



United States Office  
Of Government Ethics

Report Number 09-024

## Highlights

### Model Practice

- Ethics officials provide annual ethics training to all non-covered employees and contractors, in addition to financial disclosure report filers.

### OGE Recommends

- ADF cease requiring contractors to file OGE Forms 450.

If you have any comments or would like to discuss this report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224 or [dachrist@oge.gov](mailto:dachrist@oge.gov)

# Ethics Program Review African Development Foundation

September 2009 Report

## Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the African Development Foundation (ADF). 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.

OGE's review identified one model practice in the management of ADF's ethics program: ethics officials provide annual ethics training to all non-covered employees and contractors, in addition to financial disclosure report filers.

OGE's review of ADF identified several areas of deficiency in the performance and management of ADF's ethics program. Because ADF has taken several steps to address the areas of deficiency, OGE is making only one recommendation for improvement: ADF cease requiring contractors to file OGE Forms 450.

This report has been sent to ADF's Designated Agency Ethics Official (DAEO) and the U.S. Agency for International Development's Inspector General. OGE will follow-up with ADF within six months from the date of this report's issuance.



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## Ethics Program Review

# **African Development Foundation**

September 2009 Report

### **Introduction**

#### OGE MISSION

The United States 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 African Development Foundation (ADF) focused on the elements listed below.

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

## **Ethics Program Review: ADF**

OGE's review focused on the ethics program at ADF headquarters and the on-site field work was conducted in November 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. During the on-site fieldwork portion of OGE's review, ADF's President met with the review team. During the meeting, the President underscored his commitment to high ethical standards and welcomed any suggestions to enhance ADF's ethics program.

#### **PROGRAM STRUCTURE**

The General Counsel serves as the Designated Agency Ethics Official (DAEO) and exclusively administers the ethics program. At the time of OGE's on-site field work the Alternate DAEO (ADAEO) position was vacant. Recently, ADF acquired two new attorneys with the expectation that they will assist in the administration of the ethics program.

In its draft report on the ethics program review that was sent to ADF for comment, OGE recommended ADF appoint one of the new attorneys as the ADAEO, in accordance with 5 CFR § 2638.202(b). Accordingly, the ADF President designated an ADAEO and a Deputy DAEO.

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

At the time of OGE's on-site fieldwork, ADF's public and confidential financial disclosure systems were in need of improvement. OGE's review team found that some financial disclosure reports were not filed timely. Timely filing of reports allows ethics officials to more

## Ethics Program Review: ADF

readily identify and resolve real or potential conflicts of interest, protecting both employees and the Government.

In its draft report on the ethics program review that was sent to ADF for comment, OGE recommended that the DAEO take steps to ensure that financial disclosure reports are filed timely. The DAEO responded that strong incentives will be used to enforce timely compliance. As provided in the ADF's policy on financial disclosure reports, if the employee fails to comply after the first reminder that the report is overdue, one of the agency's ethics officials will contact the delinquent filer's immediate supervisor for appropriate action. If the delinquent filer fails to submit the report within five business days after the ethics official has contacted the filer's supervisor, the DAEO will report the delinquency up the chain of command to the ADF President or Chair of the Board, as appropriate.

### Public Financial Disclosure System (SF 278)

The administration of ADF's public financial disclosure system is primarily carried out by the DAEO. The DAEO reviews and certifies all reports, excluding her own. (The DAEO's report is reviewed and certified by the Deputy General Counsel.) The DAEO uses her knowledge of the agency's ongoing contracts to conduct a review of the reports for conflicts of interest.

To evaluate the filing, review, and certification of public reports at ADF, OGE examined the seven available public reports required to be filed by ADF employees in 2008. The following is a summary of OGE's examination of the reports.

#### Type of Report

- 2 annual reports
- 4 new entrant reports
- 1 termination report

7 total

#### Filing Timeliness

- 1 annual report was filed timely.
- 1 annual report (the DAEO's) was filed late.
- All 4 new entrant reports were filed timely.
- The timeliness of the termination report could not be determined as the termination date was not available.

7 total

The DAEO's 2008 annual public financial disclosure report, filed on July 31, 2008, was filed more than 30 days late. There was no evidence that a filing extension was granted. Employees who file their reports more than 30 days late are subject to a \$200 late filing fee. *See* 5 CFR § 2634.704.

## **Ethics Program Review: ADF**

In its prior report on ADF's ethics program dated January 15, 2003, OGE advised the DAEO that in the future, if the DAEO needs an extension for filing his or her financial disclosure report, the extension should be granted by the ADAEO. However, as discussed in the "PROGRAM STRUCTURE" section of this report, ADF did not have an ADAEO at the time of OGE's on-site fieldwork.

In its draft report on the ethics program review that was sent to ADF for comment, OGE recommended that the DAEO pay the \$200 late filing fee for the late filing of her report. According to ADF, the DAEO received a waiver of the late fee from ADF's President based on a finding that the delay was caused by extraordinary circumstances which made it reasonably necessary.

At the time of OGE's onsite field work, the DAEO's public financial disclosure report had not been sent to OGE for review as required by 5 CFR § 2634.602(c)(1). The review team advised the DAEO to send her report to OGE. Subsequently, the DAEO sent her report to OGE for review.

While OGE's review focused primarily on public reports required to be filed in 2008, the review team noted that in 2007, the DAEO failed to request a termination public financial disclosure report from one employee. During OGE's onsite fieldwork, the review team advised the DAEO to direct the filer to submit his termination report. Subsequently, the DAEO requested that the filer submit his termination report and the filer submitted it. Because the filer was not notified timely of the requirement to file a termination report, OGE suggested that the DAEO provide a waiver to the filer for the late filing fee under 5 CFR § 2634.704(b).

In its draft report on the ethics program review that was sent to ADF for comment, OGE recommended that the DAEO enforce ADF financial disclosure procedures by distributing public financial disclosure forms for completion by termination filers within 30 days of termination from a covered position. ADF ethics officials responded that the exit process for departing employees includes an ethics briefing on post-employment rules and the distribution of forms as appropriate for filing of the termination financial disclosure report. The case of late termination filing identified during OGE's review is the only known example where the requirement for the distribution of the termination form was not met. This departure from the rule was triggered by the highly unusual and contentious manner in which the employee left the agency. The former employee has submitted a termination financial disclosure report.

### Review/Certification Timeliness

- All reports were reviewed and certified timely.

### Quality of Review

OGE identified minor technical errors in some of the reports such as the dates of appointment and termination missing.

## **Ethics Program Review: ADF**

### Confidential Financial Disclosure System (OGE Form 450)

The administration of ADF's confidential financial disclosure system is primarily carried out by the DAEO. The DAEO reviews and certifies all reports. The DAEO uses her knowledge of the agency's ongoing contracts to conduct a review of the reports for conflicts of interest.

OGE's DAEOgram DO-06-036, issued on December 12, 2006, *Revised Confidential Financial Disclosure Regulation and OGE Form 450* advised ethics officials that the new annual filing cycle would be the 12 month period from January 1 to December 31 of each year and the filing date would be February 15 of the following calendar year. ADF's DAEO failed to make the necessary adjustments to the ADF confidential financial disclosure filing system. As a result, most OGE Forms 450 submitted in 2007 and 2008 were submitted by the wrong due date of October 1.

In its draft report on the ethics program review that was sent to ADF for comment, OGE recommended that the DAEO implement the annual filing cycle described in DAEOgram DO-06-036 and 5 CFR § 2634.903(a). Subsequently, ADF implemented the new filing cycle for calendar year 2008 confidential financial disclosure reports.

### Board of Directors

ADF is managed by a Board of Directors composed of seven members appointed by the President, by and with the advice and consent of the Senate. The Board members file nominee public financial disclosure reports. Board members are considered special Government employees (SGE); as such they would ordinarily file confidential reports rather than public reports annually. However, ADF's previous President excluded the Board Members from the confidential financial disclosure filing requirements based on his determination that the duties of their position made remote the possibility that they would be involved in any real or apparent conflict of interest in accordance with 5 CFR § 2634.905(a).

ADF's written procedures for the administration of its public and confidential financial disclosure systems, which are required by section 402(d)(1) of the Ethics in Government Act, state that "ADF Board members [...] have been granted a filing exclusion under 5 CFR 2634.905, effective October 17, 1996. However, Board members are to file annual certifications with the DAEO stating that to the best of their knowledge, no conflict of interest, real or apparent, exists between their financial holdings and their duties and responsibilities as members of the Board." After discussing this portion of the procedures with the DAEO, she stated that this section was incorrect.

In its draft report on the ethics program review that was sent to ADF for comment, OGE recommended ADF revise its written procedures to clearly reflect that the Board members have been excluded from filing annual confidential financial disclosure reports and are not required to file annual certifications. Subsequently, the clause requiring Board members to file annual confidential financial disclosure reports was removed from the Agency's written procedures on financial disclosure reports.

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### Contractor Confidential Filing

The review team found that the DAEO has been requiring contractors to file OGE Forms 450. OGE commends ADF for its efforts to prevent conflicts of interests among persons who perform functions and provide services to ADF under personal services contracts. However, 5 CFR § 2634.904 clearly states that a confidential filer is an *officer or employee* in the executive branch. OGE recommends ADF cease requiring contractors to file OGE Forms 450.

If ADF would like to continue to collect financial information from personal services contractors for purposes of identifying conflicts of interest, the DAEO may develop a separate form to be filed only by contractors. The requirement to file the form could be included as part of any contract agreement.

To evaluate the confidential financial disclosure system at ADF, OGE examined 15 of the 18 confidential reports required to be filed by ADF employees in 2007 and 16 of the 20 confidential reports required to be filed by ADF employees in 2008. The remaining reports were not filed at the time of OGE's onsite fieldwork. According to the DAEO, the outstanding reports have since been collected.

The following is a summary of OGE's examination of the 15 reports filed in 2007.

#### Type of Report

- 10 annual reports
- 5 new entrant reports

15 total

#### Filing Timeliness

- All 10 annual reports were filed by the erroneous filing due date of October 1.
- 1 new entrant report was filed timely.
- 4 new entrant reports were filed late.

15 total

In its draft report OGE recommended that the DAEO take steps to ensure that new entrant confidential financial disclosure reports are filed timely. Subsequently, the DAEO reissued a 2005 memorandum to the Human Resources Office (HR) requesting HR to include financial disclosure report filing information in the orientation packages for new hires. In addition, HR has agreed to provide the DAEO a monthly report on new hires, including a negative report when appropriate. Finally, the DAEO will take measures authorized in the financial disclosure filing procedures to ensure timely filing of new entrant reports.

#### Review/Certification Timeliness

- All 15 reports were reviewed and certified timely.

## Ethics Program Review: ADF

The following is a summary of OGE's examination of the 16 reports filed in 2008.

### Type of Report

- 15 annual reports
- 1 new entrant report

16 total

### Filing Timeliness

- All 15 annual reports were filed based by the erroneous filing due date of October 1.
- The 1 new entrant report was filed late.

16 total

### Review/Certification Timeliness

- 15 reports were reviewed and certified timely.
- 1 report was reviewed and certified late.

16 total

### Quality of Review

OGE identified minor technical errors in some of the reports submitted in 2007 and 2008 such as ethics officials failing to indicate the dates reports were received by the agency.

## 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.

Four ADF Presidentially-appointed, Senate-confirmed (PAS) employees entered into written ethics agreements in 2007 and 2008. OGE found that necessary actions had been taken by the PAS employees to ensure timely compliance with the ethics agreements.

## ETHICS 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

## **Ethics Program Review: ADF**

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 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.*

The initial ethics orientation at ADF is provided one-on-one by the DAEO. During the orientation, the DAEO provides employees with her contact information and the Standards.

The initial ethics orientation for the members of the Board is usually provided using a PowerPoint presentation. The Board members are also provided with a notebook containing OGE ethics training materials.

The completion of the initial ethics orientation is tracked by ADF's Human Resources Office. According to the DAEO, all new employees received the initial ethics orientation in 2007 and 2008.

### Annual Ethics Training

Public financial disclosure filers are required to receive verbal 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 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 (Principles),
- 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).*

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Annual training is provided to all ADF employees, not just covered employees, by the DAEO, and occasionally by guest-speakers from other Federal agencies. OGE considers the training of all employees to be a model practice.

In 2008, the Assistant General Counsel for Ethics and Administration from the United States Agency for International Development (USAID) provided annual ethics training to ADF employees. The DAEO provided annual ethics training to the Board members in 2008.

ADF also makes annual ethics training available to contractors. The training typically consists of PowerPoint presentations and sanitized information from real cases.

### **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.

OGE reviewed a sample of memorialized counseling rendered by the DAEO. The counseling involved conflicts of interest, impartiality, misuse of position, and outside activity. OGE found that the DAEO generally provided accurate advice in accordance with applicable laws and regulations and consulted with the OGE Desk Officer when needed. The DAEO has agreed to better monitor Board members' ethics agreements and to more thoroughly screen matters covered by employees' recusal obligations.

### **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).

ADF currently uses the services of the USAID Inspector General (IG) to investigate allegations of violations of the criminal conflict of interest statutes and to make any required referrals to the Department of Justice (DOJ). The DAEO explained that she would concurrently notify OGE of any referral to DOJ. However, the IG agent responsible for investigating violations at ADF was not aware of who would concurrently notify OGE of any referrals.

## **Ethics Program Review: ADF**

There was one potential violation of the criminal conflict of interest statutes referred to DOJ from January 2007 thru November 2008. DOJ declined to prosecute the case. The DAEO failed to notify OGE of the referral. The review team provided the DAEO with an OGE Form 202 and explained the process for notifying OGE of referrals. Subsequently, the DAEO provided the completed OGE Form 202 to OGE.

According to the DAEO, there were no identified violations of the Standards from January 2007 through November 2008.

In its draft report on the ethics program review that was sent to ADF for comment, OGE recommended that ADF establish procedures to ensure the prompt notification of OGE in the event a potential violation of the criminal conflict of interest statutes is referred to DOJ. Procedures could include a memorandum of understanding between the IG and the DAEO regarding the roles of both offices in cases involving potential ethics violations. The ADF President has requested the IG to notify OGE of any potential violations of the criminal conflict of interest statutes that the IG refers to DOJ.

### **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 to OGE of travel payments from non-Federal sources in excess of \$250. *See* 31 U.S.C. § 1353.

ADF accepted two payments from non-Federal sources during the period covering April 1, 2007 through March 31, 2008. The DAEO provided the review team with her written conflict of interest analysis for one of the payments indicating that there was no conflict of interest involved in the acceptance of the payment. The DAEO was not aware of the acceptance of the second travel payment until after the travel had taken place.

All of the semiannual reports submitted to OGE covering the period from April 1, 2007 through March 31, 2008 were late.

In its draft report of the ethics program review that was sent to ADF for comment, OGE recommended that ADF establish procedures to properly authorize and perform a conflict of interest analysis prior to the acceptance of payment of travel expenses from non-Federal sources on behalf of ADF. OGE also recommended ADF submit all future semiannual reports timely. According to the DAEO, she is confident that the addition of the ADAEO and Deputy DAEO will enable her to better distribute the work of the ethics program, which will result in more timely compliance. Also, ADF plans to adopt a tickler system to ensure that deadlines are met.

### **Summary**

During its review, OGE identified as a model practice that the DAEO provides annual ethics training to all non-covered employees and contractors, in addition to financial disclosure report filers. OGE also identified several areas of deficiency in the performance and

## **Ethics Program Review: ADF**

management of ADF's ethics program. Because ADF has taken several steps to address the areas of deficiency, OGE is making only one formal recommendation for improvement.

### **Recommendation**

OGE recommends that ADF:

1. Cease requiring contractors to file OGE Forms 450.

OGE will follow-up with ADF's DAEO within six months from the date of this report's issuance on the status of OGE's recommendation and the results of the steps ADF has taken to address identified areas of deficiency.

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