

**United States Office of Government Ethics**

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Program Review Division

# Ethics Program Review

National Aeronautics and Space Administration

## Results in Brief

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The United States Office of Government Ethics (OGE) conducted a review of the National Aeronautics and Space Administration headquarters (NASA) ethics program in June 2012. The results of the review indicated that the NASA ethics program generally appears to be effectively administered and in compliance with applicable laws, regulations, and policies except in the areas of timely certification of public financial disclosure and identification of new entrant confidential financial disclosure.

### Highlights

- NASA has comprehensive written procedures for all aspects of its ethics program, a cornerstone for a robust succession plan.
- NASA Ethics Program Tracking System (EPTS), a Web-based filing and tracking system, has introduced efficiency into the financial disclosure report collection process.
- NASA provides tailored ethics training to diverse internal groups and divisions.

### Concerns

- The OGE review team reviewed a sample of public financial disclosure reports required to be filed in 2011 and found that 73% of public reports were certified beyond the 60 day deadline.
- NASA Headquarters appears to have challenges timely identifying new entrant confidential financial disclosure report filers.

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## Objectives, Scope, and Methodology

OGE provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance. The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program. OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act and 5 CFR part 2638.

To assess NASA headquarters' ethics program, OGE examined a variety of documents provided by the Alternate Designated Agency Ethics Official (ADAEO); other documents that NASA submitted to OGE, including the annual questionnaire, prior program review reports, a review of Headquarters' public and confidential financial disclosure reports and the advice and counseling rendered to Headquarters employees. Members of OGE's Program Review Division met with the ADAEO, two Attorney Advisors and a Paralegal Specialist to seek clarification on issues that arose through analysis of documentation and to verify data collected. Lastly, members of OGE's Program Review Division also met with the DAEO and the Inspector General and Deputy Inspector General to obtain additional information about NASA's ethics program.

## Program Administration

NASA's ethics program has become highly formalized with written procedures governing all ethics-related areas. Internal directives state that the ADAEO manages the entire NASA ethics program on behalf of the DAEO. However, authority is further delegated to Chief Counsels at each of NASA's ten field centers who are designated Deputy DAEOs. The Deputy DAEOs report to the ADAEO concerning ethics-related matters. Although not in scope for this review, it is important to note that headquarters ethics officials provide guidance to the field centers on ethics issues and are expected to consult with Headquarters ethics officials on cases when the sensitivity of the matter warrants it or when Headquarters' expertise is needed.

The ethics program at headquarters is organizationally located within the Office of the General Counsel. The General Counsel serves as DAEO and a Senior Attorney serves as Alternate DAEO. The Alternate DAEO is responsible for the day-to-day operation of the headquarters program and is assisted by two full-time and five part-time ethics officials.

## 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 demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (OGE Form 278). Title I also authorizes OGE to establish a

confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest reviews (OGE Form 450). Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of officers and employees. *See* 5 CFR § 2634.104(b).

### **Written Procedures**

NASA's written procedures outline the financial disclosure system as required by Section 402(d)(1) of the Ethics in Government Act. In fact, NASA has written procedures for all facets of the administration of its ethics program. NASA's written procedures provide a basis for a robust succession plan; OGE considers NASA's comprehensive written procedures a model practice.

### **Electronic Filing System**

The Ethics Program Tracking System (EPTS) is a Web-based filing and tracking system that enables covered employees to electronically file and digitally sign financial disclosure reports. EPTS allows ethics officials to track, review, and certify public and confidential financial disclosure reports. The review team was impressed with EPTS' functionality, especially the integrated cautionary memoranda builder and prohibited holdings list. EPTS notifies filers of their responsibility to file via e-mail. When filers access EPTS they may add unlimited entries, print a copy of their completed financial disclosure form, and securely digitally sign the report. EPTS automatically notifies filers when the agency has received and certified the form. EPTS is a robust tracking and management system that gives NASA substantial control over the administration of the public and confidential financial disclosure systems. EPTS has introduced efficiency into the confidential financial disclosure system.

### **Public Financial Disclosure**

NASA Headquarters has 214 public financial disclosure filers, which includes four Presidentially appointed and Senate-confirmed officials. To evaluate the effectiveness of NASA's public system, OGE examined 49 public financial disclosure reports that were required to be filed in 2011. All but one of the reports in the sample was submitted timely. Because the late report occurred due to an administrative error, ethics officials waived the late filing fee.

OGE found that 73% of public reports were certified beyond the 60 day deadline. For the majority of annual public reports under review, the technical review did not begin until July 11, 2011, almost two months after the May 15<sup>th</sup> submission deadline. In only a couple of instances were ethics officials in communication with filers to obtain clarification and/or additional information. Although late, NASA's review of the public financial disclosure reports appears to be detailed. OGE found ample evidence of analysis and research. Eighteen percent of the sample OGE examined contained cautionary memoranda issued to public filers. These memoranda caution filers from participating in any activities involving the financial interests or covered relationships identified unless they receive a waiver from the DAEO. Ethics officials explained that this percentage is a relatively accurate representation for the total universe of public filers. Ethics officials are vigilant regarding potential conflicts and out of an abundance of caution issue

cautionary memoranda for these types of issues. As previously mentioned, EPTS has a built-in cautionary memoranda builder that significantly facilitates the process of issuing cautionary memoranda. The cautionary memorandum is e-mailed to the filer and a copy is kept in the EPTS system.

Given the high visibility of public filers and their role as key decision-makers, it is imperative that NASA conduct a timely review and certification of their financial disclosure reports.

### **Confidential Financial Disclosure**

NASA Headquarters has 464 confidential financial disclosure filers. To evaluate the effectiveness of NASA's confidential system, OGE examined 104 confidential financial disclosure reports that were required to be filed in 2011. Of the 104 confidential reports we examined, 90 of them were annual reports. Approximately 89% of the annual confidential financial disclosure reports we examined were submitted timely. A limited number of filers were granted extensions when warranted, although NASA did not consistently document the reasons for extensions.<sup>1</sup> The vast majority of annual confidential financial disclosure reports we examined were reviewed and certified timely. Ethics officials certified after 60 days only in instances where they were awaiting additional information from the filer to conduct a complete examination. NASA's review of the confidential financial disclosure reports appears to be detailed. OGE noted ample evidence of analysis and research. Forty two percent of the sample OGE examined contained cautionary memoranda issued to annual confidential financial disclosure filers. Ethics officials explained that this percentage is a relatively accurate representation for the total universe of confidential filers. The reasons for cautionary memoranda in the confidential financial disclosure program mirror the factors mentioned above for their usage in the public financial disclosure program.

The remaining 14 reports in our sample were new entrant confidential financial disclosure reports. Our review of these reports suggests that NASA may have a problem identifying new entrants, since 11 of the 14 reports were submitted late. In fact, six reports were at least 85 days late and the other five were more than 100 days late. The review team raised the issue with ethics officials, who were previously unaware of the scope of this problem. NASA Headquarters ethics officials told the review team that they would investigate the issue to determine what could have caused the issues. Although the EPTS system is supposed to "assist with the identification of new entrant and termination filers," it appears that there are process improvement opportunities that need to be made to ensure timely new entrant submissions.

### Recommendations

- Develop an action plan to address the late review and certification of public financial disclosure reports.
- Identify the reasons for and develop an action plan to address problems with the timely identification of new entrant confidential financial disclosure report filers.

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<sup>1</sup> During our initial examination, the OGE review team did not encounter extension annotations in the reports. We asked NASA Headquarters regarding this practice and they provided additional information regarding extensions. The review team suggested that ethics officials annotate in the report when extensions were granted.

## Education & Training

OGE found NASA's education and training program to be in compliance, including documenting annually its ethics training plan and satisfying both OGE's initial and annual training requirements.<sup>2</sup>

### Initial Ethics Orientation (IEO)

OGE examined NASA's IEO presentation and found it to be in compliance with 5 CFR § 2638.703. Ethics officials conduct IEO on a monthly basis as part of the in-processing of new employees arranged by Human Resources. Recently, as fewer employees are being hired, the ethics office will schedule an in-person appointment when one or two new employees require IEO.

### Annual Ethics Training

In 2011, the DAEO provided verbal training to all covered full-time employees. OGE examined NASA's annual training material and found it to be in compliance with 5 CFR § 2638.704 and 705. The review team also reviewed three presentations tailored specifically for specialized groups at NASA's headquarters such as administrative professionals, information and technology managers, and senior managers. The tailored presentations are also in compliance with 5 CFR § 2638.704 and 705. OGE considers providing such targeted ethics training to be a model practice.

## Advice & Counsel

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. See 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. See 5 CFR § 2638.204.

OGE's review of a sample of advice and counseling services found that NASA is complying with 5 CFR § 2638.203(b)(7) and (8). Specifically, OGE reviewed a sample of 36 instances of written advice and counsel issued to agency employees in the areas of gifts from outside sources, gifts between employees, 1353 travel acceptances, seeking employment, conflicts of interest, impartiality, outside activities, and misuse of position. The advice was rendered timely and appeared to be accurate.

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<sup>2</sup> We discuss ethics training for peer reviewers in a subsequent section of this report.

## Enforcement

NASA reported no disciplinary actions based wholly or in part upon violations of the standards of conduct provisions (5 CFR part 2635) in 2010. NASA reported no disciplinary actions based wholly or in part upon violations of the criminal conflict of interest statutes (18 U.S.C §§ 203, 205, 207, 208, and 209) or the standards of conduct provisions (5 CFR part 2635). NASA did make two referrals to the Office of the Inspector General (OIG) of potential violations of the criminal conflict of interest statutes. One of the referrals was submitted to the Department of Justice (DOJ) as a potential violation of the criminal conflict of interest statutes.

The review team met with the NASA Inspector General, Deputy Inspector General, and the Counsel to the Inspector General regarding the relationship with the NASA ethics office. The strong working relationship between the offices is multi-faceted and appears to be effective. First, the OIG is responsible for concurrent notification to DOJ and OGE for referrals of potential violations of the criminal conflict of interest statutes. OIG would also notify OGE and the ethics office of the final disposition of these referrals. Second, in 2004 the OIG requested and received delegated authority from the ethics office to review public and confidential financial disclosure forms. The OIG works closely with the ethics office and obtains guidance from the ethics office to ensure consistency in the review of OIG reports. Finally, OIG interfaces with the ethics office on cases and investigations that have an ethics component to gain access to financial disclosure forms and advice rendered.

## Special Government Employees

An SGE is defined in 18 U.S.C. § 202(a) as “an *officer or employee*... who is retained, designated, appointed, or employed” by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. Accordingly, SGEs are Government employees for purposes of certain conflict of interest laws. See DAEOgram DO-00-003A and OGE’s informal Advisory Memoranda 82 x 21, 82 x 22, and 00x 1, and DAEOgram DO-04-022.

### Confidential Financial Disclosure for SGEs

NASA Headquarters services 168 SGEs who file confidential financial disclosure reports. NASA SGEs serviced by Headquarters mainly consist of NASA Advisory Council (NAC) members who provide the NASA Administrator with counsel and advice on programs and issues of importance to NASA. However, there are also subcommittees which meet throughout the year and deal more in-depth with issues.<sup>3</sup> The subcommittees then bring their proposed observations, findings, and recommendations to the NAC for deliberation and final decision on whether to send forward to the NASA Administrator.

<sup>3</sup> Some of the committees and subcommittees include the Audit Finance and Analysis Committee, Science Committee, Commercial Space Committee, Human Exploration and Operations Committee, International Space Station Advisory Committee, Education & Public Outreach Committee Planetary Science Subcommittee, and the Astro-Physics Subcommittee.

SGEs are required to file their financial disclosure reports before attending a board meeting or rendering any advice. Because ethics laws prohibit Government employees from having financial conflicts of interest, it is essential that ethics officials identify and resolve all real or potential conflicts of interest or other violations in a timely manner. See 5 CFR § 2634.903 (b)(3) and OGE Advisory opinion 00 X 1.

The OGE review team examined a sample of 49 confidential financial disclosure reports required to be filed by SGEs in 2011. NASA has established September 30<sup>th</sup> of each year as the date of collection for these reports; however, for the 2011 filing cycle, NASA extended this deadline to November 7th. Twenty-three of the 49 reports the review team examined were submitted timely. Twenty-six reports were submitted late; however, 20 of these reports were submitted within 30 days of the filing deadline. The review team identified a few technical reporting issues such as marking annual instead of new entrant, over-reporting of assets, and providing full rental or home addresses. The review team brought the technical errors to the attention of ethics officials who acknowledged the technical issues and agreed to be more vigilant in the future.

### **Ethics Training for SGEs**

NASA provides in-person training to SGEs before they attend a committee meeting or perform any duty in an official capacity. The OGE review team examined the presentation that ethics officials provide to SGEs and found it to be in compliance with regulatory requirements. Ethics officials provide in-person ethics training to SGEs before their meetings. Ethics officials track SGE ethics training using EPTS. The OGE review team reviewed an EPTS-generated ethics training report and found that all active SGEs serviced by NASA Headquarters received ethics training in 2011.<sup>4</sup>

### **Outside Employment and Activities**

NASA's supplemental standards prohibit employees (except for SGEs) from engaging in certain types of outside employment and require prior approval before engaging in other specified outside employment or activities. We examined eight of the 30 employee requests to engage in outside employment or activities during the period under review. In all cases, the approvals were granted in accordance with the provisions of the supplemental standards.

### **Peer Reviewers**

In March of 2008, NASA's DAEO sent OGE a letter requesting approval for an alternate financial disclosure procedure to allow peer reviewers of grant applications<sup>5</sup> to file a NASA-

<sup>4</sup> Two SGEs did not receive ethics training, the first was seriously ill and thus inactive most of the covered year and the other SGE was inactive.

<sup>5</sup> The NASA DAEO told OGE: "As a science and technology agency, NASA receives thousands of grant applications a year and relies upon the comments of peer reviewers to help the Agency evaluate the proposals. Many of these reviewers are civil servants at one of NASA's ten Centers as well as civil servants from other

specific self-certification form in lieu of the confidential financial disclosure form (OGE Form 450). In April of 2008, OGE approved NASA's request to implement an alternative confidential financial disclosure procedure pursuant 5 CFR § 2643.905.

For the year under review, NASA Headquarters had 18 peer reviewers who filed the alternative financial disclosure form. Prior to the on-site portion of the review, the OGE review team learned that NASA does not believe that peer reviewers meet the definition of a confidential filer found at 5 CFR § 2634.904(a) and as such has not provided ethics training pursuant 5 CFR 2638.705(a) to peer reviewers. The implementation of an alternative confidential financial disclosure procedure is in *lieu* of the confidential financial disclosure form (OGE Form 450). Therefore, OGE reminds NASA that peer reviewers meet the definition of confidential filers and are required to receive annual ethics training. OGE reminds NASA that this training need not be in-person and resource-draining.

#### Recommendation

- Provide peer reviewers with annual ethics training pursuant 5 CFR 2638.705(a).

#### **1353 Travel Acceptances**

NASA permits its employees to accept 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 CFR chapter 304, implementing 31 U.S.C. § 1353. NASA has written procedures to implement 31 U.S.C. § 1353 which clearly delineate all roles and responsibilities in the process. NASA Form 1167 and its instructions mandate a review by the Office of General Counsel with the Alternate DAEO and another ethics official identified as the points of contact. The Office of the Chief Financial Officer is responsible for reporting and collecting data for the agency's semiannual report of payments of more than \$250 per event. The NASA Headquarters ethics office is responsible for forwarding the semiannual report to OGE.

The semiannual reports on payments covering the period from April 1, 2011 – September 30, 2011 and the October 1, 2011 – March 31, 2012 were submitted timely. Semiannual travel reports are now posted on our website in accordance with federal efforts to make information available to the public. See OGE Program Management Advisory PA-11-02 issued on March 30, 2011, "Procedural Update for Reporting Payments Accepted Under 31 U.S.C. § 1353."

#### **Agency Comments**

NASA is very appreciative of the OGE team's engagement with NASA's Headquarters for our program review. We are also pleased to learn of OGE's highlights, which complemented our

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agencies. Many peer reviewers are not in positions that would ordinarily require them to file [OGE Form] 450s and often serve on only one peer review a year in their area of expertise."

comprehensive written procedures, robust succession plan, the efficiency of our electronic Ethics Program Tracking System (EPTS), and our ethics training tailored to diverse internal groups.

NASA agrees with OGE's observation that we have experienced challenges in timely identifying new confidential financial disclosure report filers. Our preliminary review indicates that this is due largely to the interface between personnel and ethics systems, including on-boarding processes related to electronic position descriptions and their filing status code. We have already initiated discussions with key stakeholders, including NASA's Office of Human Capital, and the NASA Shared Services Center (NSSC) in Mississippi. We will continue and expand these discussions to further ascertain the cause and plan the way forward.

While OGE praised the detailed nature of our public financial disclosure review, including the vigilance of our advice and the quality of our process for issuing cautionary letters, our certification timeliness was a concern. In response, we wish to note two factors specific to the 2011 filing cycle, which was the cycle evaluated in our program review. First, as we outlined to OGE, staffing issues we experienced during that period impacted our review time. Second, we relied on an interpretation concerning what constitutes an initial review for purposes of the 60 day OGE regulatory timeframe that OGE had previously communicated to us. On August 29, 2011, 3 and ½ months after the 2011 annual filing deadline, OGE issued Program Management Advisory PA-11-04, which corrected different interpretations of this requirement that had apparently been communicated to agencies. NASA appreciates OGE's clarification of this requirement, though it was issued too late to have meaningfully impacted our 2011 review. Consequently, the percentage of forms not reviewed under the 60 day timeframe would have been substantially lower under our previous understanding of the rule.

The above being said, NASA recognizes the urgency of timely public financial disclosure review, especially in light of new STOCK Act disclosure requirements that require forms to be electronically accessible no later than 30 days after filing. Because of the STOCK Act, we are reprioritizing our workflow to complete public financial disclosure review before forms need to be posted, which will require us to complete our review well within the 60 day regulatory timeframe.

OGE also noted that individuals who file who file NASA's alternative financial disclosure report for peer reviewers in lieu of Form OGE 450 "meet the definition of confidential filers and are required to receive ethics training." NASA does not agree with this general conclusion because the peer review form is used in circumstances where a filer may or may not be performing duties lasting over 60 days so as to require the individual to file a confidential financial report. That technical point aside, NASA appreciates OGE's suggestion of using an abbreviated training procedure for peer reviewers, and we will coordinate with our field centers which will be impacted to determine appropriate next steps.