



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

April 9, 2009

Edgar M. Swindell
Designated Agency Ethics Official
Department of Health and Human Services
710-E Hubert H. Humphrey Building
200 Independence Avenue, SW.
Washington, DC 20201

Dear Mr. Swindell:

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Department of Health and Human Resources' Health Resources and Services Administration (HRSA). Enclosed are an executive summary and report on the results of this 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.

OGE's review identified one model practice that HRSA has implemented: HRSA conducts face-to-face initial ethics orientation for incoming Scholars and special Government employee advisory committee members.

OGE identified one issue that requires monitoring; the timely filing of new entrant confidential financial disclosure reports. Since completion of OGE's onsite fieldwork, HRSA has implemented steps to improve its process of collecting new entrant confidential financial disclosure reports in compliance with 5 CFR § 2634.903(b). OGE suggests continual monitoring of these steps to ensure sustained improvement.

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

Sincerely,

A handwritten signature in black ink, appearing to read "D. Christopher, Jr.", written over a horizontal line.

Dale A. Christopher, Jr.
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

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Dale A. Christopher, Jr.
Associate Director
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United States Office
Of Government Ethics

Report Number 09-012

Highlights

Model Practice

- HRSA provides face-to-face initial ethics orientation to incoming Scholars and special Government employee advisory committee members.

OGE Suggests

- HRSA continually monitor the steps it has taken to ensure compliance with the new entrant confidential filing requirements of 5 CFR § 2634.903(b).

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

Ethics Program Review

Department of Health and Human Services Health Resources and Services Administration

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 HRSA's ethics program. (Reports detailing OGE's review of OS and the OGC-Ethics Division and CMS 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. OGE's review of HRSA identified one model practice that HRSA has implemented: HRSA conducts face-to-face initial ethics orientation for incoming Scholars and special Government employee advisory committee members.

OGE's review of HRSA identified one area that required improvement; the timely filing of new entrant confidential financial disclosure reports. Since the completion of OGE's onsite fieldwork, HRSA has taken steps to improve the filing timeliness of new entrant reports. OGE suggests that HRSA continually monitor the steps it has taken to ensure compliance with the new entrant report filing requirements of 5 CFR § 2634.903(b).

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



United States Office
Of Government Ethics

Report Number 09-012

Ethics Program Review

Department of Health and Human Services Health Resources and Services Administration

April 2009 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.

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 Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS), focused on the elements listed below.

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

Ethics Program Review: HHS-HRSA

OGE also conducted reviews of HHS' Office of the Secretary (OS) and the Centers for Medicare and Medicaid Services (CMS). In addition, OGE 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 HRSA. (Reports detailing OGE's review of OS and the OGC-Ethics Division and CMS will be issued separately.)

Onsite fieldwork for OGE's review of HRSA was conducted in 2005 and 2006. A follow-up discussion with HRSA ethics 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.

PROGRAM STRUCTURE

The Associate General Counsel for Ethics (in the OGC-Ethics Division), serves as the HHS Designated Agency Ethics Official (DAEO) and has oversight responsibility for the HHS-wide ethics program. The DAEO relies in significant part on the cooperative efforts of a network of Deputy Ethics Counselors (DEC) to help administer the semi-autonomous ethics program within each HHS staff and operating division. Assisting each DEC in carrying out their ethics-related duties are management and/or personnel specialists who serve as primary ethics contacts or coordinators for the program and have the responsibility for carrying out the day-to-day administration of the program.

At HRSA, the ethics function resides organizationally within the Office of Management (OM) and is administered by the OM Associate Administrator, who serves as the HRSA DEC. The day-to-day operation of the ethics program is carried out by OM's Ethics and Security Staff, Division of Workforce Management, hereafter referred to as the Ethics Office. The Ethics Office includes an Ethics and Personnel Security Officer, who serves as the agency's primary ethics contact, and an Ethics and Personnel Security Specialist. Their duties include, but are not limited to, managing HRSA's confidential financial disclosure system, implementing the requirements for both initial and annual ethics training, and providing ethics counseling to employees HRSA-wide. A third Ethics Office staff member, a Management Analyst, is assigned responsibility for the public financial disclosure reports.

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: HHS-HRSA

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 (SF 278)

To evaluate the public system within HRSA, OGE examined the 32 public financial disclosure reports that were required to be filed, reviewed, and certified at the Ethics Office in 2006. OGE did not examine the reports of the HRSA Administrator, the Deputy Administrator, and the HRSA DEC which are filed, reviewed, and certified at the OGC-Ethics Division. The 32 reports consisted of:

Type of Report

- 28 annual reports
- 4 new entrant reports

32 Total

Filing Timeliness

- All 32 reports were filed timely.

Review Timeliness

- All 32 reports were reviewed timely.

Certification Timeliness

- All 32 reports were certified timely.

Quality of Review

OGE noticed one recurring technical error during its examination of the four new entrant public reports; the omission of new entrant appointment dates. While OGE obtained the appropriate dates from the Ethics Office to help confirm the timeliness of filing and review for each of these reports, OGE conveyed to the Ethics Office the importance of ensuring that appointment dates be included on future new entrant reports. During OGE's October 2008 follow-up meeting, the Ethics Office confirmed that appointment dates are routinely included on public financial disclosure reports and noted that public financial disclosure reports are now audited for technical and material sufficiency by the OGC-Ethics Division.

Ethics Program Review: HHS-HRSA

Confidential Financial Disclosure System (OGE Form 450)

To evaluate the confidential system within HRSA, OGE examined 120 of the 602 confidential financial disclosure reports that were required to be filed, reviewed, and certified in 2005. The 120 reports consisted of:

Type of Report

- 109 annual reports
- 11 new entrant reports

120 Total

Filing Timeliness

- 89 annual reports were filed timely.
- 20 annual reports were filed late.
- All 11 new entrant reports were filed late (collected during the annual filing cycle). 8 of the 11 new entrant reports were filed more than one year late.

120 Total

OGE does not consider the late filing of the 20 annual reports to be an egregious matter, since the majority of the late reports were filed fewer than 15 days after the established deadline. However, the Ethics Office must remain diligent in ensuring that all annual reports are filed timely in view of the role financial disclosure plays in preventing employees from committing ethics violations.

Review Timeliness

- All 120 reports were reviewed timely.

Certification Timeliness

- All 120 reports were certified timely.

Quality of Review

- All 120 reports appeared to have been reviewed properly for potential conflicts of interests.

Improvements to the New Entrant System

Prior to OGE's onsite fieldwork, the Ethics Office's process for identifying new entrant filers was to receive a monthly listing of all new and newly-promoted HRSA employees from the HRSA Human Resources office.

Ethics Program Review: HHS-HRSA

After the completion of OGE's onsite fieldwork, the Ethics Office began generating its own monthly listing from HRSA's Human Resources database to help identify new and newly-promoted HRSA employees more timely. During OGE's October 2008 follow-up meeting, the Ethics Office indicated that this action has improved the timeliness of confidential financial disclosure filings.

Late new entrant filing diminishes an agency's ability to provide timely and specific conflict of interest advice to help prevent employees from committing ethics violations. HRSA must continually monitor the new entrant filing process to ensure that all new entrant confidential filers timely submit their reports in accordance with 5 CFR § 2634.903(b).

OUTSIDE EMPLOYMENT AND ACTIVITIES

OGE examined 19 outside employment positions or activities that required prior approval under the HHS supplemental standards of conduct regulation. OGE found the appropriate approval form (HHS-520) and/or annual reporting form (HHS-521) on file for each outside employment position or activity and found evidence that employees were receiving prior approval, when appropriate, before engaging in outside employment or activities.

ADVISORY COMMITTEES

The Ethics Office provides basic ethics program services, including the collection of confidential financial disclosure reports and the provision of annual ethics training, for special Government employee (SGE) members serving on HRSA's 11 advisory committees.

OGE examined HRSA's process for ensuring that all SGEs are identified and that their new entrant confidential financial disclosure reports are filed initially and, if term appointees, annually thereafter, in accordance with 5 CFR § 2634.903(b). OGE's examination identified that HRSA had been inconsistent in collecting new entrant SGE confidential reports either upon the members' reappointment or redesignation as an SGE or upon the anniversary of his or her initial appointment. OGE suggested that HRSA consider using May 15, or another specified date, as its SGE report filing date to help avoid the administrative burden of managing numerous due dates.

HRSA has since revised its procedures to require the filing of SGE new entrant confidential reports by May 31 of each year. During OGE's October 2008 follow-up meeting, the Ethics Office reported that the institution of the May 31 filing date has streamlined the OGE Form 450 filing process for SGEs and has resulted in greater consistency in collecting the reports.

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.

Ethics Program Review: HHS-HRSA

OGE found established processes in place at HRSA to ensure that new employee ethics orientation and annual training requirements are met, in accordance with the education-related provisions of subpart G of 5 CFR part 2638. The Ethics Office provides face-to-face initial ethics orientation presentations to incoming Scholars and SGE advisory committee members. OGE considers this to be a model practice.

Initial Ethics Orientation

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

- the Standards of Ethical Conduct for Employees of the Executive Branch (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.*

Within 60 days from the time an employee begins work at HRSA, the employee is provided an initial ethics orientation, which includes:

- the Standards;
- HHS' supplemental standards of conduct regulation;
- the names, titles, office addresses, and phone numbers of the HHS DAEO, the HRSA DEC, and the HRSA Ethics Office; and
- at least one hour of official duty time to review the items described above.

General Observation

OGE verified that 75 new HRSA employees were provided with initial ethics orientation through an examination of the forms used to certify that an employee has received the orientation. OGE raised three concerns with the Ethics Office regarding the certification form:

- The certification form gave no indication as to whether the new employee was receiving initial ethics orientation within the required 90 days of entering on duty.
- The certification form only asked for the employee's name, bureau/office, signature, and date.
- The certification form gave no indication as to whether a new employee was entering into a covered financial disclosure filing position.

OGE suggested that the Ethics Office consider revising the certification form to include more information, such as the employee's entrance-on-duty date (for tracking timeliness of initial ethics orientation receipt), job title, work telephone number and/direct extension, grade level, employment type/classification, and supervisor's name and contact information. OGE also suggested adding a checkbox to the form to indicate whether the new employee is entering into a

Ethics Program Review: HHS-HRSA

covered position to ensure that new employees are identified and instructed to file their financial disclosure reports timely.

During the October 2008 meeting, OGE found that the initial ethics orientation certification form has been revised to include date of appointment, position title and grade level, training completion date, and supervisor's name. The Ethics Office also maintains a database that tracks which employees are entering into covered positions and their entrance-on-duty dates, OGE Form 450 filing dates, ethics training notification dates, and ethics training completion dates.

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).

OGE found HRSA to be providing verbal annual ethics training to public financial disclosure filers and other covered employees as required.

Ethics Training for SGEs

OGE found HRSA to be providing its SGEs with 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 exception at 5 CFR § 2638.705(d)(2).

Ethics Intranet Web Page

OGE found HRSA's ethics intranet Web page to be a useful and comprehensive ethics tool for providing periodic updates, points of contact information, and general guidance on areas governing ethics in Government.

Ethics Program Review: HHS-HRSA

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 HRSA, 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 HRSA were also found to be timely, which is important in preventing conflicts of interest and other ethics violations from occurring.

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).

OGE found the Ethics Office to be aware of the requirements contained in 5 CFR § 2638.203(b)(11) and (12). At the time of OGE's onsite fieldwork, there had been no alleged violations of the criminal conflict of interest laws referred for prosecution to a U.S. Attorney's Office or to the Public Integrity Section of the Department of Justice's Criminal Division.

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.

HRSA did not accept any travel payments under 31 U.S.C. § 1353 from 2005 through 2008. In the event a travel payment greater than \$250 was accepted by HRSA, the Ethics Office would be responsible for collecting the information to be reported using the HHS-348 form,

Ethics Program Review: HHS-HRSA

Request for Approval to Accept Payment of Travel Expenses from a Non-Federal Source, drafting HRSA's semiannual report of payments of more than \$250 per event, and forwarding the report to the Office of the Assistant Secretary for Administration and Management for inclusion in the HHS semiannual report to OGE.

Summary

OGE's review identified one model practice that HRSA has implemented: HRSA conducts face-to-face initial ethics orientation for some of its new employees.

OGE's review of HRSA identified one area that required improvement; the timely filing of new entrant confidential financial disclosure reports. Since the completion of OGE's onsite fieldwork, HRSA has taken steps to improve the filing timeliness of new entrant reports. OGE suggests that HRSA continually monitor the steps it has taken to ensure compliance with the new entrant report filing requirements of 5 CFR § 2634.903(b).

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