



January 7, 2004

Steven J Morello
Designated Agency Ethics Official
Department of the Army
104 Army Pentagon
Washington, DC 20310-0104

Dear Mr Morello

The Office of Government Ethics (OGE) recently completed its review of the ethics program at the U.S Army Aviation and Missile Command (AMCOM), at the Redstone Arsenal (RA), Alabama This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Ethics Act) Our objective was to determine the ethics program's effectiveness, measured largely by its compliance with applicable statutes and regulations The review was conducted from June through October 2003 The following is a summary of our findings and conclusions

HIGHLIGHTS

Substantial effort will need to be expended to bring the AMCOM ethics program into full compliance with ethics requirements Deficiencies were revealed in the ethics education and training program, by the lack of procedures to ensure that employees disqualify themselves appropriately while seeking post-retirement employment, in the misapplication of the requirements of 5 C F R part 2635 and 41 C F R part 304-1, and in the confidential financial disclosure program Further, the Chief Counsel of AMCOM should ensure that counseling and advice issued to AMCOM employees is in compliance with current statutes and regulations The correction of these deficiencies will enable AMCOM to prevent conflicts of interest more effectively and ensure that AMCOM has an effective ethics program

PROGRAM STRUCTURE

The AMCOM ethics program is established in the General Law/Intellectual Property Law Division (GLIPLD) of the AMCOM Legal Office (LO) An Attorney-Advisor is the primary ethics counselor (EC) and expends approximately 50 percent of his time on the ethics program Four additional attorney-advisors assist in the ethics program, primarily in the review and certification of OGE Forms 450 and in the providing of counseling and advice According to the EC, these attorney

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advisors expend approximately 20 percent of their time on the ethics program. A paralegal has recently been assigned to work on the ethics program and, notwithstanding that she is in a learning process, has already made great strides to improve the management of the confidential financial disclosure program.

Due to the large number of confidential financial disclosure report filers, ethics points of contact (EPC) are established in the AMCOM program offices and directorates prior to the annual confidential filing cycle. The EPCs are appointed by the directors and program managers of the various AMCOM functions. The paralegal has prepared an EPC training program, which all EPCs will be required to attend before the 2003 filing cycle begins.

EDUCATION AND TRAINING

Initial Ethics Orientation Program

Requires Attention

The AMCOM initial ethics orientation (IEO) program is not compliant with the provisions of 5 C F R § 2638 703. The EC advised us that there are no written procedures regarding the notification and scheduling of IEO for new employees hired or transferred to covered positions at AMCOM or RA and there are no assurances that all those required to receive IEO have done so. He stated that there is a verbal agreement with personnel officials to provide him with information concerning new employees, however, it is not effective. The EC indicated that he usually has to request a list of new employees from personnel and schedule IEO for those identified. The EC cannot state whether all new employees are identified to him, however, he believes he provided IEO to approximately 65 people during 2002. There are no tracking procedures to memorialize the IEO. We recommend that the EC establish an IEO program in accordance with § 2638 703 and track employee attendance.

Annual Ethics Training For

SF 278 Filers Is Provided By The EC

Verbal ethics training was provided for the 23 AMCOM public financial disclosure report filers, as required by § 2638.704. The majority of the employees received the training in person from the EC. Some of the employees received the training verbally while in travel status to other facilities and their attendance was verified to the EC by e-mails from the temporary duty locations.

Annual Ethics Training For

Other Employees Requires Attention

Annual ethics training for other employees fell short of the requirements at 5 C F R § 2638 705 and the Department of Defense (DOD) Joint Ethics Regulation (JER). According to the EC, the training consisted entirely of an article published in the RA newspaper which all confidential

disclosure report filers assigned to AMCOM at RA were to read. The required training was brought to the attention of the employees by appropriate supervisory personnel who were apparently advised of the requirement during staff meetings. We recommend that the EC establish an annual ethics training program for other employees in accordance with § 2638 705 and track employee attendance.

ENFORCEMENT

According to the EC, during the past several years neither LO nor the U S. Army Criminal Investigation Command (CID) have referred any violations of the criminal conflict of interest statutes, as required by 28 U S C § 535, to the Department of Justice. The EC indicated that he was aware of the requirements of 5 C F R § 2638 603. Further, he advised that there were no recent administrative actions taken or considered regarding standards of conduct matters.

In discussions with the AMCOM Inspector General (IG) and a CID representative, it was determined that there is a working relationship between the IG and the LO concerning matters of mutual interest. The CID representative advised us that most of their legal advice comes from the RA Garrison Staff Judge Advocate's Office, however, if a matter involves AMCOM or an AMCOM employee, the LO is also consulted.

ETHICS AGREEMENTS

Procedures to ensure disqualifications arising from seeking employment are not carried out in accordance with 5 C F R §§ 2635 604 and 3601 105(c) of the DOD supplemental standards of conduct. The EC provided us with copies of written memorandums of disqualification. Two of the memorandums indicated that the employees were disqualifying themselves from participating in matters involving the companies listed, citing 5 C F R § 2635 601 and the JER as the authority for the disqualifications. Discussions with the EC revealed that these disqualifications were for the purpose of enabling employees to seek post-retirement employment without violating subpart F of 5 C F R part 2635. One employee, identified as a weapon system manager, listed 39 companies from which he was disqualifying himself, 24 of which are on the current contractor list for AMCOM. Another employee, identified as chief of the logistics division, listed 132 companies, 58 of which are on the current AMCOM contractor list. We advised the EC that blanket disqualifications are not the correct procedure for dealing with employees seeking post-retirement employment. Moreover, procedures should ensure such disqualifications include screening arrangements in accordance with § 2634 804(b)(1) ¹

We recommend that the EC establish procedures to ensure disqualifications arising from seeking employment are carried out in accordance with 5 C F R §§ 2635 604 and 3601 105(c) of the DOD supplemental standards of conduct.

¹ There are no Presidentially-appointed, Senate-confirmed (PAS) employees at AMCOM. There are no 18 U S C § 208(b)(1) waivers concerning AMCOM.

COUNSELING AND ADVICE

Ethics counseling and advice services meet the requirements of 5 C F R. § 2538 203(b)(7) and (8) We examined a sample of the ethics-related counseling and advice rendered by the EC Based on our examination, we concluded that most of the written advice complied with applicable ethics laws and regulations Our examination did reveal a possible misapplication of the widely attended gathering provision of 5 C F R § 2635 204(g) and the improper use of the authority at 31 U S C § 1353 for reimbursement of local travel

The EC advised that five attorneys in the GLIPLD are responsible for responding to ethics questions Attorneys from other divisions in the LO refer ethics-related inquiries to the designated attorneys According to the EC, the ethics advice is provided both orally and in writing, and he personally reduces 70 percent of his advice to writing The topics that are most prevalent include post-employment, gifts, contractor and Government employee relationships, conflicts of interest, and seeking outside employment

Examination of written determinations and other documents concerning attendance at the 2002 Armed Forces Salute Luncheon (AFSL) and the 2002 Advanced Planning Briefing for Industry (APBI) revealed possible misapplication of the widely attended gathering provisions of 5 C F R § 2635 204(g) and the provisions of 31 U S C. § 1353 Extensive discussions were held between OGE officials and AMCOM ethics officials regarding these issues The AMCOM Chief Counsel, who was not involved in the writing of the 2002 determinations, advised that he will ensure future written determinations concerning attendance at AFSL and APBI functions will comport to the requirements of 5 C F R part 2635 and 41 C F R part 304-1 with regard to the prohibitions on soliciting gifts Further, he assured us that the provisions of 31 U S C. § 1353 would not be used for local travel

The EC advised that post-employment briefings are provided two times a month The briefings cover 18 U S C § 207, procurement integrity, and disqualifications while seeking employment

FINANCIAL DISCLOSURE SYSTEMS

The financial disclosure systems appear to be well managed except for the late filing of new entrant confidential reports We examined a sample of 100 of the 3,586 confidential reports required to be filed in 2002, consisting of 97 annual and 3 new entrant reports All reports were filed timely except for the three new entrant reports, and the reviews of the reports were timely and thorough The new entrant reports were filed from more than three months to more than six months late We recommend that procedures be established to ensure that new entrant reports are filed timely in accordance with 5 C F R § 2634 903(b) ²

² This was an issue during the last program review conducted by OGE in 1994 at the AMCOM predecessor organization, the U S Army Missile Command While a recommendation was not made at that time, the report addressed the matter

In addition, we examined all 23 public reports required to be filed in 2003, none of which were from PAS employees. All reports were filed timely, except the new entrant report filed by the Acting Chief Counsel, and the reviews of the reports were timely and thorough. The Acting Chief Counsel, who assumed the position on October 11 and was not expected to be in the position for more than 60 days in 2002, continued in the position into 2003 and did not file his report until May 2, 2003. We reminded the EC that in situations such as this 5 C F R § 2634 204©)(1) requires that the Acting Chief Counsel submit a report within 15 calendar days after the 60th day of duty (i.e., by no later than December 25, 2002).

31 U S C § 1353 TRAVEL PAYMENTS

With one exception all of the acceptances appear to comply with the controlling procedures and regulations. Procedures in the JER exist to ensure proper acceptance and reporting of travel payments accepted by AMCOM employees under 31 U S C § 1353 and the implementing General Services Administration regulation at 41 C F R Chapter 304. To determine if the procedures were being used appropriately we examined AMCOM's two most recent submissions of the travel acceptances to AMCOM's immediate superior headquarters.³

One AMCOM employee was invited for an extended stay at two universities in Italy to participate in research of mutual interest. The period of the trip was from December 2001 to February 2002. The universities paid the employee's living expenses during the extended stay and the employee's transportation expenses were paid by the U S Government. This trip does not meet the criteria for acceptance of expenses under 31 U S C § 1353. AMCOM should determine if the gift of living expenses is permissible under other Department of the Army gift acceptance authority. Moreover, we recommend that § 1353 be cited as authority to accept travel reimbursements from non-Government sources only when the proper criteria are met.

RECOMMENDATIONS

To bring the AMCOM ethics program into compliance with current regulations, we recommend that the EC

1. Establish an IEO program in accordance with 5 C F R § 2638 703 and implement a tracking system to enable you to determine if all employees attend.
2. Establish an annual ethics training program for other employees in accordance with 5 C F R § 2638 705. Further, the EC should establish a tracking system to enable him to determine whether all of the covered employees are trained.

³ See also our discussion of the improper use of the authority at 31 U S C § 1353 for local travel included in our Counseling and Advice section. That acceptance was not reported in the submissions to Army Materiel Command because the value was less than \$250.

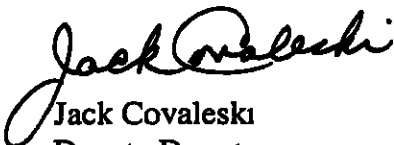
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- 3 Establish appropriate procedures regarding written memorandums of disqualification by employees seeking post-retirement employment in accordance with subpart F of 5 C F R part 2635
- 4 Establish procedures to ensure the timely filing of new entrant confidential financial disclosure reports in accordance with 5 C F R § 2634 903(b)
- 5 Ensure that 31 U S C § 1353 is cited as the authority to accept travel reimbursements only when the travel meets the proper criteria

Please advise me within 60 days of the specific actions planned or taken concerning the recommendations in our report. In view of the corrective action authority vested with the Director of the OGE under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C F R part 2638, it is important that ethics officials take actions to correct these deficiencies in a timely manner. A copy of this report is being sent by transmittal letter to the U S Army IG and the Commanding General, AMCOM. Please contact Charles R. Kraus at 202-482-9256 if we may be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs

cc Mr Fred Allen
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