certification, if the employee was trained via video presentation. OGE found the training content to satisfy the relevant requirements.

During our discussion with ethics officials, OGE reviewers were advised that not all confidential filers were trained by the end of 2012. Ethics officials explained that when making final updates to their annual ethics training spreadsheet for 2012 they noticed that approximately 300 confidential filers did not have a training date recorded. Ethics officials acknowledged that these employees either did not notify ethics officials of their training completion, or their self-certification did not reach ethics officials, or in some cases, the employee did not attend a training session. The Ethics Office subsequently issued an agency-wide tasker in March 2013 directing all points of contact to confirm whether filers in question attended one of the training

sessions in 2012. For filers who confirmed attending a training session, their dates of completion were recorded. For those who did not attend a training session, a copy of the annual training slides used to satisfy the 2012 annual training requirement was provided to them and they were given one hour to review them. Dates of completion were recorded upon their review of the materials. OGE confirmed via DIA's internal tracking system that all who were required to receive annual ethics training in 2012 ultimately were trained.

With regard to annual training for 2013, OGE confirmed via DIA's annual questionnaire that not all confidential filers received the required annual ethics training by the end of 2013. Specifically, of the 693 confidential filers who were required to be trained in 2013, 401 confidential filers actually received the training by the end of 2013. Annual ethics training is a vital component of an agency's ethics program because it helps to prevent inadvertent violations and maintain the public's confidence that Government officials act impartially and free of conflicts of interest. As the Ethics Office prepared to satisfy the training requirement for confidential filers for 2014, OGE recommended that the Ethics Office ensure that all covered employees receive their annual ethics training by the end of the year.

Recommendation

- Ensure that all covered employees receive annual ethics training in 2015.

Model Agency Practices

OGE identifies model practices and shares them when it appears they may benefit an agency's ethics program. The following are model practices OGE noted that DIA implemented to enhance its training program:

- Ethics officials have committed to providing in-person IEO to new employees and in-person annual ethics training to all covered employees.
- The DIA Director personally commits to providing leadership support to the ethics program. This helps to demonstrate the importance of adhering to ethical standards and principles.
- Ethics Officials provide discretionary training throughout the year to emphasize specific ethics rules and requirements to different audiences within DIA.

Advice and Counsel

During OGE's last review in 2010, OGE shared some of its concerns and observations regarding the administration of the advice and counseling program. At that time, OGE found the advice provided by the Ethics Office followed no standard format and was very informal. OGE also found some elements to have been absent from the ethics officials' analyses and found it hard to determine if those elements were discussed by phone, in another email, or in person. To help improve the program, OGE suggested that DIA adopt a more formal method of documenting advice and counseling. OGE also suggested maintaining the advice rendered in a manner which would make it accessible to all ethics officials. In response to these suggestions, the Ethics

Office began organizing its ethics advice by topic and posting it in the General Counsel's shared directory. General ethics information was also posted on DIA's internal website which is available to all employees.

OGE's current examination found that DIA provides ethics advice and counseling in accordance with the requirements at 5 C.F.R. § 2638.203 and § 2638.204. OGE also found that the written advice and counseling examined during the review had been provided in a user-friendly format and appeared consistent with appropriate laws and regulations. Employees are encouraged to contact the Ethics Office via e-mail, telephone, or in-person. However, most inquiries are made and advice rendered via e-mail correspondence. OGE notes that while the Ethics Office is primarily responsible for providing advice to DIA employees, including rendering advice to the DIA Director, all Deputy DAEOs are authorized to provide advice and counsel to employees on routine matters.

Enforcement

OGE met with the DIA Counsel to the Inspector General (IG Counsel) to discuss DIA's system of enforcement and determine the effectiveness of the working relationship between the Ethics Office and IG officials. Consistent with 5 C.F.R. § 2638.203(b)(12), it was clear that a close working relationship existed between the Ethics Office and the Office of the Inspector General (OIG). This was evidenced by the DAEO's designation of the IG Counsel to serve as a Deputy Ethics Official for the IG staff.² In this capacity, the IG Counsel is responsible for providing ethics advice, annual ethics training, and other ethics program services to IG employees. The IG Counsel also assists in providing in-person initial ethics orientation training to all new civilian hires and military members who are assigned to DIA.

OGE assessed DIA's compliance with the requirement that OGE be concurrently notified of all referrals for prosecution made to Department of Justice (Justice) regarding alleged violations of the criminal conflict of interest statutes, declinations to prosecute, follow-up actions on referrals, and the disposition of the referral. (*See* 5 C.F.R. § 2638.603.) When discussing DIA's system of enforcement with the IG Counsel, OGE found the IG Counsel was aware of the requirement to concurrently notify OGE when referrals are made to Justice. However, the IG Counsel acknowledged that concurrent notification to OGE has not been consistent. According to the IG Counsel, copies of referrals are also sent to the Ethics Office but there was some confusion regarding which office (the Ethics Office or the IG office) has the responsibility for concurrently notifying OGE when referrals are made.

Two referrals were made to Justice regarding potential criminal conflict of interest violations in 2012, according to the IG Counsel, in both cases, Justice declined to prosecute. However, OGE was not concurrently notified that the referrals had been made. The IG Counsel also indicated that there had been no referrals made to Justice in 2013. According to DIA's annual questionnaire there was one reported disciplinary action taken based wholly or in part upon violations of the Standards of Conduct.

² OGE notes that prior to joining the IG office, the IG Counsel was a part of DIA's Office of the General Counsel.

To improve this area of DIA's ethics program, OGE is recommending that DIA establish procedures which identify the office responsible for notifying OGE of all criminal conflict of interest referrals and other required follow-up information using the OGE Form 202, Notification of Conflict of Interest Referral. While OGE regulations do not specify who at an agency must notify OGE, this responsibility usually lies with either an agency's IG or ethics officials.

Recommendation

- Establish procedures which identify the office responsible for notifying OGE of all criminal conflict of interest referrals and other required follow-up information using the OGE Form 202, Notification of Conflict of Interest Referral.

1353 Travel Acceptances

DIA accepts payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under the authority of the General Services Administration (GSA) regulation at 41 C.F.R. chapter 304, implementing 31 U.S.C. § 1353. The approval process for accepting payment under this authority is specified in subsection 4-300 of the JER.

To meet the semiannual reporting requirement, the Ethics Office is responsible for compiling the information to be reported from all DIA components, drafting the semiannual report of payments of more than \$250 per event, and forwarding it to OGE. OGE examined DIA's semiannual reports covering October 1, 2012 through March 31, 2013 and April 1, 2013 through September 30, 2013. In total, 25 travel payments had been accepted during these periods. OGE determined that both reports had been submitted to OGE in a timely manner.

Agency Comments

DIA provided written comments on a draft of this report. Some of the comments were incorporated into the text of the final report. Additional comments are below.

In response to OGE's concern and corresponding recommendation that DIA ensure that all confidential financial disclosure filers submit their reports timely, DIA responded:

For 2015 filing season, all 450 filers were notified of the February 17th deadline using the Agency's worldwide electronic tasking system, announced at various senior and staff director meetings, posted the information on the Agency's web page, and sent emails (and reminders) to the individual filer, their supervisors, and newly established sub-office points of contact via Financial Disclosure Management (FDM) software program.

In response to OGE's concern and corresponding recommendation regarding annual ethics training in 2014, DIA responded:

Although multiple training sessions were provided for confidential filers in 2013, not all attended. For the 2014 annual ethics training, the Financial Disclosure Management program was used to record and track the annual training for all filers. Therefore, the Ethics Office could

more easily identify those filers who were delinquent in satisfying the annual ethics training requirement.

Additionally, ethics officials continued to provide in-person initial ethics orientation to all new employees, and in-person annual ethics training to all covered employees, both OGE 278 and 450 filers. To ensure that all 450 filers were notified of the annual training requirement, the Ethics Office used the Agency's worldwide electronic tasking system, announced the various training sessions at various senior leadership and staff director meetings, posted the information on the Agency's web page, and sent emails (and reminders) to the individual filer, their supervisors, and newly established sub-office points of contact via Financial Disclosure Management (FDM) software program.

In response to OGE's concern and corresponding recommendation regarding concurrent notification of criminal conflict of interest referrals, DIA responded:

The Inspector General's Counsel (IG Counsel) will coordinate with and notify the Ethics Office of all criminal conflict of interest referrals and follow-up information. The Ethics Office will be responsible for completing and submitting the requisite OGE Form-202.

Additionally, DIA's comments included the following:

DIA appreciates the time and effort OGE expended on the Ethics Program Review. We look forward to continuing to work with OGE on recommendations for improving its Ethics. One such effort is that DIA has approved a full-time attorney position to be the Ethics Program Coordinator.