

AGENCY ETHICS PROGRAM REVIEW REPORT

Agency: Federal Emergency Management Agency (FEMA)

Review Dates: February 5, 1990 to February 20, 1990

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AGENCY BACKGROUND

The Federal Emergency Management Agency (FEMA) is the central point of contact within the federal government for emergency management activities. Such activities include:

- coordinating civil emergency preparedness for nuclear power plant accidents and hazardous materials incidents;
- coordinating federal aid for Presidentially declared disasters and emergencies;
- ensuring that government at all levels is able to respond to and recover from national emergencies; and
- providing funding, technical assistance, supplies, equipment, and training to enhance state and local governments' emergency management capabilities.

The agency employs approximately 2,500 employees, located at headquarters and in ten regional offices. According to an ethics official, approximately 80% of the agency's employees deal with procurement or contracting in some way.

Some areas in which possible conflicts of interest could arise within FEMA are:

- employee financial holdings in nuclear power plants, and
- holdings in agency contractors providing emergency management equipment such as warning devices, sirens, and emergency communications.

For example, an employee in the Natural and Technological Hazards Division may know whether a particular nuclear power plant's off-site emergency preparedness plan will be approved or denied. Because a plant cannot receive approval to operate without a favorable decision on this plan, the employee may be in a position to use this information to benefit financially by buying or selling

stock in that company.

PRIOR OGE REVIEWS

We first reviewed FEMA's ethics program in September 1982 and concluded that several elements of the program were not being effectively implemented. Our second review, in December 1984, revealed that few improvements had been made since our initial review. We then conducted periodic follow-ups to monitor FEMA's compliance with our recommendations. We performed our third program review from December 1986 through February 1987, and issued thirteen recommendations to the Designated Agency Ethics Official (DAEO) for improvement of the program. We followed-up in November 1987, at which time FEMA reported that most of the recommendations had been adopted.

ETHICS OFFICIALS' DUTIES AND RESPONSIBILITIES

Observation: FEMA's DAEO believes his office lacks sufficient staff resources to manage all aspects of the ethics program.

Currently, the DAEO and three assistants perform ethics duties. However, none of them do so on a full-time basis. According to the DAEO, each member of the ethics staff is responsible for a sizeable full-time assignment and estimates spending approximately 20% of his/her time on ethics duties. As a result of the limited amount of time available for ethics responsibilities, the staff concentrates only on basic program elements.

The DAEO stressed that FEMA badly needs at least one full-time ethics official because of:

-- the large volume of the public and confidential reports,

- the extended coverage for the confidential reporting system;
- the need for numerous responses to outside employment requests and gift acceptance inquiries; and
- the need for ongoing ethics training at headquarters and the 10 regional offices.

Because of these reasons, as well as our observation that FEMA needs to perform a more complete, in-depth conflicts of interest analysis, OGE agrees with the DAEO's assessment, and suggests that FEMA's management provide sufficient staff resources to ensure the effectiveness of the ethics program as mandated in Presidential Executive Order 12674.

STANDARDS OF CONDUCT

Observation: FEMA's Standards of Conduct are consistent with basic Federal regulations and standards.

FEMA's Standards of Conduct, which are found in 44 C.F.R., Part 3, are consistent with basic federal regulations and standards. However, FEMA published these standards without OGE approval, as required by 5 C.F.R. 735.104(c). Indeed, in a 1986 letter to the agency, OGE informed FEMA that our approval was contingent upon revisions to provisions of section 3.14(e) on spousal travel. Again, we encourage FEMA to follow through on our previous recommendation that this section include clarification of the circumstances under which the spouse of an employee may accept reimbursement from a private organization for actual expenses. In light of the pending regulations on acceptance of payment from non-federal sources, FEMA should not formally modify their standards at this time. Instead, the DAEO should provide guidance and clarification of spousal travel to employees through the use of

internal policy memoranda. At such time that FEMA does revise their standards of conduct, we remind them that our approval is required prior to publication in the Federal Register.

PUBLIC FINANCIAL DISCLOSURE REPORTING SYSTEM

Observation: Review of the public financial disclosure reports needs improvement.

In 1989, 51 individuals filed public financial disclosure reports, 49 were full-time FEMA employees and two were special Government employees who had worked at least 61 days during the calendar year. Our review found that all these reports were on file.

Covered employees who leave the agency receive a blank public report, which is to be returned within 30 days. The agency strictly adheres to the 30 day time frame and contacts a filer if a report has not been received within the allotted time. We reviewed the list of public filers and found that all termination reports had been collected, as required.

To determine the adequacy of FEMA's public report review process, we reviewed 25, or 50%, of these reports and found no conflicts of interest. We did, however, identify a recurring reporting weakness of not identifying the specific nature and the physical location of partnerships. The public reporting instructions on the SF 278 state that the reporting individual must identify the nature and location of a business, a partnership, or a joint venture. The instructions go on to explain that this level of information is necessary in order to give reviewers an adequate basis for the conflicts analysis required by the Ethics in Government Act of

1978. In conclusion, without this information, it appears that FEMA ethics officials are not adequately assessing public reports for real or apparent conflicts of interest. We recommend improving the review of these reports by identifying the nature and location of a business, partnership, or joint venture and by using this information to assess conflicts of interest.

CONFIDENTIAL FINANCIAL DISCLOSURE REPORTING SYSTEM

Observation: Although FEMA generally collects reports as required, the substantive as well as the technical reviews of the reports need improvement.

FEMA has written procedures on how to collect, review, and evaluate confidential financial disclosure statements. According to these procedures, the Office of Personnel provides ethics officials a master list of all covered employees in grade GS-13 through GS-15. This list is used to collect the statements and track the reporting process. Once collected, the forms are reviewed for technical correctness, i.e. the use of "none" instead of "N/A". Then, those reports citing financial holdings are compared with a listing of contractors and grantees who receive \$25,000 or more and a nuclear power plant listing to determine whether a conflict may exist. In cases where an employee's holding is found on these lists, FEMA determines whether a waiver, divestiture, or recusal is appropriate. In cases where an employee reports outside employment or activities, FEMA determines what the activity involves, and considers appropriate remedial action.

The Collection Process

For the 1989 reporting period, FEMA collected confidential reports from 684 full-time employees, 8 consultants, and 20 Advisory Board members. Based on our review of the files, we verified that all full-time employees required to submit reports had done so. However, we identified one special Government employee who had not filed. In addition, we found Advisory Board members who had not filed in a timely manner, i.e. prior to the first Board meeting of the year.

Currently, the agency collects annual confidential reports from all employees in grades GS-13 through GS-15. Beginning with the 1990 reporting cycle, FEMA plans to collect reports from all employees, regardless of grade, in procurement and contracting positions. In October, 1989, OGE approved this action. FEMA's Personnel Office and the DAEO's office are currently developing plans and procedures for identifying and collecting reports from individuals meeting the new coverage criteria. Once the administrative details of the new system are resolved, FEMA should revise the written procedures, as appropriate.

In light of the expanded coverage for individuals required to file confidential reports in 1990, FEMA ethics officials expect the volume of reports to almost double from the current 684 to approximately 1,100 reports. Last year, summer interns reviewed the reports; this year, a newly hired attorney will review the reports in addition to her full-time staff attorney responsibilities. Ethics officials expressed concern that, with the great increase in the number of reports, the review may not be accomplished within a reasonable timeframe.

The Review Process

In order to assess FEMA's review procedures, we examined 68, or 10%, of the confidential reports submitted for the last reporting period. Our review and discussions with the ethics officials suggest that the substantive reviews need to be improved. For example, the comparison of financial holdings with the contractor/grantee and nuclear power plant listings is the extent of FEMA's conflicts analysis. Officials do not consider financial interests in contractors or grantees below the \$25,000 threshold nor do they identify the nature of a reported business or financial interest that does not appear on the listings. In summary, reviewers are generally not performing adequate in-depth conflicts of interest analyses of financial interests cited on the confidential reports. Such analysis is imperative and should include identifying the nature of a business or financial interest. By limiting their analysis to simply the contractor/grantee and nuclear power plant listings, FEMA officials overlook other sources of possible conflicts of interest. For example, one employee reported Racal Electronics on his confidential report. Because this company did not appear on FEMA's contractor/grantee list or the nuclear power plant list; the reviewer did not continue the analysis by identifying the nature of this company. However, a review of Moody's indicates that the nature and principal activities of Racal Electronics are professional electronics, fire and physical security, and telecommunications. Because these activities are pertinent to some of FEMA's activities, further conflicts analysis should have been done. For example, further analysis might have included research on:

- the employee's official duties to determine whether he is in a position to influence contracting decisions for fire and physical security equipment;

- whether Racal Electronics is a subsidiary of a company cited on the contractor list; or
- whether Racal has a contract with FEMA for less than \$25,000.

During our review, we identified two other cases where additional substantive reviews by ethics officials were warranted--one involved a FEMA consultant and the other involved a full-time employee.

- A FEMA consultant reported that he was an owner and senior consultant of an emergency management consulting firm and that he worked for another company as a part-time consultant. Although emergency management is a FEMA activity, FEMA did not research whether this firm had a contract with the agency for less than \$25,000. Also, even though the company the individual worked for as a part-time consultant is on the FEMA contractor list and has about \$6.4 million in contracts with the agency, the ethics official did not further investigate the matter to determine which contracts the individual worked on for that company. In fact, the only comment on the report was that the individual was advised to contact the ethics official prior to accepting any employment with the company.

- In another case, a FEMA contracting officer reported (b)(6) (b)(6) employment at a particular company. This company is on the FEMA contractor list; however, FEMA's review failed to identify this potential conflict. As a result, (b)(6) who was servicing the contract, was never advised about remedial actions such as recusal or removal from the position, nor was (b)(6) ever counseled on any ethical issues. FEMA's failure to identify this

situation surfaced when the company for which (b)(6) worked lost the renewal contract. The contracting officer was subsequently reported by another FEMA employee for withholding information from the new contractor. (b)(6) actions are currently under investigation by the DAEO's office.

In summary, FEMA's use of the listings provides a starting point for examining reported financial interests for potential conflicts; however, further, more in-depth analysis is required. The nature of a business or financial interest can be determined by referring to Moody's or Standard and Poor's and by contacting the reporting individual. We suggest that officials document their files with this information so that they will not have to research the information each year. FEMA ethics officials stated that they do not explore the nature of financial holdings because they lack adequate resources to undertake the task. We acknowledge that investigating the nature of financial holdings increases the reviewing time; however, without a proper substantive review of each report, the fundamental purpose of the reporting process is nullified.

In addition to improving the substantive reviews of the confidential reports, the agency also needs to improve the technical reviews. For instance, some of the files we reviewed did not contain reviewers' notes or comments, such as contact with a reporting individual concerning possible remedial actions. For example, according to an ethics official, if a waiver indicates that a particular financial holding was de-minimus, the reporting individual was always contacted. However, our review of the waiver cases did not show any documentation that contacts with individuals were ever made. FEMA instructions state that if the reviewer calls

the individual and obtains information, the reviewer should add it to the form and note "per conversation with _____ on _____" and add his/her initials. We recommend that officials adhere to this procedure.

According to agency procedures on the review of confidential reports involving outside employment/activities, the reviewer should determine what the outside employment or activity involves, which usually entails a call to the filer. However, we also found no evidence that this policy has been implemented. Therefore, we recommend that officials execute this policy, as required. Another method for improving the technical reviews is to compare the outside employment files with the individual's confidential report to confirm that individuals are reporting known sources of income on their disclosure statements.

FEMA is in the process of revising its confidential report Form 11-1, because ethics officials suspect employees are making technical completion errors due to the form's design. Our review of the confidential reports identified technical errors. For instance, most individuals with rental property did not report creditor(s), even when more than one rental property was reported. In addition, individuals did not appear to be reporting spousal employment. However, in light of OGE's pending confidential report regulations, we suggest that FEMA continue to use their existing report. In lieu of revising the form to address reporting errors, such as those noted above, ethics officials should clarify the reporting instructions by issuing a cover memorandum describing common errors, such as the memo FEMA currently uses for public reports, or by completing and distributing an example confidential report.

OUTSIDE EMPLOYMENT/ACTIVITIES AND GIFT ACCEPTANCE COUNSELING

Observation: Outside employment counseling is consistent with the agency's Standards of Conduct; however, gift acceptance counseling is not.

Outside employment

An employee must obtain prior written approval before engaging in outside employment in the same professional field as that of the individual's official position. In October 1989, the DAEO issued a detailed memo on outside employment to all FEMA employees. This memo included written procedures for obtaining approval. A review of the counseling files shows that outside employment advice is consistent with the criteria set forth in FEMA's Standards of Conduct.

Gift acceptance

Section 3.14 of FEMA's Standards of Conduct describes four exceptions to the prohibition against accepting gifts from certain persons. One of these exceptions is "acceptance of food and refreshments of nominal value (fifteen dollars or less) on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting..." (emphasis added). However, FEMA employees are allowed to attend monthly luncheons of the Armed Forces Communications and Electronics Association (AFCEA) which is an association composed primarily of government contractors, including many contractors who do business with FEMA. The DAEO should review circumstances surrounding FEMA's affiliation with the AFCEA and issue an updated memo to employees regarding FEMA's position. If the DAEO decides to allow employees to continue the

affiliation, he should monitor agency employee attendance at the monthly luncheons, i.e. who is going, how many are going, and when.

In reviewing the files, we found several instances in which the previous DAEO provided advice but deferred the final ethics decision to other agency officials. In one instance, the former DAEO deferred the decision on whether it is in the agency's interest that employees attend monthly AFCEA luncheons. In another case, the DAEO deferred the decision on whether it is in the government's and FEMA's interest that an employee accept a meal during a luncheon. Deferring decisions to supervisors or other agency officials may result in inconsistent ethics decisions. Because final standards of conduct decisions should be made by the DAEO, OGE encourages the current DAEO to review these prior gift acceptance decisions to determine if such activity is ongoing and, if so, whether approval is in accordance with the Standards of Conduct.

Based on our review and discussions with ethics officials, we found that not all counseling opinions were documented in the files. We, therefore, recommend that ethics officials, at a minimum, document all counseling advice provided in response to employee written requests, and, whenever possible, provide the employee a written response.

ETHICS EDUCATION AND TRAINING

Observation: Although ethics education and training improved in 1989 for regional staff, it did not improve for headquarters staff.

In 1989, the former DAEO and Deputy DAEO performed ethics training in each of FEMA's ten regions. The training was mandatory and employees were required to sign attendance sheets. OGE commends FEMA on this endeavor. However, this training did not include headquarters staff which comprises the majority of FEMA employees. The DAEO plans to conduct 1990 training sessions for headquarters staff in Washington, D.C., Emmitsburg, Maryland, and Berryville, Virginia. OGE encourages the implementation of this plan.

Although FEMA does not have an annual ethics training plan, ethics officials acknowledge the need for training. However, they lack staff resources, and, in some cases, the travel money, to implement the necessary training program.

In addition to training, the DAEO issues ethics memoranda to all FEMA employees. In 1989, three such memos were issued. Each memo addressed a particular provision of the standards of conduct, such as outside employment, but none of them addressed all the provisions. According to Section 3.4(a) of FEMA's standards, these regulations are to "be brought to the attention of (full-time employees and special government) employees at least annually". The last ethics memo to do so was issued in May 1988. Because of the importance of educating all employees on the standards of conduct, and, in light of FEMA's recent disciplinary action where two high level officials were suspended for two weeks without pay for a standards of conduct violation, we recommend that the DAEO

promptly issue a current memo to all employees explaining the standards of conduct.

POST-EMPLOYMENT RESTRICTIONS

Observation: Although OGC distributes a Post-Employment Restriction Summary, their method of dissemination does not include all employees.

Several months ago OGC began distributing a post-employment restriction summary to all departing employees who are serviced by headquarters in Washington, D.C. Because this was one of the 1987 OGE recommendations, we are pleased to see its addition. However, FEMA's method of distribution does not cover headquarters employees assigned outside of Washington, D.C. or regional employees. It also does not cover special Government employees, such as consultants, who most certainly have a need to know this information. OGE recommends that FEMA further explore methods for distributing this summary to **all** FEMA employees.

COORDINATION WITH THE INSPECTOR GENERAL

Observation: An open channel of communication exists between OGC and the Office of the Inspector General.

Both OGC and the Office of the Inspector General (OIG) receive information on possible ethics violations. OGC may refer a possible ethics violation to the OIG for investigation and OIG may refer a possible violation to OGC for resolution. The channel of communication between the two offices appears open.

In March 1985, OGE identified the need for periodic audits of FEMA's ethics program and recommended that OGC pursue this with

OIG. In June 1987, OGE reported that the ethics program could be strengthened by periodic reviews by OIG. The OIG has not performed an ethics audit to date nor has it scheduled one on its 1990 formal planning document. Once again, OGE recommends that OIG periodically audit the ethics program.

RECOMMENDATIONS

We have cited ten recommendations to improve the efficiency and effectiveness of FEMA's ethics program. These are summarized as follows:

- FEMA's management should allocate sufficient staff resources to ensure the effectiveness of the ethics program and provide the scope and leadership necessary to develop and maintain a sound ethics program.

- FEMA should provide guidance to all employees concerning Section 3.14(e) of the Standards of Conduct, including clarification of the circumstances under which the spouse of an employee may accept reimbursement from a private source. Pending issuance of executive branch regulations, this clarification should be done through an internal notice or memorandum. We remind FEMA that whenever the agency revises the standards, they must submit them to OGE for approval **prior** to publication in the Federal Register.

- Ethics officials need to improve the review of public and confidential financial disclosure reports by identifying the nature and location of a business, partnership, or joint venture and use this information

to assess conflicts of interest.

- The review of confidential reports needs improvement by strengthening the analysis for conflicts of interest. In addition, officials should compare any outside employment approvals with the individual's confidential report to ensure that individuals are reporting all known sources of income. Lastly, officials should adhere to their written procedures by reviewing all confidential reports for the nature of outside employment/activities and by documenting the file whenever they contact the reporting individual.
- Ethics officials should clarify the confidential report instructions by issuing a cover memo describing common errors, such as the memo FEMA currently uses for public reports.
- The DAE0 should issue a memorandum to all employees explaining the Standards of Conduct, and continue this practice at least annually thereafter. We also recommend that the DAE0 contact OGE's Education and Liaison Division for assistance with any training questions.
- The DAE0 should review employee attendance at AFCEA events and issue a memo to employees clarifying FEMA's policy on gift acceptance. If the DAE0 decides to continue the current practice, he should monitor employee attendance at the monthly luncheons more closely.
- Ethics officials should improve the documentation of counseling advice, and, whenever possible, provide the

employee a written response.

- FEMA needs to further explore methods for distributing the post-employment information to all FEMA employees, especially senior level and special Government employees.
- The Office of the Inspector General should periodically audit the ethics program.

OGE AGENCY REPORT
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