



United States Office
Of Government Ethics

Report Number 08-010

Highlights

Model Practices

- All new employees meet with the Alternate Designated Agency Ethics Official (DAEO) during the general orientation process.
- Upon leaving service at OSTP, all employees are required to meet with the Alternate DAEO.

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Ethics Program Review Office of Science and Technology Policy

July 2008 Report

Executive Summary

The Office of Government Ethics (OGE) has completed its review of the ethics program at the Office of Science and Technology Policy (OSTP), Executive Office of the President. The purpose of a review is to identify and report on the strengths and weaknesses of the 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.

The review identified substantive deficiencies in the areas of confidential financial disclosure and annual ethics training. OSTP took corrective action prior to and during the review to address the identified deficiencies.

None of the confidential financial disclosure reports required to be filed by regular employees in 2005 were filed until February and March 2006. According to the Designated Agency Ethics Official (DAEO), filers were not reminded to file reports in 2005 because of an oversight on his part. After the DAEO realized that reports had not been filed, he obtained the delinquent reports from filers. Additionally, written procedures were developed to help ensure future reports are filed in a timely manner. In accordance with the written procedures, the Alternate DAEO will screen new employees to determine if they should file a report and will review the OSTP staff list each year to identify filers.

Annual ethics training was not completed in 2005. However, make-up training was provided to all of OSTP's covered employees in 2006. There was also no written annual training plan in place for 2006. We reminded the DAEO that a written annual training plan is required each year. The DAEO created a plan for calendar year 2007 and agreed to complete one for each subsequent calendar year.

OGE identified two model practices that OSTP uses to ensure new and departing employees are made aware of the financial disclosure requirements and the availability of post-employment counseling.

This report has been sent to OSTP's DAEO.



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Ethics Program Review

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Introduction

OGE MISSION

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

PURPOSE OF A REVIEW

The purpose of a review is to identify and report on the strengths and weaknesses of the 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 Science and Technology Policy (OSTP), Executive Office of the President, focused on the elements listed below:

- Program structure
- Financial disclosure systems
- Ethics education and training
- Ethics counseling
- Outside employment
- Enforcement of ethics laws and regulations
- Ethics agreements
- Travel payments from non-Federal sources

The on-site fieldwork portion of the review was conducted in March 2006.

Ethics Program Review: OSTP

Program Elements

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

PROGRAM STRUCTURE

OSTP's ethics program serves the agency's approximately 45 full-time employees and the approximately 35 members of the President's Council of Advisors for Science and Technology (PCAST). PCAST is an advisory committee under the Federal Advisory Committee Act whose members are all special Government employees (SGE). The Designated Agency Ethics Official (DAEO) was solely responsible for administering the ethics program until July 2006, when an additional attorney was hired to serve as Alternate DAEO. The DAEO and Alternate DAEO are OSTP's only ethics officials and both perform ethics functions as collateral duties.

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 in providing counseling to employees. *See* 5 CFR § 2634.104(b).

Public Financial Disclosure System

OSTP has procedures for administering its public financial disclosure program. The OSTP Budget Office informs the Alternate DAEO when individuals whose salaries indicate they should file a public financial disclosure report are hired. Therefore, the Alternate DAEO is aware of who is required to file a public report prior to their arrival at OSTP. New employees are individually introduced to the Alternate DAEO during the general orientation process. This provides the Alternate DAEO the opportunity to inform new employees of filing requirements. Annual filers are personally notified each year of the filing requirement by the DAEO, who also verifies that all required reports are filed. All personnel are required to meet with the Alternate

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DAEO upon leaving service at OSTP. This allows the Alternate DAEO to notify departing public filers of the requirement to submit termination reports.

OSTP's procedures are well-designed to help ensure that new entrant and termination filers are promptly identified and informed of filing requirements. Promptly identifying filers and explaining filing requirements to them increases compliance with relevant regulations and helps to ensure that reports are filed within required time frames. This allows ethics officials to more readily identify and resolve real or potential conflicts of interest, protecting both employees and the Government.

To evaluate the filing, review, and certification of public reports at OSTP, OGE examined 10 of the 15 public reports required to be filed by non-Presidentially-appointed, Senate-confirmed (PAS) employees in 2005. These 10 reports consisted of:

Type of Report

- 8 incumbent reports
- 1 new entrant report
- 1 termination report

10 total

Filing Timeliness

- All 10 reports were filed timely.

Review/Certification Timeliness

- 9 reports were reviewed and certified timely.
- 1 report was delayed in review and certification because the filer was on leave.

10 total

Quality of Review

Written comments and documentation in the files indicated that the reports underwent a thorough review by the DAEO.

Confidential Financial Disclosure System

OSTP took corrective action to address a significant deficiency in the confidential financial disclosure system prior to OGE's review.

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First, according to the DAEO, filers were not reminded to file reports in 2005 because of an oversight. After the DAEO realized that reports had not been filed, he obtained the delinquent reports from filers. Additionally, procedures were developed to help ensure that all reports are filed in a timely manner. The procedures included amending the new employee orientation process to require all new employees to meet with the Alternate DAEO so that a determination can be made as to whether the employee is required to file a confidential (or public) financial disclosure report. The Alternate DAEO will also review the OSTP staff list each year, identify confidential filers, and personally provide memoranda to all filers in advance of the filing deadline.

As with public financial disclosure filers, it is important to promptly identify confidential filers and explain to them the filing requirements. This increases compliance with relevant regulations and helps to ensure timely filing of reports. Again, this allows ethics officials to more readily identify and resolve real or potential conflicts of interest, protecting both employees and the Government.

The failure to obtain 2005 reports in a timely manner is a significant deficiency. However, it appears that OSTP has taken appropriate steps to prevent this from recurring. These steps should help prevent similar lapses in the future. For this reason, OGE makes no formal recommendation regarding this issue.

To evaluate the confidential financial disclosure system at OSTP, OGE examined the four confidential financial disclosure reports required to be filed by non-SGEs in 2005. All of the reports were annual reports.

Filing Timeliness

- The 4 reports required to be filed in 2005 were filed in February and March 2006.

Review/Certification Timeliness

- All 4 reports were reviewed and certified timely.

Quality of Review

Written comments and documentation in the files indicated that the reports underwent a thorough review by the DAEO.

Special Government Employees

OGE examined 15 of the confidential financial disclosure reports required to be filed by the approximately 35 SGE members of PCAST in 2005.

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Filing Timeliness

- All 15 reports were filed timely.

Review/Certification Timeliness

- All 15 reports were reviewed and certified timely.

Quality of Review

Written comments and documentation in the files indicated that the reports underwent a thorough review by the DAEO.

ETHICS EDUCATION

An ethics education 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 education program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees.

Initial Ethics Orientation

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

- the Standards;
- 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.

To meet the initial ethics orientation requirements, all new employees receive initial ethics orientation materials from the Executive Office of the President, Office of Administration, where they are given the required initial ethics orientation materials as well as one hour of official time to review them. New employees certify that they have received the required materials, that they intend to spend one hour reviewing them, and that they are committed to adhering to the ethics standards, including the completion of financial disclosure reports, as appropriate. Additionally, all new employees meet with the Alternate DAEO who can also provide additional training or guidance, if necessary.

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Annual Ethics Training

Annual training was not completed in 2005 because of a misunderstanding. In early November 2005, the White House Counsel's Office conducted a series of presentations regarding general ethics rules. The White House mandated that all Executive Office of the President employees attend one of these sessions. OSTP's DAEO believed that these sessions would satisfy the requirements for in-person annual ethics training. However, in February 2006, the DAEO learned that the sessions were not to be used as a substitute for annual ethics training. Consequently, the DAEO developed a training presentation which was provided to all of OSTP's covered employees in 2006. The training presentation met relevant content requirements. According to the DAEO, in addition to covered employees, all other employees were invited and expected to attend annual ethics training.

Although there was no written annual training plan in place for 2006, the DAEO created one for calendar year 2007. *See* 5 CFR § 2638.706. The training plan is important because it focuses the agency's training efforts to suit the needs of its employees.

ETHICS AGREEMENTS

If potential or actual conflicts of interest exist, public and confidential financial disclosure filers may be required to enter into ethics agreements. Generally, employees entering into ethics agreements are required to comply with those agreements within three months of the agreement or of Senate confirmation, if applicable. *See* subpart H of 5 CFR part 2634.

Timely compliance with ethics agreements is imperative in promoting the public's confidence in the integrity, accountability, and transparency of the Government's activities. This is particularly true regarding senior Government officials.

OGE examined ethics agreements executed by each of OSTP's two current and one former PAS employees. The agreements required either divestiture, resignation from potentially conflicting positions, or recusal. Actions were carried out in accordance with applicable regulations and the terms of the agreements. Requisite proof of compliance with the ethics agreements was provided to OGE in a timely manner.

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.

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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 counseling to assess whether processes and written procedures are effective.

Employees are made aware of the availability of ethics counseling services during initial ethics orientation and annual training. At the time OGE's fieldwork was conducted, the DAEO was solely responsible for providing ethics counseling, which he did primarily via email. While this practice created records of the counseling provided, those records would not have been readily accessible to other ethics officials as a reference. Since there were no other ethics officials at the time, there was no negative impact from this practice on the ethics program.

Subsequent to the completion of OGE's fieldwork, an additional ethics official was hired and appointed Alternate DAEO. When the Alternate DAEO assumed responsibility for providing counseling along with the DAEO, a shared computer drive was designated to record, and make accessible, significant opinions issued by the DAEO and Alternate DAEO. In addition, the DAEO and Alternate DAEO send each other copies of counseling they provide via email. This helps to ensure consistency in the opinions provided to employees and can reduce the time and effort involved in responding to a request for advice if a response to a similar request has already been provided and recorded. (In OGE DAEOgram DO-05-019, dated November 17, 2005, OGE addresses some concerns and observations about when and how ethics officials should document ethics advice and provides guidance to help implement agencies' advice and counseling services successfully.)

To evaluate the counseling provided, OGE examined a sample of approximately 60 written determinations rendered during the period covered by the review. The counseling was primarily in the areas of outside activities and employment, use of Government position, and gifts. OGE found that the counseling rendered accurately addressed applicable statutes and regulations and was timely and consistent.

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).

According to ethics officials, there were no potential violations of the criminal conflict of interest statutes referred to the Department of Justice from 2005 through September 2006. There

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were also no identified violations of the Standards of Ethical Conduct for Employees of the Executive Branch during that time.

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.

OSTP's procedures for accepting payments from non-Federal sources for travel, subsistence, and related expenses under the authority of 31 U.S.C. § 1353 appear to be effective and appropriate. All travel under this authority is required to be approved at the division director level and by the Director of Budget and Administration. The Alternate DAEO must also approve, certifying that the acceptance of payment does not create a conflict of interest.

OGE examined OSTP's semiannual reports of payments in excess of \$250 accepted under the authority of 31 U.S.C. § 1353 covering the period of October 1, 2004 through September 30, 2005. The reports contained 22 payments. OGE's examination of the reports and supporting documentation did not identify any deficiencies in OSTP's process for accepting such payments.

Summary

OGE's review identified substantive deficiencies in the areas of financial disclosure and annual ethics training. Lapses in collecting confidential financial disclosure reports and conducting required annual ethics training have been addressed by OSTP. Procedures to ensure that such lapses do not occur in the future have been implemented.

OGE's review identified two model practices that OSTP has implemented. The model practices include:

- requiring all new employees to meet with the Alternate DAEO during the general orientation process; and
- requiring all departing employees to meet with the Alternate DAEO upon leaving service at OSTP.

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