



United States  
**Office of Government Ethics**

1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

April 15, 1998

Nikki L. Tinsley  
Acting Inspector General  
Environmental Protection Agency  
Mail Code 2410  
401 M Street, SW.  
Washington, DC 20460

Dear Ms. Tinsley:

As part of the Office of Government Ethics' monitoring activities, we have completed a review of the Environmental Protection Agency's ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended.

I have enclosed a copy of the report for your information. Please contact Dale Christopher at 202-208-8000, extension 1130, if you wish to discuss this report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jack Covaleski".

Jack Covaleski  
Senior Associate Director  
Office of Agency Programs

Enclosure



United States  
**Office of Government Ethics**

1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

April 15, 1998

Scott C. Fulton  
Principal Deputy General Counsel  
Environmental Protection Agency  
Mail Code 2311  
401 M Street, SW.  
Washington, DC 20460

Dear Mr. Fulton:

The Office of Government Ethics (OGE) recently completed a review of the Environmental Protection Agency's (EPA) ethics program, focusing on the Office of the Administrator; the Office of General Counsel (OGC); the Office of Air and Radiation; the Office of Prevention, Pesticides, and Toxic Substances; the Office of Solid Waste and Emergency Response; the Office of Water; and two offices within the Office of Administration and Resources Management: the Office of Acquisition Management and the Office of Grants and Debarment. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (Ethics Act). Our objectives were to determine the program's effectiveness and compliance with applicable laws and regulations. To meet our objectives, we examined the following program elements: the administration of the ethics program, the public and confidential financial disclosure systems, the ethics training program, the ethics counseling services, the coordination between ethics officials and officials from the Office of Inspector General (OIG), and the acceptance of travel payments from non-Federal sources under 31 U.S.C. § 1353. The review was conducted from January through April 1998. The following is a summary of our findings, conclusions, and recommendations.

#### ADMINISTRATION

EPA has an extremely decentralized ethics program. You are EPA's Designated Agency Ethics Official (DAEO) and an attorney within OGC is the Alternate DAEO (ADAEO). Two other attorneys and an ethics staff assistant from OGC assist in administering the program. In addition, there are approximately 100 Deputy Ethics Officials (DEO) EPA-wide who perform certain ethics duties for their respective offices, including collecting, reviewing, certifying, and maintaining confidential financial disclosure reports; providing annual ethics training; and providing ethics counseling. The DEOs may, and often do, designate other staff employees to assist them in carrying out these duties.

To maintain oversight of EPA's widely dispersed ethics program, you require DEOs to provide you certification statements each year detailing the number of confidential reports collected and reviewed at their respective offices, the number of remedial actions initiated (e.g., divestitures, recusals, etc.), and the number of employees provided annual ethics training. Additionally, your office routinely disseminates ethics-related directives known as Ethics Advisories to assist DEOs in administering their portions of the program and to apprise them of any changes in the ethics rules. We commend you for your efforts in monitoring DEO compliance and ensuring a certain degree of commonality in the administration of the program among the individual offices.

#### PUBLIC FINANCIAL DISCLOSURE SYSTEM

To evaluate the public financial disclosure system administered by your office, we examined 60 of the public reports filed in 1997. These included 4 new entrant, 2 termination, and 54 incumbent reports. Fifty-seven filers submitted their reports by the appropriate filing deadlines, including any filing extensions, and all of the reports were reviewed and certified in a timely manner.<sup>1</sup>

The review of the public reports by you and the ADAEO to identify and resolve conflicts appeared to be conducted in a thorough manner as our examination revealed no substantive deficiencies. We did, however, uncover several minor technical reporting deficiencies, including failure to identify types or amounts of income for certain assets, failure to provide the date appointed to the covered filing position, and failure to identify mutual funds as excepted investment funds.

#### CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

Unlike the public system, the confidential system is very decentralized. Each office administers its own system under the direction of the DEO. However, the actual day-to-day administration is usually carried out by a staff employee, with the DEO serving as the final review and certification official.

To evaluate the confidential system, we examined a sample of 387 OGE Form 450s or SF 450s filed in 1997 at each of the offices included in our review. These included 49 new entrant and 338 incumbent reports. We also examined 113 OGE Optional Form 450-As filed in 1997.

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<sup>1</sup>None of the three late filers submitted their reports more than 30 days after the appropriate filing deadlines and were therefore not subject to the \$200 late filing fee.

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Nearly all the incumbent OGE Form/SF 450s and OGE Optional Form 450-As were filed in a timely manner; however, filing timeliness of new entrant reports requires improvement. Our examination revealed that only 13 of the 49 new entrant reports were filed within 30 days of the dates the employees entered the covered filing positions. While several DEOs and their staff employees stated that they require new employees to file new entrant reports prior to offering them a position, our examination did not reveal any evidence of this. You should ensure that new employees entering covered filing positions file new entrant reports within 30 days, as required by 5 C.F.R. § 2634.903(b).

The review of the reports by the DEOs and staff employees was conducted in a timely manner; however, the technical review could be improved. Our examination revealed that 356 of the 387 reports were reviewed and certified in a timely manner. However, while our examination did not uncover any substantive deficiencies, it did reveal some common technical deficiencies, including overreporting of checking and savings accounts, Federal salary, and interests in the Thrift Savings Plan; failure to report the nature of income for reported assets; and failure to provide or to correctly provide filer reporting status.

Our examination of the confidential systems at the various offices also revealed a few common administrative errors. The most prevalent of these was the collection of the SF 450 instead of the OGE Form 450 which has replaced it. OGE's primary purpose in replacing the SF 450 with the OGE Form 450 was to incorporate the 1993 regulatory change that eliminated the requirement to report deposit accounts, money market funds and accounts, and U.S. Government obligations and securities. As previously noted, many 1997 confidential filers erroneously continued to report these types of assets, especially checking and savings accounts. Conversion to the OGE Form 450 should help to curtail these types of disclosures and ensure that only relevant, useful information is collected for purposes of identifying and resolving conflicts.

The second common administrative error was the failure of reviewing officials to indicate in the appropriate block on the OGE Form/SF 450s the dates they received completed reports from the filers. This is important because OGE has traditionally held that the date the report is received by the agency is the date on which the report is considered to have been filed. Therefore, indicating the date received is necessary to accurately reflect the timeliness of filing and review.

Finally, a few offices collected incumbent reports in September 1997. We understand that in most cases officials collected these reports early in an attempt to ensure that they were filed timely. However, annual reports should not be collected

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prior to October 1 of each year, as the annual reporting period covers the preceding 12-month period, ending September 30.

#### ETHICS TRAINING

We commend EPA for providing initial ethics orientations that exceed what is minimally required by OGE's training regulation. The ADAEO provides a live ethics briefing approximately once a week for all new EPA headquarters employees. Additionally, he provides new employees with information on how to access ethics-related materials contained on EPA's local area network.

Until recently, the ADAEO was also responsible for providing annual ethics training for all public filers. However, this responsibility now rests with the DEOs. In 1997 approximately 95 percent of public filers were provided annual ethics training by the ADAEO. The ADAEO stated that it's sometimes difficult to induce public filers to attend annual training because of their busy schedules. However, he added that shifting the responsibility for training these filers to the DEOs may help to ensure that all public filers receive annual training.

In accordance with EPA's 1997 annual ethics training plan, annual training was provided to confidential filers by the DEOs and other designated staff employees. This training was accomplished by a variety of methods; however, most offices took advantage of the change to OGE's training regulation which allowed them to provide the training through the use of written materials. While some offices provided written materials that met the minimum written content requirements of 5 C.F.R. § 2638.704(c), many did not. The most common deficiency of the written materials was the failure to include information regarding EPA's supplemental standards-of-conduct regulation, as required by § 2638.704(c)(1). You should ensure that DEOs are aware of the minimum content requirements and that employees receive appropriate materials.

In addition to providing initial orientations and annual ethics training, your office routinely provides ethics training for DEOs. In 1997, this training consisted of a one-day conference at which a wide variety of topics were discussed, including the conflict-of-interest laws and regulations, confidential financial disclosure, new developments in the ethics area, and the DEO's role in the administration of the ethics program.

#### COUNSELING

Ethics counseling is provided by you, the ADAEO, and the DEOs. While the vast majority of ethics counseling appears to be provided orally, we did examine a sample of the available written determinations rendered from 1997 to the date of our review. We

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found the advice to be accurate, well researched, and fully in compliance with applicable ethics laws and regulations.

During our review, many DEOs stated that they often consult with the ADAEO prior to counseling an employee, especially when complex issues are involved. Based on these comments, it is evident that the ADAEO maintains ongoing dialogue with the DEOs and is quite responsive to their questions.

#### RELATIONSHIP WITH OIG

According to the Assistant Inspector General (IG) for Management and the ADAEO, a good working relationship exists between their offices. The Assistant IG for Management stated that he generally contacts the ADAEO when the need arises. However, he added that his office rarely receives allegations of ethics-related violations.

The Assistant IG for Management also stated that employee misconduct cases are generally handled by the appropriate management officials. He added that his office had not referred any allegations of violations of the criminal conflict-of-interest laws to the Department of Justice during 1997.

#### ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

EPA has detailed written procedures in place to approve the acceptance of travel payments and related expenses from non-Federal sources under 31 U.S.C. § 1353 and the implementing General Services Administration (GSA) regulation at 41 C.F.R. part 304-1. In accordance with these procedures, only you, the ADAEO, and two OGC attorneys are authorized to approve the acceptance of these types of payments.

To determine the effectiveness of the procedures, we examined all the payments contained in EPA's January 1998 semiannual report to OGE of payments totaling more than \$250 per event for the period April 1, 1997 through September 30, 1997. This report contained approximately 700 payments for employee attendance at a wide variety of events, including conferences, workshops, and symposiums sponsored by various scientific and educational institutions and associations.

We questioned one of the OGC attorneys about several payments contained in the report which appeared to be improperly accepted under the authority of 31 U.S.C. § 1353 and the GSA regulation. First, several payments were reported as being accepted in cash, which is disallowed under 41 C.F.R. § 304-1.6. According to the attorney, these payments were improperly reported and were actually made by check made payable to EPA. Second, we questioned several

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payments which appeared to be accepted for attendance at meetings or similar functions that did not take place away from the employees' official duty stations (i.e., the meetings appeared to be held in the Washington metropolitan area). The attorney stated that these were data entry errors and that the meetings did in fact take place away from the employees' official duty stations.

#### CONCLUSIONS AND RECOMMENDATIONS

EPA's ethics program is well managed. We were impressed with your efforts in administering such a large and decentralized program. We particularly applaud the efforts of the ADAEO who by all accounts is an invaluable resource for the DEOs and is highly responsive to their questions. Other strong points include the Ethics Advisory system, the public financial disclosure system, and the training provided the DEOs. Improvements to the confidential financial disclosure system and the annual ethics training program will further enhance EPA's ethics program. Specifically, we recommend you ensure that:

1. New entrant confidential reports are collected no later than 30 days after an employee enters a covered filing position in accordance with 5 C.F.R. § 2634.903(b).
2. Confidential filers submit OGE Form 450s (or Form 450-As) in lieu of the SF 450.
3. DEOs provide confidential filers written annual ethics briefings that meet the minimum course content requirements at 5 C.F.R. § 2638.704(c).

In closing, I would like to thank all the EPA officials involved in this review for their efforts on behalf of the ethics program. Please advise me within 60 days of the specific actions your agency has taken or plans to take on our recommendations. A brief follow-up review will be scheduled within six months from the date of this report. In view of the corrective action authority vested with the Director of the Office of Government Ethics under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that EPA take timely actions to implement our recommendations. A copy of this report is being forwarded to EPA's IG via transmittal letter. Please contact

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Dale Christopher at 202-208-8000, extension 1130, if we may be of further assistance.

Sincerely,



Jack Covalesski  
Senior Associate Director  
Office of Agency Programs

Report Number 98- 015