

**United States Office of Government Ethics**

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Compliance Division

# Ethics Program Review

Corporation for National and Community Service

## Results in Brief

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The United States Office of Government Ethics (OGE) conducted a review of the Corporation for National and Community Service (CNCS) ethics program between January and February 2014. CNCS' ethics program appears to be in substantial compliance with applicable laws, regulations, and policies. However, OGE is making three recommendations for the improvement of CNCS's ethics program.

### Highlights

- CNCS has comprehensive written procedures for the administration of several elements of its ethics program: the financial disclosure system, education and training, ethics advice and counseling, ethics agreements, the enforcement of disciplinary actions for ethics-related violations, ethics services to special Government employees and the acceptance of travel payments from non-federal sources.

### Concerns

- Some newly designated special government employees did not file required confidential financial disclosure reports.
- CNCS must review the employment status of peer reviewers who evaluate and rate grant applications.

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## Objectives, Scope, and Methodology

OGE provides overall leadership and oversight of the executive branch ethics program which is designed to prevent and resolve conflicts of interest. OGE's Program Review Branch (PRB) carries out OGE's oversight responsibilities through onsite monitoring of agency ethics programs to ensure agencies are held accountable for compliance with applicable ethics requirements established by statutes, rules, regulations, and Executive Orders. PRB's oversight activities are also designed to mitigate program vulnerabilities, identify trends, and disseminate model

practices as well as to advance OGE's overarching goals of uniformity, continuity and transparency. OGE has authority to evaluate the effectiveness of executive agency ethics programs pursuant to Title IV of the Ethics in Government Act and 5 C.F.R. part 2638.

To assess CNCS's ethics program, OGE examined a variety of documents provided by ethics officials including the 2012 and 2013 Agency Ethics Program Questionnaires and samples of public and confidential financial disclosure reports filed in 2013, initial and annual ethics training materials, and a sample of ethics advice and counsel rendered to employees in 2013. OGE Compliance Division staff also met with CNCS ethics personnel and CNCS' Inspector General and Assistant Inspector General for Investigations to discuss the information collected, clarify issues identified during the review, and discuss ethics program operations in detail.

## **Program Administration**

Established in 1993, the Corporation for National and Community Service (CNCS) is a federal agency that engages more than 5 million Americans in service through its core programs -- Senior Corps, AmeriCorps, and the Social Innovation Fund -- and leads President Obama's national call to service initiative, United We Serve.

CNCS's Board of Directors and Chief Executive Officer (CEO) are appointed by the President and confirmed by the Senate. The Chief Executive Officer oversees the agency, which includes about 600 employees operating throughout the United States and its territories. The Board of Directors sets policies and direction for CNCS and is responsible for all actions taken by the Chief Executive Officer with respect to standards, policies, procedures, programs and initiatives as are necessary to carry out the mission of CNCS.

The Office of General Counsel (OGC) administers the CNCS's ethics program. The Deputy General Counsel serves as the Designated Agency Ethics Official (DAEO). An Associate General Counsel serves as the Alternate DAEO (ADAEO). The DAEO and ADAEO are primarily responsible for the day-to-day administration of the ethics program. Additionally, two Associate General Counsels serve as Deputy Ethics Counselors (DEC).

### **Leadership Support of the Ethics Program**

Commitment and action by agency leadership is critical to ensure the integrity of an agency's ethical culture and for fostering public confidence in the decision-making processes of Government. The CEO demonstrates her support of the ethics program and the importance of ethics training by attending ethics training sessions each year with other public filers.

## **Financial Disclosure**

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 publicly disclose their personal financial interests using the OGE Form 278. Title I also authorizes OGE to establish a confidential financial disclosure system in which less senior executive branch personnel in

certain designated positions may be required to complete the OGE Form 450. Financial disclosure serves to prevent, identify, and resolve conflicts of interest by providing for a systematic review of the financial interests of officers and employees. The financial disclosure reports assist agencies in administering their ethics programs and also assist in providing counseling to employees. *See* 5 C.F.R. part 2634.

### **Written Procedures**

Section 402(d)(1) of the Ethics in Government Act requires that each executive branch agency establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available financial disclosure reports filed by the agency's officers and employees. OGE found that CNCS has comprehensive financial disclosure written procedures to ensure the proper identification of filers, and collection, review, certification and retention of reports. Additionally, the written procedures include the penalties for the failure to file a financial disclosure report, requirements to comply with the STOCK Act and clearly delineate the responsibilities of all CNCS offices that support the ethics office in identifying financial disclosure filers.

### **Public System**

The DAEO performed both a technical and a conflicts of interest review of all public reports filed in 2013. During her review, the DAEO contacted filers directly to correct reporting omissions and errors, as necessary. The DAEO indicated that for CNCS filers' the potential conflicts are usually created by their former affiliations with employers or organizations outside the Federal Government. To conduct the conflict of interest analysis, the DAEO relied on her knowledge of the public filers' former outside positions and current official duties.

According to the DAEO, CNCS senior officials are aware of ethics-related considerations and notify her when hiring new employees into positions whose incumbents must file public financial disclosure reports. The DAEO also indicated that she is often part of the vetting process for new employees being hired into such positions. The DAEO raises any ethics-related concerns, based on the potential conflicts that a job candidate's current affiliations might have. As part of the vetting process, she has drafted ethics agreements for new employees in public filing positions in which they agree to resign from outside positions that might create a conflict of interest. The DAEO also uses this vetting process to introduce new employees to the ethics rules and regulations and provide filers with other advice as required.

### *Electronic Filing System*

CNCS began using an electronic filing system to help manage the public financial disclosure system in 2012. Public filers were required to use the electronic filing system to electronically prepare, submit, and digitally sign their financial disclosure reports during the 2013 annual filing cycle. The DAEO indicated that the electronic filing system has simplified the review process and expects that, as she becomes familiar with some of its features, the timeframe for following-up and receiving additional information from filers will be reduced.

### *Examination of Public Reports*

OGE examined 33 public reports required to be filed in 2013.<sup>1</sup> OGE found that 97 percent of these reports were filed timely. The majority of the reports were certified within 60 days of the date they were filed, as required. OGE also found that 4 reports were certified beyond the deadline and 4 reports had not been certified as of the time of the onsite review because the DAEO was seeking additional technical information from the filers. For example, the DAEO requested corrections to a report on the value of a mutual fund

OGE reviewers also verified that the filers from the selected sample of reports submitted OGE Periodic Transactions reports (OGE 278-T), as applicable. OGE's examination of the public reports did not reveal any apparent conflicts of interest.

### **Confidential System**

The DAEO reviewed of all confidential reports from headquarter employees filed in 2013. The ADAEO reviewed and certified the confidential reports for state office employees.

The Office of Human Capital notifies the ethics office of any new entrant confidential filers. During their review of the confidential financial disclosure reports, both the DAEO and ADAEO contacted filers directly to correct reporting omissions and errors, as necessary. As with the public filers, CNCS confidential filers' potential conflicts usually arise from their former affiliations with employers or organizations outside the Federal Government. To conduct the conflict of interest analysis, ethics officials relied on their knowledge of the programs managed at the state offices and the filers' former outside positions.

### *Examination of Confidential Reports*

OGE examined 48 confidential reports required to be filed in 2013.<sup>2</sup> OGE found that 92% of the reports were filed timely and 90% of the reports were reviewed and certified timely. OGE did not identify any apparent conflict of interest in the sample of reports.

## **Education and Training**

An ethics training program is essential to raising awareness among employees regarding ethics laws and rules and informing them of agency ethics officials' availability to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation (IEO) for all employees and annual ethics training for covered employees. OGE found CNCS's training program to be in compliance with the requirements of applicable OGE regulations.

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<sup>1</sup> OGE reviewers examined all public reports required to be filed in 2013 with the exception of the three reports that had been previously sent to OGE for review: the DAEO's report and the reports for CNCS' two PAS officials.

<sup>2</sup> OGE examined a judgmental sample of confidential reports: 25 new entrant and 23 incumbent reports required to be filed in 2013. In 2013, CNCS had approximately 350 confidential filers.

## **Initial Ethics Orientation**

Agencies must provide new employees an IEO that includes the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards), any agency supplemental standards, contact information for the agency's ethics officials, and one hour to review the materials. This training must be provided within 90 days from the time an employee begins working for an agency. *See* 5 C.F.R. § 2638.703.

All 121 employees required to receive IEO in 2013 were trained. New employees received an electronic New Employee Ethics Orientation brochure as a part of the employee's Offer Package. This package was sent out to all new full-time employees by the CNCS Office of Human Capital (OHC). Additionally, after a brief in-person presentation by the DAEO or ADAEO during the new employee orientation, employees were sent a PowerPoint presentation on the following ethics topics: the conflicts of interest statutes, the 14 General Principles of Ethical Conduct, the Standards of Ethical Conduct for Employees of the Executive Branch, Gifts, the Hatch Act and the lobbying restrictions. The PowerPoint presentation also included the ethics officials' contact information. Employees were required to email the DAEO confirming their review of the IEO materials. OGE found that the content of IEO satisfied all relevant requirements.

## **Annual Ethics Training Plan**

OGE regulations at 5 C.F.R. § 2638.706 require agencies to develop, at the beginning of each year, a written plan for annual ethics training. The plan must contain a brief description of the agency's annual training and include estimates of the number of employees who will receive verbal and written training. OGE found that CNCS' ethics training plan for 2013 contained a brief description of the agency's annual training and estimates of the numbers of employees who will receive verbal and written training, and as such, met all relevant requirements.

## **Annual Ethics Training**

OGE regulation requires all covered employees to receive annual ethics training that includes a review of: (1) the 14 General Principles of Ethical Conduct; (2) the Standards; (3) any agency supplemental Standards; (4) the criminal conflict of interest statutes; and (5) ethics official contact information. Training length and delivery method vary by an employee's financial disclosure filing status. *See* 5 C.F.R. § 2638.704 and 705.

In 2013 CNCS provided annual training to all 382 non-SGE covered employees. The DAEO provided in-person training to 22 public filers. CNCS' 360 confidential filers received online training. OGE found that the content of CNCS's annual training for confidential filers satisfied all relevant requirements. However, OGE noted that some of the criminal conflict of interest statutes (18 U.S.C. § 201, 207 and 209), the 14 Principles and the Standards were not covered during the annual training provided to public filers. Ethics training was focused on the new requirements of the STOCK Act, and the criminal conflict of interest statutes in 18 U.S.C. § 203, 205 and 208.

## Recommendation

- Ensure that annual ethics training includes a review of: (1) the 14 General Principles of Ethical Conduct; (2) the Standards; (3) any agency supplemental Standards; (4) the criminal conflict of interest statutes; and (5) ethics official contact information.

### **Advice and Counsel**

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 C.F.R. § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 C.F.R. § 2638.204.

OGE found that CNCS ethics officials have established written procedures for the administration of the advice and counsel element of the ethics program. Ethics officials spend a moderate amount of time administering the advice and counseling element of the ethics program. The DAEO and the ADAEO are primarily responsible for providing advice to CNCS employees at headquarters and at all 46 state offices. According to ethics officials, while most inquiries are made via e-mail, headquarters employees often visit ethics officials in-person to ask ethics-related questions. Written counseling files are stored on a shared computer drive to which both ethics officials have access.

OGE examined 13 examples of advice provided via e-mail and written memorandums by ethics officials in 2013. The advice pertained to a variety of topics such as conflicts-of-interest, and post-employment issues. Other issues addressed included endorsements, accepting gifts, and teaching and speaking. OGE found the advice was consistent with ethics laws and regulations and was provided timely.

### **Conflict Remedies**

The Ethics in Government Act expressly recognizes the need for Presidentially-appointed, Senate-confirmed (PAS) nominees to address actual or apparent conflicts of interest by requiring written notice of the specific actions to be taken in order to alleviate conflicts of interest.

Each of the two PAS employees, the CEO and the Inspector General (IG), maintain a screening arrangement to ensure continued compliance with the recusals required by their ethics agreements. The screening arrangements are enforced by the CEO's Executive Scheduler and the Counsel to the IG respectively. Copies of the screening arrangements were provided to CNCS senior officials.

As indicated earlier in this report, some non-PAS public filers have entered into ethics agreements in which they agree to resign from outside positions that might create a conflict of interest with their official duties. Similarly to PAS employees, screening arrangements are put in place to ensure that the recusals required by their ethics agreements remain in effect for the intended time frame.

## Enforcement

Agencies must concurrently notify OGE when a case involving an alleged violation of a criminal conflict-of-interest statute is referred to the Department of Justice (Justice). Agencies are also required to report when Justice declines to prosecute a potential violation, any follow-up actions on a referral, and the disposition of the referral. *See* 5 C.F.R. § 2638.603. OGE's review of CNCS's system of enforcement focused primarily on these requirements.

In 2013, CNCS ethics officials referred an employee to the Office of Inspector General (OIG) for an alleged violation of 18 U.S.C § 205. After investigating the matter, the OIG referred the matter to Justice. The OIG notified OGE of the referral and its declination by Justice with the Notification of Conflict Referral Form (OGE Form 202). CNCS management counseled the employee.

Additionally, OGE's review examined the working relationship between the ethics office and OIG officials. The review team met with the IG and her Assistant and learned that, generally, a good working relationship exists between ethics officials and the OIG. Additionally, the DAEO indicated that OIG officials consult with ethics officials when an investigation might involve ethics related issues.

OGE found that CNCS ethics officials have established written procedures for the administration of the enforcement element of the ethics program. Written procedures effectively promote continuity transparency, and uniformity.

## Special Government Employees

Special Government employees (SGE) are officers or employees of the executive or legislative branch, retained, designated, appointed or employed to perform their duties, full-time or intermittently, for not more than 130 days in any 365-day period. SGEs typically serve on agency advisory boards or commissions. As of December 31, 2013, CNCS had 15 SGEs serving as members of the Board of Directors and the AmeriCorps NCCC Advisory Board..

### Board of Directors

Members of the Board of Directors file new entrant confidential financial disclosure reports upon nomination and subsequently file new entrant confidential reports each year thereafter on a date established by ethics officials (in 2013 the reports were due on July 15<sup>th</sup>). All confidential financial disclosure reports required to be filed in 2013 were filed, reviewed and certified timely.

CNCS provided written training to Board members in 2013. In-person annual training was originally scheduled to be provided during a Board meeting in the fall but the meeting was cancelled. Therefore, the DAEO sent Board members the annual ethics training in an email. Board members were required to verify by email the receipt and completion of the annual training. Only three out of the eight Board members sent confirmation emails to the DAEO. As of the time of the onsite review, the DAEO continued efforts to verify that the rest of the Board members completed the training. OGE found that the content of the annual ethics training

materials provided to SGE satisfied all relevant requirements by covering the conflict of interest statutes as applicable to SGEs, the Standards and the 14 Principles.

### AmeriCorps NCCC Advisory Board

The AmeriCorps NCCC Advisory Board advises the director and staff on policy and programs; assists in developing a long-term strategy; facilitates the pooling of national, state, and local resources; reviews program progress and direction; and assists in evaluating the program. In 2013 the DAEO made the determination that the Advisory Board members were performing the duties of SGEs and alerted the AmeriCorps director.

The Advisory Board members were notified of their SGE status in early 2013. Since the notification of SGE status, one member resigned from the Advisory Board, and three members' terms ended. Advisory Board members were also notified of the requirement to file confidential financial disclosure reports. In 2013 six out of the 11 members filed reports. The DAEO explained to the remaining advisory members that they must file financial disclosure reports before they may participate in meetings. However, in 2014 members attended a meeting in February before submitting their reports in March 2014. The DAEO was not aware of the February meeting.

Advisory Board members did not receive ethics training in 2013 because of the DAEO's oversight. However, in 2014 the DAEO provided the required ethics training in advance of the February Advisory board meeting.

### Recommendation

- Ensure that each SGE files a confidential financial disclosure report before participating in board meetings each year.

### Peer Reviewers

CNCS uses the services of external peer reviewers to evaluate and rate grant applications submitted by organizations that use citizen service as a strategy to meet critical national and community needs. The applications are evaluated based upon published selection criteria. The opinion of external peer reviewers is considered by CNCS in making funding decisions and to provide feedback to applicants.

Peer reviewers include practitioners, educators, administrators/managers, analysts, researchers, funders, entrepreneurs, evaluators, and board members. Typically, their expertise includes at least 5 years in one of the relevant areas such as national service, volunteer management, education, literacy and tutoring, human services, nonprofit management, grant making, philanthropy, program evaluation, public health and health services, disaster preparedness and response, and the environment and clean energy. Peer reviewers spend between 30 hours over a five day period to 60 hours over a fifteen day period for a grant application review and, receive a modest honorarium for their participation in the grant review.

CNCS requires peer reviewers to complete the *Confidentiality and Conflict of Interest Statement for Review Participants* form to screen potential conflicts of interest with a prospective peer reviewer's affiliations. Instructions on this form define a conflict of interest for a peer reviewer as when the individual is directly or indirectly affiliated with an organization that has submitted a grant application for review. Some of the affiliations are:

- A personal submission of an application to CNCS.
- Currently being employed or are being considered for employment at the institution that is applying for the grant.
- Ownership of the institution's securities or other evidences of debt.

If CNCS Office of Grants Policy and Operations has questions about whether an affiliation is a conflict of interest, they contact an attorney at OGC who consults with the DAEO.

During OGE's review, the review team and OGE's General Counsel and Legal Policy Division inquired about the employment status of the peer reviewers. The DAEO stated that the peer reviewers are not regular or special Government employees. However, the DAEO also stated that she has never reviewed the employment status of the peer reviewers. The criteria for determining Government employment is at 5 U.S.C. § 2104 and 2105. See also OGE Advisory DO-00-003.

#### Recommendation

- Make a determination as to the status of the peer reviewers based on the provisions of 5 U.S.C. § 2104 and 2105. See also OGE Advisory DO-00-003.

### **1353 Travel Acceptances**

Federal agencies may allow employees to accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under the authority of the General Services Administration (GSA) regulation at 41 C.F.R. chapter 304, implementing 31 U.S.C. § 1353. Semiannual reports of payments accepted under 31 U.S.C. § 1353 must be submitted to OGE by May 31 and November 30 of each year.

CNCS submitted the required semi-annual reports of payments accepted from non-Federal sources in 2013 in a timely manner. CNCS has established written procedures for the administration of the 1353 travel acceptance.

### **Agency Comments**

CNCS has implemented an electronic financial disclosure filing system for public and confidential financial disclosure reports. This year the contractor added a feature that automatically tracks the number of days since a report has been filed. This system enhancement will improve our ability to easily monitor the reports that are approaching the 60-day certification point. In addition, with the calendar year 2014 filings we have increased our use of the filing system's features to track review activities on our reports and communications with filers.

In response to our discussions during the program review, SGE filers were required to submit their confidential financial disclosure reports prior to their first meeting of this year and will be required to do so for each future year. In addition, ethics training for the CNCS Board of Directors was presented at the first meeting and NCCC Advisory Board training was presented prior to the first meeting. Written materials were provided to members who were unable to participate. With regard to future ethics trainings of the CNCS Board of Directors and the NCCC Advisory Board, we intend to ensure such trainings take place before or during the first meeting of the year.