



United States Office  
Of Government Ethics

Report Number 08-013

## Highlights

### OGE Recommends

- That RD take steps to improve the filing timeliness of new entrant confidential financial disclosure reports.
- That RD include additional information in the initial ethics orientation packet.

### OGE Suggests

- That RD evaluate whether State Ethics Advisors require training on how to review and certify confidential financial disclosure reports and if so, provide the required training.
- That RD create a written procedure for administering the process for obtaining prior approval to engage in outside employment.

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](mailto:dachrist@oge.gov).

# Ethics Program Review U.S. Department of Agriculture Rural Development

October 2008 Report

## Executive Summary

The Office of Government Ethics (OGE) has completed its review of the ethics program at the U.S. Department of Agriculture's (USDA) Rural Development (RD). 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 for administering the program.

OGE identified two deficiencies that require action to enhance RD's ethics program. The first deficiency relates to new entrant confidential financial disclosure report filing. Specifically, 11 new entrant reports were filed late or had no date of appointment. This number represents 100 percent of new entrant confidential financial disclosure reports examined by OGE. OGE recommends that RD take steps to improve the filing timeliness of new entrant confidential financial disclosures reports.

The second deficiency relates to compliance with the initial ethics orientation requirements. Specifically, RD's initial ethics orientation packet lacked the Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture at 5 CFR part 8301; the name, title, and office address and telephone number of the Designated Agency Ethics Official (DAEO); and the office address of the Mission Area Ethics Advisor. OGE recommends that RD include this information in its initial ethics orientation packet.

In addition to the two deficiencies mentioned, OGE identified two areas of risk. The first relates to training for State Ethics Advisors and the second relates to written procedures. OGE suggests that RD take action in these areas.

This report has been sent to USDA's DAEO and USDA's Inspector General. USDA's DAEO is to advise OGE within 60 days of the specific actions OE has taken or plans to take to address OGE's recommendations. OGE stands ready to assist USDA in implementing the recommendations as well as other program initiatives that USDA may choose to undertake. OGE will follow-up with USDA's DAEO within six months from the date of this report's issuance on the status of OGE's recommendations.



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## Ethics Program Review

# U.S. Department of Agriculture Rural Development

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### 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 U.S. Department of Agriculture (USDA) focused on the elements listed below.

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

## Ethics Program Review: USDA – RD

OGE's review of USDA focused on the ethics programs at four USDA components: the Office of the Secretary (OSEC), Rural Development (RD), Agricultural Research Service (ARS), and Food Safety and Inspection Service (FSIS). This report details OGE's review of RD.<sup>1</sup>

OGE conducted on-site examinations at RD headquarters and three RD state offices. OGE sent a brief questionnaire to State Ethics Advisors at the remaining 44 state offices that did not undergo an OGE on-site examination to gather information about their ethics duties and responsibilities. State Ethics Advisors from 28 state offices responded to the questionnaire.

### 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. On June 15, 2006, the Secretary of Agriculture underscored the importance of ethics at USDA by issuing a memorandum to the entire agency reminding employees to maintain high ethical standards and to adhere to the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). The Secretary of Agriculture also discussed his commitment to ethics in a meeting with the Director of OGE in November 2006.

#### PROGRAM STRUCTURE

The Office of Ethics (OE) provides overall direction and support for the USDA ethics program. The Director of OE serves as the Designated Agency Ethics Official (DAEO) for USDA. The DAEO delegated the authority and responsibility for the RD ethics program to the RD Deputy Ethics Official. The RD Mission Area Ethics Advisor is responsible for the daily operations of the ethics program.

In addition to RD headquarters, there are 47 state offices. Each office has at least one, but often two State Ethics Advisors. According to the Mission Area Ethics Advisor, the State Ethics Advisors spend 5 percent of their time on ethics duties and are typically human resources officers. (A liaison for State Ethics Advisors is located in St. Louis, MO and spends 75 percent of her time on ethics duties.) Within each state office, State Ethics Advisors have considerable ethics duties. According to written delegations of authority, State Ethics Advisors are responsible for:

- administering ethics regulations and statutes governing employee conduct;
- conducting the confidential financial disclosure reporting system;<sup>2</sup>
- implementing RD specific policies;

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<sup>1</sup> Reports detailing OGE's review of OSEC, ARS, and FSIS will be issued separately.

<sup>2</sup> This includes reviewing and certifying confidential financial disclosure reports.

## Ethics Program Review: USDA – RD

- approving outside employment and other activities for all RD state employees (except the State Director); and
- training RD employees in the state offices on all ethics statutes, regulations, and policies.

OGE is concerned by the then Mission Area Ethics Advisor's statement that the RD Ethics Office has no authority to review state office ethics programs. At the time of OGE's field work, headquarters' oversight of ethics program requirements at state offices consisted of receiving quarterly reports from state offices and conducting quarterly teleconferences with State Ethics Advisors. It is unclear from OGE's examination of state offices if this amount of oversight is sufficient. However, it is clear that State Ethics Advisors need training on administering their ethics duties, in particular with regard to the confidential financial disclosure system.<sup>3</sup> See the "FINANCIAL DISCLOSURE SYSTEMS" section of this report for more information on this subject.

Also, RD needs to develop formalized procedures for granting prior approval for outside employment in the state offices. See the "OUTSIDE EMPLOYMENT" section of this report for more information on this subject.

### 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).

The Mission Area Ethics Advisor collects, reviews, and certifies confidential financial disclosure reports for RD headquarters employees. State Ethics Advisors collect, review, and certify confidential financial disclosure reports for RD employees in state offices. OE collects, reviews, and certifies public financial disclosure reports for RD employees.<sup>4</sup>

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<sup>3</sup> 28 percent of State Ethics Advisors from 31 state offices stated that they have not had training, or have had limited training, on how to administer an ethics program.

<sup>4</sup> OGE's examination of the public financial disclosure program at USDA is contained in OGE's report on the ethics program at USDA's OSEC.

## Ethics Program Review: USDA – RD

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

RD has comprehensive written procedures for administering its confidential financial disclosure program at RD Instruction 2045-EE (2045-EE). Comprehensive written procedures contribute to a confidential financial disclosure system that is well managed. Significantly, 2045-EE lists the positions that require filing of confidential disclosure reports at both headquarters and the state offices. 2045-EE is a good procedural guide for the confidential financial disclosure system at RD. Most State Ethics Advisors were aware of 2045-EE and are adhering to it.

A remotely accessible database was developed for tracking confidential financial disclosure reports but its use was discontinued because the Mission Area Ethics Advisor found it too confusing. Despite the lack of a tracking system, the Mission Area Ethics Advisor seemed to be able to administer the confidential financial disclosure system at headquarters effectively. However, RD needs to improve the filing timeliness of new entrant confidential financial disclosure reports.

To evaluate the filing, review, and certification of confidential reports at RD headquarters, OGE examined 65 out of the 203 confidential reports required to be filed at headquarters in 2005. The 65 reports consisted of:

#### Type of Report

- 52 annual reports
- 11 new entrant reports
- 1 combined new entrant/annual report
- 1 report without report type indicated

65 total

#### Filing Timeliness

- 52 annual reports were filed in a timely manner.
- 7 new entrant reports were filed late.
- 4 new entrant reports lacked a date of appointment and therefore filing timeliness could not be evaluated.
- 1 combined new entrant/annual report was filed timely.
- 1 report did not have a report type listed and therefore filing timeliness could not be evaluated.

65 total

#### Review/Certification Timeliness

- All 65 reports were reviewed and certified in a timely manner.

## Ethics Program Review: USDA – RD

### Quality of Review

Written comments on reports, documentation in files, and conversations with ethics officials indicated that the financial disclosure reports underwent a thorough review by the Mission Area Ethics Advisor.

### State Offices

OGE examined confidential financial disclosure reports filed at three RD state offices. This examination revealed a variance in the proficiency with which state offices review and certify financial disclosure reports. At one state office, the State Ethics Advisor competently and capably reviews and certifies OGE Forms 450. At the two other state offices visited, it was clear that the State Ethics Advisors need more training on the basic technical requirements of confidential financial disclosure. For instance, ethics officials at both of these state offices were unfamiliar with the requirement that underlying holdings for non-excepted investment funds need to be reported. OGE suggests that RD evaluate whether its other State Ethics Advisors require training, in addition to any ethics training already provided, on how to review and certify confidential financial disclosure reports.

## 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.

RD offers a variety of education and training products for its employees including instructor-led presentations, Web modules, and written materials. Ethics training at headquarters and the state offices is tracked using a computer program called the Modular Ethics Training Tracking System Agriculture Learning (AgLearn) Service.<sup>5</sup>

### 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;
- 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.*

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<sup>5</sup> AgLearn provides educational services for USDA Federal employees, contractors, partners, and customers.

## Ethics Program Review: USDA – RD

To meet the initial ethics orientation requirement, within 90 days from the time an employee begins work at RD, the employee is provided with a packet which includes:

- the Standards;
- the 14 Principles;
- the OGE booklet: *A Brief Wrap on Ethics*; and
- the phone number and email address of the Mission Area Ethics Advisor.

In addition, all new employees in headquarters are provided with an instructor-led training course conducted by the Mission Area Ethics Advisor.

The initial ethics orientation packet needs to be improved in three areas to be in compliance with 5 CFR § 2638.703(a)(1) and (b). Specifically, the packet should include (1) the Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture at 5 CFR part 8301, (2) the name, title, and office address and telephone number of the DAEO, and (3) the office address of the Mission Area Ethics Advisor.

### 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 reviewed the following USDA ethics training courses:

- 17 Web modules;
- Slides of the instructor-led course titled *Outside Activities and Potential Conflicts*; and
- Slides of the instructor-led course titled *Post-employment and Seeking Employment*.

OGE's review of these courses found them to meet the annual ethics training content requirements.

## Ethics Program Review: USDA – RD

### 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.

RD does not have a formal procedure for memorializing counseling. Instead, the Mission Area Ethics Advisor memorializes only counseling that he considers "controversial." Counseling in state offices is provided by State Ethics Advisors. State Ethics Advisors contact the State Ethics Liaison in St. Louis, Missouri for support with ethics counseling when needed.

To evaluate the counseling provided by the RD Ethics Office to employees at RD headquarters, OGE analyzed samples of memorialized ethics counseling. These samples were reviewed by OGE's USDA Desk Officer. OGE's USDA Desk Officer found the majority of the counseling to be in compliance with applicable law and regulation. The Desk Officer has discussed her analysis with USDA ethics officials; her chief concern dealt with the vagueness of the analysis in many samples and the one sample that gave incorrect guidance. These concerns do not rise to the level that would require OGE to make a recommendation for improvement.

### OUTSIDE EMPLOYMENT

Prior written approval to engage in certain types of outside employment is required for all USDA public and confidential financial disclosure filers, except special Government employees. *See* 5 CFR § 8301.102. RD uses a form titled 'Application for Approval to Engage in Non-Federal Employment or Activity for the approval process.

#### Headquarters

To assess whether confidential filers at RD headquarters were receiving prior written approval before engaging in outside employment, OGE examined Part III of the OGE Forms 450 and cross-checked the outside employments listed there with the Applications for Approval to Engage in Non-Federal Employment included in employee files. OGE's examination showed that employees at headquarters were receiving prior approval, when appropriate, before engaging in outside employment in compliance with 5 CFR § 8301.102.

## Ethics Program Review: USDA – RD

### State Offices

Procedures at state offices for granting prior approval before engaging in outside employment lack consistency and often do not comply with regulation. OGE's examination of state offices revealed that at least 15 RD state offices have been requiring all employees to receive prior approval before engaging in outside employment, even when employees do not meet the criteria set out in 5 CFR § 8301.102. Employees that were required to obtain prior approval that did not meet the prescribed criteria were unduly burdened. Further, any additional ethics requirements placed on employees must be approved by OGE.

Additionally, many state offices have interpreted "employment" to mean any kind of outside activity, instead of the specific definition of "employment" laid out at 5 CFR § 8301.102(b). Many state offices also do not use the USDA form Application for Approval to Engage in Non-Federal Employment. Instead, in many cases an employee sends a letter to the State Director seeking approval. In one instance, prior approval to engage in outside employment was given verbally by a State Director. Section 8301.102(a) of 5 CFR requires that prior approval be granted in writing.

OGE informed the Mission Area Ethics Advisor and OE of the problems it identified at the state offices regarding prior approval for engaging in outside employment. The Mission Area Ethics Advisor informed OGE and OE that she would send an email to State Ethics Advisors concerning outside employment regulation and procedures. Further, the Mission Area Ethics Advisor stated that she would bring up the issue of outside employment at the next teleconference. Because RD was actively trying to improve the prior approval process in the state offices during OGE's field work, OGE is not making a recommendation in this area. However, OGE suggests that RD create a written procedure for administering the prior approval process at state offices similar in format to that of 2045-EE.

### 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).

The Mission Area Ethics Advisor refers cases involving possible violations of the Standards and the criminal conflict of interest statutes to the RD Employee Relations Branch investigations. The Employee Relations Branch consults with the Mission Area Ethics Advisor on ethics issues during investigations.

### 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

## **Ethics Program Review: USDA – RD**

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.

OE is responsible for administering written ethics agreements entered into by RD Presidentially-appointed, Senate-confirmed employees. OGE's examination of USDA's ethics agreement program is summarized in OGE's report on the ethics program at USDA's OSEC.

### **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.

RD accepts travel payments from non-Federal sources under the authority of 31 U.S.C. § 1353. The payment approval process is detailed in OE department-wide Ethics Issuance 99-2 and a 2002 memorandum from the Deputy Under Secretary for Rural Development. The Mission Area Ethics Advisor is responsible for determining whether it is appropriate to accept an offer from a non-Federal source to finance the travel expenses of an employee. The Mission Area Ethics Advisor completes SF 326 for acceptance of travel payments from non-Federal sources and forwards the SF 326 to OE. OE subsequently uses the information from the SF 326 to fill out the required semiannual reports. USDA filed with OGE the six required semiannual reports for the period covering April 2005 through September 2007.

### **Conclusion**

To enhance the USDA ethics program, OGE suggests that RD:

1. Evaluate whether State Ethics Advisors require training on how to review and certify confidential financial disclosure reports and if so, provide the required training.
2. Create written procedures for administering the process for obtaining prior approval for outside employment that foster consistency and accuracy throughout RD's state offices.

To enhance the USDA ethics program, OGE recommends that RD:

1. Take steps to improve the filing timeliness of new entrant confidential financial disclosure reports.
2. Add to the initial ethics orientation packet the following: (1) the Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture at 5 CFR part 8301 (2) the name, title, and office address and telephone number of the DAEO and (3) the office address of the Mission Area Ethics Advisor.

## **Ethics Program Review: USDA – RD**

USDA's DAEO is to advise OGE within 60 days of the specific actions USDA has taken or plans to take to address OGE's recommendations. OGE stands ready to assist USDA in implementing the recommendations, as well as other program initiatives that USDA may choose to undertake. OGE will follow-up with USDA's DAEO within six months from the date of this report's issuance on the status of OGE's recommendations.

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