



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

April 9, 2009

Edgar Swindell  
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 completed its review of the Department of Health and Human Services' (HHS) ethics program within the Office of the Secretary and ~~Office of the General Counsel~~ - Ethics Division (OGC-Ethics Division). Enclosed are an executive summary and report on OGE's review.

The purpose of a review is to identify and report on the strengths and weaknesses of a program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program.

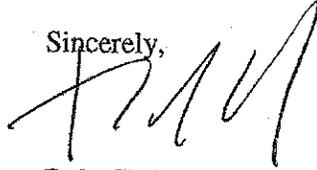
During its ethics program reviews, OGE identifies model practices that agencies have implemented to enhance the ethics program. OGE identified the below model practices at OS and OGC-Ethics Division.

- Expanding oversight and monitoring of the financial disclosure systems and the ethics training program HHS-wide.
- Revising the HHS supplemental standards of conduct regulation.
- Modifying the performance plans or contracts of all HHS Deputy Ethics Counselors to include an evaluation element of their ethics duties and responsibilities.
- Performing self-assessments through internal ethics program reviews conducted by the OGC-Ethics Division.
- Providing instructor-led initial ethics orientation to HHS employees.
- Providing instructor-led annual ethics training to political appointees.
- Providing verbal annual ethics training to confidential financial disclosure filers.
- Establishing written procedures for various aspects of the ethics program.

Mr. Edgar Swindell  
Page 2.

If you have comments or would like to discuss the report, please contact me at 202-482-9224. You may also contact OGE's Deputy Director, Joseph E. Gangloff, at 202-482-9220.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dale Christopher', written in a cursive style.

Dale Christopher  
Associate Director  
Program Review Division

Enclosures



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

April 9, 2009

Daniel R. Levinson  
Inspector General  
Department of Health and Human Services  
330 Independence Avenue, SW.  
Washington, DC 20201

Dear Mr. Levinson:

The Office of Government Ethics (OGE) has completed its review of the Department of Health and Human Services' (HHS) ethics program within the Office of the Secretary and Office of the General Counsel – Ethics Division (OGC-Ethics Division). Enclosed are an executive summary and report on OGE's review.

The purpose of an OGE review is to identify and report on the strengths and weaknesses of an ethics program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures in place for administering the program.

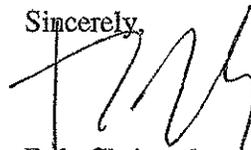
During its ethics program reviews, OGE identifies model practices that agencies have implemented to enhance the ethics program. OGE identified the below model practices at OS and OGC-Ethics Division.

- Expanding oversight and monitoring of the financial disclosure systems and the ethics training program HHS-wide.
- Revising the HHS supplemental standards of conduct regulation.
- Modifying the performance plans or contracts of all HHS Deputy Ethics Counselors to include an evaluation element of their ethics duties and responsibilities.
- Performing self-assessments through internal ethics program reviews conducted by the OGC-Ethics Division.
- Providing instructor-led initial ethics orientation to HHS employees.
- Providing instructor-led annual ethics training to political appointees.
- Providing verbal annual ethics training to confidential financial disclosure filers.
- Establishing written procedures for various aspects of the ethics program.

Mr. Daniel R. Levinson  
Page 2

If you have comments or would like to discuss the report, please contact me at 202-482-9224. You may also contact OGE's Deputy Director, Joseph E. Gangloff, at 202-482-9220.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale Christopher". The signature is stylized with a large initial "D" and "C".

Dale Christopher  
Associate Director  
Program Review Division

Enclosures



United States Office  
Of Government Ethics

Report Number 09-010

## Highlights

### Model Practices

- Expanding oversight and monitoring of the financial disclosure systems and the ethics training program HHS-wide.
- Revising the HHS supplemental standards of conduct regulation.
- Modifying the performance plans or contracts of all HHS DEC's to include an evaluation element of their ethics duties and responsibilities.
- Performing self-assessments through internal ethics program reviews conducted by the OGC-Ethics Division.
- Providing instructor-led initial ethics orientation to HHS employees.
- Providing instructor-led annual ethics training to political appointees.
- Providing verbal annual ethics training to confidential financial disclosure filers.
- Establishing written procedures for various aspects of the ethics program.

If you have comments or would like to discuss this report, please contact Dale Christopher, Associate Director for Program Reviews, at 202-482-9224 or [dachrist@oge.gov](mailto:dachrist@oge.gov)

# Ethics Program Review

## Department of Health and Human Services

### Office of the Secretary

### Office of the General Counsel – Ethics Division

April 2009 Report

## Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics programs at the following components within the Department of Health and Human Services (HHS): the Office of the Secretary (OS), the Health Resources and Services Administration (HRSA), and the Centers for Medicare and Medicaid Services (CMS). OGE's review also focused on the administration of the ethics program HHS-wide by the Office of the General Counsel's Ethics Division (OGC-Ethics Division). This report details OGE's review of OS and the OGC-Ethics Division. (Reports detailing OGE's review of CMS and HRSA will be issued separately.)

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 found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures in place for administering the program.

During its ethics program reviews, OGE identifies model practices that agencies have implemented to enhance the ethics program. The model practices that OGE identified at OS and the OGC-Ethics Division are highlighted in the box to the left.

This report has been sent to HHS' Designated Agency Ethics Official and Inspector General.



United States Office  
Of Government Ethics

Report Number 09-010

## Ethics Program Review

# Department of Health and Human Services Office of the Secretary Office of the General Counsel – Ethics Division

April 2009 Report

### Introduction

#### OGE MISSION

The United States Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance.

#### PURPOSE OF A REVIEW

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 found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures in place for administering the program.

#### REVIEW AUTHORITY AND SCOPE

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the Office of the Secretary (OS) and the Office of General Counsel-Ethics Division (OGC-Ethics Division), Department of Health and Human Services (HHS), focused on the elements listed below.

- Leadership involvement in the ethics program
- Program structure
- Financial disclosure systems
- Outside employment and activities
- Federal advisory committees
- Ethics training
- Ethics counseling
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

## **Ethics Program Review: HHS**

OGE also conducted reviews of HHS' Health Resources and Services Administration (HRSA) and the Centers for Medicare and Medicaid Services (CMS). This report details OGE's review of OS and the OGC-Ethics Division. (Reports detailing OGE's review of CMS and HRSA will be issued separately.)

On-site fieldwork for OGE's review of OS and the OGC-Ethics Division was conducted in 2005 and 2006. A follow-up meeting with OGC-Ethics Division officials was held in October 2008 to gather additional, updated information regarding the ethics program.

### **Program Elements**

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

#### **LEADERSHIP**

Commitment and action by agency leadership is the keystone for ensuring the integrity of an agency's ethical culture and for fostering public confidence in the decision-making processes of Government. The Secretary of HHS and the HHS Designated Agency Ethics Official (DAEO) meet on a regular basis to discuss ethics issues. Moreover, HHS leadership demonstrated its commitment to enhancing HHS' ability to administer a sound and effective ethics program by dedicating additional staff and financial resources to redesign and augment the capabilities of the OGC-Ethics Division. In fact, according to OGC-Ethics Division officials, in some instances leadership originated requests for more ethics staff.

#### **PROGRAM STRUCTURE**

The Associate General Counsel for Ethics (in the OGC-Ethics Division), serves as the HHS DAEO and has oversight responsibility for the HHS-wide ethics program. The OGC-Ethics Division staff assists the DAEO in carrying out the day-to-day management of the ethics program. Duties within the OGC-Ethics Division include developing ethics-related regulations and policies, administering and monitoring the public and confidential financial disclosure systems, designing and implementing the ethics training program, providing HHS employees with ethics counseling services, and conducting internal compliance based reviews.

In addition to establishing policies and procedures for the overall operation of the HHS ethics program, the OGC-Ethics Division also directly administers the ethics services for HHS employees within several OS divisions. These OS divisions include the Office of the General Counsel, the Office of the Assistant Secretary for Legislation, and the Office of Intergovernmental Affairs.

#### Deputy Ethics Counselors

In addition to the staff in the OGC-Ethics Division, HHS also relies on the cooperative efforts of a network of Deputy Ethics Counselors (DEC) to help administer the ethics program within each HHS operating and staff division. DEC's are generally senior-level management officials chosen by the DAEO in consultation with the head of each operating or staff division.

## **Ethics Program Review: HHS**

According to OGC-Ethics Division officials, the DAEO is involved in every DEC appointment and has input on their performance evaluations.

DECs are responsible for establishing a system for reviewing public and confidential financial disclosure reports, considering outside activity requests, providing ethics counseling, initiating ethics training programs, and ensuring that violations of the conflicts statutes or the standards of conduct are reported to investigatory authorities and where appropriate, seeing that disciplinary action is taken. DEC responsibilities are laid out in the HHS "Statement of Functions, Responsibilities, and Authority," commonly referred to as the "Green Book." The Green Book is composed of 14 chapters covering guidance, standard procedures, and instructions. According to OGC-Ethics Division officials, DEC also receive in-person training when they are appointed to a DEC position.

Assisting each DEC in carrying out their ethics-related duties are management and/or personnel specialists who serve as ethics contacts or coordinators.

### Improvements in the OGC-Ethics Division

#### Staffing and Structure

Since OGE's last review of the HHS ethics program, conducted in 1998, staff, resources, and responsibilities of the OGC-Ethics Division have increased significantly. Under the direction of the DAEO, the OGC-Ethics Division has grown from a staff of 7 to a staff of 25, all devoted to ethics on a full-time basis. According to OGC-Ethics Division officials there are close to 200 ethics officials HHS-wide located in the various HHS components, about 100 of whom perform ethics duties on a full-time basis.

The OGC-Ethics Division is now comprised of two branches: 1) the Ethics Advice and Financial Disclosure Branch and 2) the Ethics Education and Program Review Branch. Both branches are headed by Deputy Associate General Counsels. The Deputy Associate General Counsel for Ethics Advice and Financial Disclosure serves as the agency's Alternate DAEO.

#### Public Financial Disclosure

The OGC-Ethics Division has increased its oversight of the public financial disclosure system HHS-wide. The increased oversight has taken the form of several initiatives which are summarized below.

- The OGC-Ethics Division now serves as the repository for all certified original public reports filed HHS-wide. While DECs are still responsible for collecting, reviewing, and certifying public reports filed within their respective components, all certified public reports are now required to be forwarded, along with any approved outside activity forms, to the OGC-Ethics Division. To help ensure that all conflicts or potential conflicts of interest have been promptly identified and resolved, the OGC-Ethics Division is now responsible for conducting oversight reviews of these reports.
- The DECs now report to the OGC-Ethics Division when employees are designated to serve on an acting basis in a public filing position for more than 14 days. For

## Ethics Program Review: HHS

temporary acting service of 14 days or less, the official designating the employee to serve in an acting capacity must obtain a copy of the employee's public (or confidential) report, if applicable, and review the employee's report and any outside affiliations.

- An HHS-wide effort was undertaken to enhance the level of public filing for certain employees throughout HHS, who, by virtue of their positions, should be required to file a public report. All HHS components were directed to identify employees that occupied certain non-General Schedule and non-Senior Executive Service (SES) pay plan positions that, in the judgment of the DEC, could be considered "SES-Equivalent" for purposes of filing a public report. Since 2004, this canvas has produced a considerable number of requests from HHS to OGE for equivalency determinations.
- A new hiring and pre-appointment process has been implemented for all prospective employees who are selected for positions for which a public report is required to help avoid the possibility of senior-level HHS employees performing Federal duties without a prior conflict of interest determination. Through the incorporation of a pre-appointment review, all prospective employees who are now selected for employment at HHS in non-career SES, Schedule C, career SES, 0-7 uniformed service, or an equivalent position subject to the public filing requirements are now required to complete the following steps prior to being considered for a position: 1) file a completed new entrant public report with the OGC-Ethics Division, 2) execute an ethics agreement, where appropriate, 3) receive an initial ethics orientation or similar briefing from the OGC-Ethics Division via telephone, in-person, or by other means, and 4) receive a final ethics clearance from the OGC-Ethics Division.

### Performance Plan Elements for DEC's, Senior Executives, Managers, and Supervisors

The HHS ethics program relies considerably on the actions of executives, managers and supervisors in reviewing financial disclosure reports, approving outside activity requests, and providing guidance. As initiated by the DAEO, HHS includes an evaluation element in the performance plan or contract of all DEC's to reflect their ethics duties and responsibilities. Signed copies of each DEC's performance plan or contract is filed annually with the HHS DAEO on or before November 30.

### Self-Assessment

Self-assessment is a vital tool in managing an effective ethics program. The OGC-Ethics Division performs self-assessments of the ethics program at the various HHS components. The self-assessments take the form of internal ethics program reviews conducted by the OGC-Ethics Division's Program Review Section.

The Program Review Section has conducted 36 program reviews since 2005. According to OGC-Ethics Division officials, all HHS operating and staff divisions have been reviewed at least once. Thirty-six reports have been issued based on the program reviews.

## **Ethics Program Review: HHS**

According to OGC-Ethics Division officials, the reviews closely resemble the program reviews that OGE conducts. Documentation provided to OGE showed that the reviews resulted in 186 "required actions," which are similar to the recommendations that OGE makes in its program review reports. The documentation also showed that all but approximately 20 required actions from the 5 most recent reports have been closed.

### Other Notable Improvements

The OGC-Ethics Division has taken additional steps to enhance its ability to administer a sound and effective ethics program HHS-wide. The steps include:

- revising HHS' supplemental standards of conduct regulation, particularly relating to the outside employment and activities of HHS employees,
- expanding HHS-wide the ethics training program to include more in-person, computer-based, and individualized training opportunities, and
- increasing interaction with HHS' Office of the Inspector General (HHS-IG) to help clearly define each office's role within the system of enforcement, and
- establishing written procedures for ethics training, program reviews, and for processing outside activity requests.

## **FINANCIAL DISCLOSURE SYSTEMS**

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 (SF 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 review (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 both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs and providing counseling to employees. *See* 5 CFR § 2634.104(b).

### Public Financial Disclosure System (SF 278)

The OGC-Ethics Division is responsible for formulating broad policy and procedures for the overall administration of HHS' public financial disclosure system. The OGC-Ethics Division is also responsible for reviewing and certifying public reports for all political appointees, including Presidential appointees requiring Senate confirmation (PAS), Schedule C employees, and non-career members of the SES. Additionally, the OGC-Ethics Division is responsible for reviewing and certifying the public reports filed by the DEC's and the public reports filed within

## **Ethics Program Review: HHS**

the immediate Office of the Secretary, the Office of the Deputy Secretary, and Office of the General Counsel.

All other HHS public reports are reviewed and certified by the DEC's and their staffs. The public reports reviewed and certified by the DEC's and their staffs are submitted to the OGC-Ethics Division for "oversight." The oversight consists of a review of the reports by a paralegal and a Financial Disclosure Counsel.

To evaluate the public system within OS, OGE examined 75 of the 284 public reports that were required to be collected, reviewed, and certified in 2006. The 75 reports consisted of:

### Type of Report

- 54 annual reports
- 9 new entrant reports
- 11 termination reports
- 1 combined annual/termination report

75 total

### Filing Timeliness

- 73 of the 75 reports were filed timely.
- 2 termination reports were filed late.<sup>1</sup>

75 total

### Review Timeliness

- All 75 reports were reviewed timely.

### Certification Timeliness

- All 75 reports were certified timely.

### Confidential Financial Disclosure System (OGE Form 450)

The OGC-Ethics Division is responsible for formulating policies and procedures for the overall administration of HHS' confidential financial disclosure system and for providing guidance to and general oversight of the DEC's.<sup>2</sup> The OGC-Ethics Division is also responsible for reviewing and certifying the confidential reports filed within certain OS components.

---

<sup>1</sup> The \$200 late filing fee for both delinquent filers was waived in accordance with 5 CFR § 2634.704(b).

<sup>2</sup> The DAEO has delegated responsibility of reviewing confidential reports to the DEC's who, in turn, have the authority to delegate the review responsibility to other officials if the DEC determines that the function would best be carried out by another official or office.

## Ethics Program Review: HHS

To evaluate the confidential system within OS, OGE examined 58 reports that were required to be collected, reviewed, and certified by the OGC-Ethics Division in 2005. The 58 reports consisted of:

### Type of Report

- 17 new entrant reports
- 35 annual reports
- 6 OGE Optional Form 450A reports

58 total

### Filing Timeliness

- 56 reports were filed timely.
- 2 reports were filed late.

58 total

### Review Timeliness

- All 58 reports were reviewed timely.

### Certification Timeliness

- All 58 reports were certified in a timely manner.

## OUTSIDE EMPLOYMENT AND ACTIVITIES

Substantial amendments were made to HHS' supplemental standards of conduct regulation to help strengthen the ethics program, particularly regarding employees' outside employment and activities. The amendments resulted in two additional requirements for HHS employees.

- HHS employees who seek to engage in certain outside employment or activities are required to file an initial written request (HHS-520) prior to commencing the outside employment or activities, a revised request if there is a significant change in circumstances, and a renewal request at least 30 days prior to either an approval expiring or 12 months from the date of approval, whichever comes first.
- HHS employees are required to file an annual report (HHS-521) to help ensure that any outside employment or activity which was approved using the HHS Form 520 continues to meet the standards for approval. The HHS-521 must be filed with the employee's supervisor by February 28 of each year and covers all employment that was approved or undertaken in the previous calendar year.

## Ethics Program Review: HHS

OGE examined approximately 117 outside employment positions or activities that required prior approval during the period covered by OGE's review. OGE found the appropriate HHS-520 or HHS-521 forms on file and found evidence that employees were receiving prior approval, when appropriate, before engaging in outside employment or activities.

### ETHICS TRAINING

An ethics training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees.

The day-to-day administration of the HHS training program is carried out by the individual staff and operating divisions under the auspices of the DEC's. The OGC-Ethics Division is responsible for providing guidance and assistance to the DEC's on the implementation of the ethics training requirements and for developing materials that are available for use during training sessions. The OGC-Ethics Division is also responsible conducting ethics training sessions for all political appointees, DEC's and ethics practitioners, and other employees as requested.

The OGC-Ethics Division also holds quarterly meetings with members of the HHS ethics community. The largest of the meetings is the one-day Annual DEC Workshop. According to the OGC-Ethics Division, the workshop has become one of the most important opportunities to "train the trainers," as the DEC's and their staffs are in attendance. For the 2009 DEC Workshop, the OGC-Ethics Division plans to summarize for the DEC's eight sessions from OGE's 16<sup>th</sup> National Government Ethics Conference.

#### Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with an initial ethics orientation. An initial ethics orientation must include:

- the Standards of Ethical Conduct for Executive Branch Employees (Standards) and any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. See 5 CFR § 2638.703.

The OGC-Ethics Division provides instructor-led initial ethics orientation to incoming HHS employees who work in the Washington, DC Headquarters Complex as well as to those who are processed through the Rockville, MD offices. Providing instructor-led initial ethics orientation exceeds the minimum training requirements and is a model practice.

## Ethics Program Review: HHS

New employees are also provided with written materials that include:

- the Standards;
- HSS' supplemental standards of conduct regulation;
- the names, titles, office addresses, and phone numbers of the HHS DAEO and other ethics officials within the OGC-Ethics Division; and
- at least one hour of official duty time to review the items described above. *See 5 CFR § 2638.703.*

OGE attended one of the initial ethics orientation presentations conducted by the OGC-Ethics Division and found it to be well-gearred to the variety of new employees in attendance.

At the time of OGE's follow-up meeting at HHS in October 2008, the OGC-Ethics Division was developing an online training module that focuses on initial ethics orientation. The OGC-Ethics Division hopes that that the training module will be loaded on an employee's computer and that the employee would have to take the training before he or she could otherwise operate the computer.

### Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training. *See 5 CFR § 2638.704(a).* Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See 5 CFR § 2638.704(c)(2).* Other covered employees (e.g., confidential filers) are required to receive verbal ethics training at least once every three years and may receive written training in the intervening years. *See 5 CFR § 2638.705(c).* The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct,
- the Standards,
- any agency supplemental standards,
- the Federal conflict of interest statutes, and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See 5 CFR § 2638.704(b).*

To satisfy the annual ethics training requirement within OS, employees are required to complete an OGC-Ethics Division computer-based training module. According to OGC-Ethics Division officials, the computer-based training module for 2008 annual training focused on gifts, outside activities, and political activities. Links to the 14 Principles, the Standards, HHS' supplemental standard of conduct regulation, conflict of interest statutes, and contact information for ethics officials were provided on the instruction page.

OGE notes that the provision of electronically based training to confidential filers each year exceeds the minimum training requirements. Additionally, in 2008, all political appointees were provided with instructor-led annual ethics training. These actions are model practices.

## Ethics Program Review: HHS

### Ethics Training For SGEs

SGE advisory committee members are required to receive an initial ethics orientation on the conflict-of-interest laws and ethics regulations that apply to them when they first come on board, and annually thereafter, via written training material in accordance with the 5 CFR § 2638.705(d).

The OGC-Ethics Division is responsible for developing the training content for all SGEs throughout HHS. Initial ethics orientations for new SGEs are conducted by the DEC's and their staffs using the content developed by the OGC-Ethics Division.

To comply with the annual ethics training requirements, DEC's have been instructed by the OGC-Ethics Division to provide SGEs with written annual training in lieu of in-person training, in accordance with 5 CFR § 2638.705(d)(2). The written materials consist of:

- Ethics Rules for Advisory Committee Members and Other Individuals Appointed as Special Government Employees (2004) – an 11-page handout created by the OGC-Ethics Division with summarizes the ethical requirements applicable to SGEs serving on advisory committees,
- OGE's Conflict of Interest Prosecution Survey, and
- OGE's Conflict of Interest and the Special Government Employee document.

Although optional, DEC's are also encouraged to provide further ethics training to SGEs by:

- showing the OGE-produced videotape, The Ethical Choice: Ethics for Special Government Employees, and/or
- directing the SGE to complete one of OGE's computer-based training modules.

The OGC-Ethics Division also provides in-person training to advisory committee Designated Federal Officials to ensure that they have a sufficient background in the ethics rules to be aware of issues as they arise.

### Ethics Intranet Site

The OGC-Ethics Division maintains a intranet site that contains comprehensive information concerning the structure of the HHS ethics program. Additionally, the site contains information on current events, financial disclosure, ethics education, advisory opinions, and various links to other ethics-related sites.

## **Ethics Program Review: HHS**

### **ETHICS COUNSELING**

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 assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of advice to assess whether processes and written procedures are effective.

To evaluate the counseling services provided by the OGC-Ethics Division to OS employees, OGE examined a sample of ethics-related counseling covering a variety of issues, ranging from outside activities to seeking and post-employment matters. OGE found the counseling to be in compliance with the requirements of 5 CFR § 2638.203 (b)(7) and (8). The counseling services provided by the OGC-Ethics Division were also found to be timely, which is important in preventing conflicts of interest and other ethics violations from occurring.

Also of note is that, according to OGC-Ethics Division, all political appointees receive in-person post-employment counseling before leaving HHS.

### **ENFORCEMENT**

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).

The OGC-Ethics Division and HHS-IG have an effective working relationship. The OGC-Ethics Division coordinates with HHS-IG, as necessary, on standards of conduct and conflict of interest matters. Both offices have worked to increase interaction with one another to help define each office's role within the system of enforcement. For example, the OGC-Ethics Division meets quarterly with the Special Investigations unit of the HHS-IG.

OGE confirmed that HHS is notifying OGE of referrals to the Department of Justice of alleged violations of the conflict of interest statutes. From 2005 through 2008, HHS concurrently notified OGE of 38 referrals of alleged violations of the conflict of interest statutes, as required by 5 CFR § 2638.603.

## Ethics Program Review: HHS

### ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports of travel payments from non-Federal sources in excess of \$250 to OGE. *See* 31 U.S.C. § 1353.

OGE found HHS to have written procedures in place to administer the acceptance of travel payments from non-Federal sources under the authority of 31 U.S.C. § 1353. The procedures are detailed in the HHS Travel Manual.

The OGC-Ethics Division recently helped to revise the HHS Travel Manual to add a more expansive discussion of ethics considerations. In particular, the OGC-Ethics Division re-wrote the entire section of the manual dealing with § 1353 travel.

The authority for accepting travel payments is delegated to the various HHS components. Approving officials within the components are responsible for submitting information on accepted travel payments to HHS' Office of the Assistant Secretary for Administration and Management, which, in turn, is responsible for compiling the information and forwarding a combined report to OGE on a semiannual basis. OGE received all of the required semiannual reports from 2005 through 2008.

#### Summary

The overall OS ethics program has several processes and procedures in place to prevent ethics violations from occurring. Moreover, with the increase in staff and resources, the OGC-Ethics Division has enhanced its ability to administer an effective ethics program HHS-wide.

During its ethics program reviews, OGE identifies model practices that agencies have implemented to enhance the ethics program. OGE identified the below model practices at OS and OGC-Ethics Division.

- Expanding oversight and monitoring of the financial disclosure systems and the ethics training program HHS-wide.
- Revising the HHS supplemental standards of conduct regulation.
- Modifying the performance plans or contracts of all HHS DECs to include an evaluation element of their ethics duties and responsibilities.
- Performing self-assessments through internal ethics program reviews conducted by the OGC-Ethics Division.
- Providing instructor-led initial ethics orientation to HHS employees.
- Providing instructor-led annual ethics training to political appointees.
- Providing verbal annual ethics training to confidential financial disclosure filers.
- Establishing written procedures for various aspects of the ethics program.

If you have comments or would like to discuss this report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224.