



United States Office
Of Government Ethics

Report Number 08-014

Highlights

Model Practices

- NSC exhibits substantial leadership involvement in the ethics program.
- NSC uses a guide that it created when reviewing confidential financial disclosure reports.
- NSC provides one-on-one initial ethics orientation to all new employees and detailees.

OGE Recommends

- That NSC collect late fees from filers of the three public financial disclosure reports that were filed late, unless a filing extension is warranted.
- That NSC continue its efforts to review and certify the financial disclosure reports that OGE identified as not being reviewed or certified at the time of the onsite fieldwork.

Ethics Program Review National Security Council

October 2008 Report

Executive Summary

The Office of Government Ethics (OGE) has completed its review of the ethics program at the National Security Council (NSC), Executive Office of the President. 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.

OGE's review identified three model practices at NSC that relate to leadership involvement in the ethics program, confidential financial disclosure, and initial ethics orientation.

OGE's review identified two issues that require action by NSC in the area of financial disclosure. Since the completion of OGE's onsite fieldwork, NSC has taken steps to address the issues. OGE recommends that NSC continue its efforts to address the issues to enhance the overall effectiveness of its financial disclosure systems.

This report has been sent to NSC's Designated Agency Ethics Official. OGE will follow-up with NSC within six months.



United States Office
Of Government Ethics

Report Number 08-014

Ethics Program Review

National Security Council

October 2008 Report

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 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 National Security Council (NSC), Executive Office of the President focused on the elements listed below.

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

OGE's onsite fieldwork was conducted at NSC in late March and early April 2008.

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. Leadership involvement in the ethics program at NSC is evident. The President of the United States has underscored the importance of ethics in a memorandum that is provided to new NSC employees and detailees. The Assistant to the President for National Security Affairs has also provided guidance in a memorandum that emphasizes impartiality and alerts employees to be wary of even the appearance of conflicts of interest.

PROGRAM STRUCTURE

NSC's ethics program is administered within the Office of the Legal Advisor. The Counsel to the President serves as the Designated Agency Ethics Official (DAEO). The Legal Advisor serves as the Alternate DAEO. The Alternate DAEO and three Deputy Legal Advisors are involved in the day-to-day administration of the ethics program. All of the ethics officials work on ethics on a part-time basis.

NSC is an organization within the White House designed to advise the President on national security and foreign policy matters. According to the NSC Legal Advisor, NSC's unique structure and placement has yielded a unique ethics program. For example, as an advisory body to the President, the NSC is more closely related to White House offices. Accordingly, the NSC's DAEO is the Counsel to the President, who serves as the White House DAEO.

The NSC Legal Adviser's Office provides day-to-day ethics advice on routine matters and, as necessary and appropriate, draws upon the expertise resident in the White House Counsel's Office. In fact, the Associate Counsel to the President for Ethics is a former Director of OGE. Accordingly, the NSC Legal Advisor believes that while the NSC does not have an internal ethics office staffed by full-time personnel with extensive experience in ethics matters, the NSC staff has ethics expertise at their ready disposal.

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).

Ethics Program Review: NSC

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).

During the onsite fieldwork, OGE found that the public and confidential financial disclosure systems at NSC were in need of improvement. However, since the completion of OGE's fieldwork, NSC has taken several steps to improve its financial disclosure systems.

Financial Disclosure Tracking System

At the time of the onsite fieldwork, NSC did not have a reliable financial disclosure tracking system. A Deputy Legal Advisor advised the OGE review team that tracking filers was difficult and time-consuming due to the nature of the agency; at NSC, detailees make up the majority of the staff. The turnover of detailees is a particular challenge for NSC ethics officials.

According to the NSC Legal Advisor, since the completion of OGE's onsite fieldwork, NSC has put in place an improved tracking system for all personnel who file public and confidential financial disclosure reports.

Public Financial Disclosure System (SF 278)

Public financial disclosure reports filed by NSC employees are required to be reviewed and certified by NSC's ethics officials. However, public financial disclosure reports filed by detailees are only required to be reviewed by NSC ethics officials; final certification is the responsibility of the detailee's employing agency.

To evaluate the filing, review, and certification of public reports at NSC, OGE examined all 46 public reports required to be filed by NSC's employees and detailees in 2007. The following is a summary of OGE's examination of all 46 reports:

Type of Report

- 40 incumbent reports
- 6 new entrant reports

46 total

Filing Timeliness

- 43 reports were filed timely.
- 3 reports were filed late.

46 total

Ethics Program Review: NSC

Review/Certification Timeliness

- None of the reports was reviewed timely.

Certification Timeliness

- None of the reports submitted by NSC employees was certified by NSC's ethics officials, as required. (Reports submitted by detailees are not required to be certified by NSC; certification occurs at the filer's employing agency.)

Quality of Review

During its onsite fieldwork, OGE found no indication that non-Presidentially-appointed, Senate-confirmed public financial disclosure reports were reviewed or certified in calendar year 2007. According to the NSC Legal Advisor, all public reports for both 2007 and 2008 have been reviewed and are in the process of being certified.

During its onsite fieldwork, OGE identified three reports that were submitted late and the filers were not granted filing extensions or waivers of the fee for the late filing. OGE recommends that NSC collect the late filing fees for the three public financial disclosure reports that were submitted late, unless a filing extension is warranted.

Confidential Financial Disclosure System (OGE Form 450/A)

To evaluate the confidential financial disclosure system at the NSC, OGE examined 44 of the 73 confidential reports required to be filed by NSC employees in 2008. The following is a summary of OGE's examination of the 44 reports:

Type of Report

- 40 annual reports
- 4 new entrant reports

44 total

Filing Timeliness

- All 44 reports were filed timely.

Review Timeliness

- All 44 reports were reviewed timely.

Ethics Program Review: NSC

Certification Timeliness

- At the time of the onsite fieldwork, none of the 44 reports had been certified. Following the completion of the onsite fieldwork, the NSC Legal Advisor informed OGE that all of the confidential financial disclosure reports are in the process of being certified.

Quality of Review

Written comments on the worksheets and documentation in the files indicated that the reports underwent a thorough review by NSC's ethics officials. For example, in some cases there were indications of communication with the filer regarding follow-up questions.

In addition, NSC ethics officials created a review guide titled, *OGE Form 450 Review Worksheet* that helps direct the reviewer through the review. The use of a review guide is a model practice that helps to ensure a consistent review.

ETHICS EDUCATION AND TRAINING

An ethics education and 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.

NSC offers a variety of education and training products for its employees including one-on-one initial ethics orientation, electronic presentations, and written materials.

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 of Ethical Conduct for Executive Branch Employees (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 requirement, within 90 days from the time an employee begins work at NSC, the employee is provided with:

- the Standards;
- the names, titles, office addresses, and phone numbers of ethics officials; and
- a one hour one-on-one briefing on the items described above.

Ethics Program Review: NSC

New NSC employees are also provided a package titled *Office of Legal Affairs Read Ahead Package*, which contains several documents. The documents included in the package consist of:

- a copy of a presentation titled *In-Briefing Outline*,
- a newsletter titled *Ethics in a Thimble*,
- a memorandum titled *Basic Post-Employment Restrictions*,
- a memorandum from the President highlighting ethics, and
- a memorandum from the Assistant to the President for National Security Affairs regarding impartiality and conflicts of interest.

Initial ethics orientation was provided to all new employees who entered on duty at NSC during 2007.

Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training each year. *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 annual ethics training at least once every three years and may receive written annual 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).

OGE reviewed the following NSC annual ethics training materials:

- *Annual Ethics Review Topics*, a presentation, and
- *Ethics in a Thimble*, a newsletter.

OGE's review of these materials found them to meet the annual ethics training content requirements.

NSC's ethics officials stated that all NSC employees required to receive annual ethics training in 2007 received it.

Ethics Program Review: NSC

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 meet the counseling requirements at NSC, ethics-related counseling is provided to employees primarily by the Deputy Legal Advisors.

To evaluate the ethics counseling provided to employees at NSC, OGE analyzed samples of memorialized ethics counseling. These samples were reviewed by OGE's NSC Desk Officer. Generally, the ethics counseling was in the areas of widely-attended gatherings, speaking engagements, gifts (including gifts from outside sources), outside employment, and seeking employment. The Desk Officer found that the advice rendered was thorough, accurate, and consistent with applicable statutes and regulations. The Desk Officer discussed her review with an NSC ethics official.

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).

NSC has no Office of the Inspector General. There were no criminal conflict of interest violations referred to the Department of Justice (DOJ) during 2007. During the same period, there were no substantiated violations of the Standards. According to NSC ethics officials, if a violation were alleged, the response would vary depending on whether the individual was an employee or a detailee. For detailees, they would be disciplined, and if necessary, referred to DOJ through their respective employing agency. For NSC employees, NSC would work with the White House Counsel's Office to appropriately address the circumstances presented by a disciplinary issue.

Ethics Program Review: NSC

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

An employee may accept payment of travel expenses from a non-Federal source 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.

According to NSC ethics officials, NSC accepts payments from non-Federal sources. OGE reviewed one semiannual report sent to OGE covering the period from October 1, 2006 through March 31, 2007. The semiannual report was submitted using the appropriate SF 326 form was submitted to OGE in a timely manner. However, NSC did not submit a report for the period covering April 1, 2007 through September 30, 2007. The review team reminded NSC ethics officials that even negative reports must be submitted to OGE. Since the completion of OGE's onsite fieldwork, NSC has submitted the report for April 1, 2007 through September 30, 2007 using the appropriate SF 326.

Summary

OGE's review of NSC's ethics program identified three model practices:

- exhibiting leadership involvement in the ethics program,
- creating a guide for reviewing confidential financial disclosure reports, and
- providing one-on-one initial ethics orientation to all new employees and detailees.

During its onsite fieldwork, OGE identified some areas in need of improvement, primarily relating to NSC's financial disclosure systems. NSC has since addressed, or is addressing, the areas identified.

Recommendations

To further enhance NSC's ethics program, OGE recommends that NSC:

1. Continue its efforts to certify the public and confidential reports that OGE identified as not being certified at the time of the onsite fieldwork.
2. Collect late filing fees from filers of the three public financial disclosure reports that were filed late, unless a filing extension is warranted.

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