



United States Office
Of Government Ethics

Report Number 08-016

Highlights

Model Practices

- DeCA's ethics officials routinely provide ethics training to all employees throughout the year via a variety of media.

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Defense Commissary Agency

October 2008 Report

Executive Summary

The Office of Government Ethics (OGE) has completed its review of the ethics program at the Defense Commissary Agency (DeCA). 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 in place for administering the program.

At the time of OGE's onsite fieldwork, DeCA's agency head had not appointed an individual to serve as the Alternate Designated Agency Ethics Official (Alternate DAEO). Subsequent to the completion of OGE's onsite fieldwork, DeCA's agency head formally appointed the Deputy DAEO as the Alternate DAEO, in accordance with 5 CFR § 2638.202(b).

OGE's review identified a model practice that DeCA has implemented: DeCA's ethics officials routinely provide ethics training to all employees throughout the year via a variety of media. The enclosed report describes in detail DeCA's training efforts.

A copy of this report has been sent to DeCA's DAEO and DeCA's Inspector General.



United States Office
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Report Number 08-016

Ethics Program Review
Defense Commissary Agency

October 2008 Report

Introduction

OGE MISSION

The U.S. 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 Defense Commissary Agency (DeCA) focused on the elements listed below.

- 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 review focused on the ethics program at DeCA's headquarters. The on-site fieldwork was conducted in May 2008.

Program Elements

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

PROGRAM STRUCTURE

DeCA's ethics program is administered within the Office of the General Counsel. The General Counsel serves as the Designated Agency Ethics Official (DAEO). The Assistant General Counsel serves as the Deputy DAEO (DDAEO) and is closely involved in the administration of the ethics program. DeCA's DDAEO was appointed by the DAEO.

At the time of OGE's onsite fieldwork, DeCA's agency head had not designated an individual to serve as the Alternate DAEO (ADAEO). According to 5 CFR § 2638.202(b), the head of each agency shall appoint an ADAEO to serve in an acting capacity in the absence of the DAEO. Subsequent to the completion of OGE's onsite fieldwork, DeCA's agency head formally designated the DDAEO as the ADAEO in accordance with 5 CFR § 2638.202(b).

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 (SF 278)

DeCA's DAEO is responsible for administering the agency's public financial disclosure system. The DAEO distributes to each public financial disclosure report filer a memorandum concerning the public filing requirement. The DAEO also e-mails a link to an electronic version of the SF 278 as well as an online training course on how to complete the form.

To evaluate the filing, review, and certification of public reports at DeCA, OGE examined all 6 public reports required to be filed in 2007. These 6 reports consisted of:

Ethics Program Review: DeCA

Type of Report

- 5 incumbent reports
- 1 termination report

6 total

Filing Timeliness

- All 6 reports were filed timely.

Review Timeliness

- All 6 reports were reviewed timely.

Certification Timeliness

- All 6 reports were certified timely.

Quality of Review

Written comments on the reports and documentation in the files indicated that the reports underwent a thorough review by DeCA's ethics officials.

Confidential Financial Disclosure System (OGE Form 450)

DeCA operates under the National Security Personnel System (NSPS). NSPS codes job announcements to indicate that the position requires the filing of a financial disclosure report. In addition to NSPS, DeCA's Human Resources Office notifies the DDAEO when someone joins DeCA, enabling the DDAEO to track confidential financial disclosure report filers.

The DDAEO e-mails a memorandum to each confidential financial disclosure report filer concerning the confidential filing requirement. The e-mail includes a link to an electronic version of the OGE Form 450 as well as an online training course on how to fill out the form.

To evaluate the confidential financial disclosure system at DeCA, OGE examined all 106 confidential reports required to be filed in 2007. These 106 reports consisted of:

Type of Report

- 98 incumbent reports
- 8 new entrant reports

106 total

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Filing Timeliness

- All 106 reports were filed timely.

Review Timeliness

- All 106 reports were reviewed timely.

Certification Timeliness

- All 106 reports were certified timely.

Quality of Review

Written comments on the reports and documentation in the files indicated that the reports underwent a thorough review by DeCA's ethics officials.

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.

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

- the 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.

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All new employees receive a web-based initial ethics orientation when they begin work at DeCA in addition to receiving the written materials.

The completion of the initial ethics orientation is tracked by sign-in sheets. Each supervisor/store manager notifies the DDAEO about the completion of training based on the information from the sign-in sheets. The information from the sign-in sheets is then transferred to each employee's personnel file. According to DeCA's ethics officials, initial ethics orientation was provided to all new employees who began work at DeCA 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).

DeCA provides annual ethics training to all employees, not just employees in covered positions. DeCA ensures that covered and non-covered employees are provided an hour of official duty time to participate in annual ethics training.

The DAEO provides one-on-one training to all public filers before certifying their SF 278s.

The annual ethics training for confidential filers is generally Web-based. Confidential filers can select training products from a variety of sources pre-approved by DeCA, including the Department of Defense, the Department of Agriculture, and DeCA PowerPoint presentations from DeCA's "public folders." DeCA's public folders are an online compilation of ethics-related materials.

Once a year, the DDAEO sends an e-mail to confidential filers advising them of the requirement to receive annual ethics training and directing them to file their OGE Form 450s. In the same email, the DDAEO advises that for DeCA purposes, by signing their OGE Form 450s, the filers are also certifying that they received annual ethics training. The email includes a link with instructions on how to complete the OGE Form 450s and how to access the Web-based annual ethics training.

Ethics Program Review: DeCA

DeCA's ethics officials provide additional ethics training to all employees, including covered employees, throughout the year. On the Web sites commissaries.com and DeCA.mil, DeCA's ethics officials provide ethics tips to supervisors and other employees. The ethics officials also send out memoranda on ethics-related issues, such as gift acceptance, to all DeCA employees. Finally, DeCA utilizes television monitors which are located in Headquarters as well as in each commissary to provide general ethics guidance and contact information.

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 counseling to assess whether processes and written procedures are effective.

OGE examined samples of memorialized ethics counseling for DeCA. The majority of the counseling related to requests from employees to work as vendor stockers at DeCA facilities. In accordance with DeCA internal policy, a request is submitted to the regional manager who then forwards the request to the DDAEO. The DDAEO provides a legal opinion to the regional director who then makes the ultimate decision as to whether the individual can hold the position of vendor stocker. On average, DeCA's ethics officials provide 2,000 to 3,000 of these types of legal opinions a year.

The ethics office memorializes most of the counseling rendered. The memorialized counseling is maintained on the DDAEO's computer and can be searched using Microsoft Outlook.

All senior-level employees receive one-on-one post-employment counseling upon departing DeCA. Additionally, all OGE Form 450 filers receive a basic fact sheet on post-employment rules upon departure.

ENFORCEMENT

The DAEO is 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).

Ethics Program Review: DeCA

DeCA's DDAEO stated that the agency's ethics officials and the Office of the Inspector General have an effective working relationship, and that they, as necessary, coordinate on employee misconduct cases and other ethics-related matters.

At DeCA, there were no criminal conflict of interest violations referred to the Department of Justice during 2007. During the same period, there were no substantiated violations of the Standards of Ethical Conduct for Employees of the Executive Branch.

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.

DeCA accepts travel payments from non-Federal sources under the authority of 31 U.S.C. § 1353. The procedures for requesting and receiving authorization for acceptance of travel payments from a non-Federal source are outlined in DeCA internal operating procedures. Employees must provide specific information to the Office of the General Counsel regarding the offer of payment in advance of the travel taking place.

OGE reviewed two semiannual reports submitted to OGE covering the period from October 1, 2006 through September 30, 2007. Both semiannual reports were submitted in a timely manner using the appropriate SF 326. As part of its review, OGE examined all of the supporting documentation for all four of the payments listed in the two reports. OGE found that all payments were approved prior to the occurrence of travel and were properly authorized. Conflict of interest analyses were conducted by the DDAEO as part of the approval process for each payment.

Summary

At the time of OGE's onsite fieldwork, DeCA's agency head had not appointed an individual to serve as the ADAEO. Subsequent to the completion of OGE's onsite fieldwork, DeCA's agency head formally appointed the DDAEO as the ADAEO in accordance with 5 CFR § 2638.202(b).

OGE's review identified a model practice that DeCA has implemented:

- DeCA's ethics officials routinely provide ethics training to all employees throughout the year via a variety of media.