



United States Office  
Of Government Ethics

Report Number 08-009

## Highlights

### Model Practices

- ARS has a process for certifying confidential financial disclosure reports that results in a high quality conflict of interest review. The process strengthens the relationship between the Mission Area Ethics Advisor and Area Ethics Advisors.
- ARS has a system for financial disclosure that tracks the date a report was received, the date it was initially reviewed, and the date it was certified. The system also tracks extension requests, collateral duties with the start and end dates of the contracts, and approved outside employment requests.

### OGE Recommends

- That ARS improve the filing timeliness of new entrant confidential financial disclosure reports.

## Ethics Program Review

# U.S. Department of Agriculture Agricultural Research Service

July 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) Agricultural Research Service (ARS). 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's review identified several model practices that ARS has implemented. The model practices include:

- a process for certifying confidential financial disclosure reports that results in a high quality conflict of interest review. The process strengthens the relationship between the Mission Area Ethics Advisor and Area Ethics Advisors and
- a system for financial disclosure that tracks the date a report was received, the date it was initially reviewed, and the date it was certified. The system also tracks extension requests, collateral duties with the start and end dates of the contracts, and approved outside employment requests.

OGE's report makes one recommendation: that ARS improve the filing timeliness of new entrant confidential financial disclosure reports.

This report has been sent to USDA's Designated Agency Ethics Official (DAEO) and USDA's Inspector General. USDA's DAEO is to advise OGE within 60 days of the specific actions ARS has taken or plans to take to address OGE's recommendation. OGE stands ready to assist ARS in implementing the recommendation 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 recommendation.

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).



United States Office  
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## Ethics Program Review

# U.S. Department of Agriculture Agricultural Research Service

July 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 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
- Enforcement of ethics laws and regulations
- Outside employment
- Ethics agreements
- Travel payments from non-Federal Sources

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

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 the Food Safety and Inspection Service (FSIS). This report details OGE's review of ARS.<sup>1</sup>

### **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 for USDA. ARS is a part of the Research, Education and Economics Mission Area (REE). The DAEO delegated the authority and responsibility over REE's ethics program to a Deputy Ethics Official. The REE Mission Area Ethics Advisor is responsible for the daily operations of the ethics program. The REE ethics office also consists of an Ethics Advisor and two Ethics Assistants. The REE ethics program is located within the Employee Relations Branch.

In addition to ARS headquarters, there are eight ARS area offices. The Associate Director for each area office acts as an Area Ethics Advisor and a Program Analyst serves as an ethics assistant. Ethics staff at area offices perform their ethics duties in a part-time capacity. Associate Directors regularly consult the REE ethics office when considering ethics matters.

The REE Mission Area Ethics Advisor informed OGE that she believes that the REE ethics office should not be organizationally a part of the Employee Relations Branch, which advises managers and employees on matters relating to conduct, performance, labor relations, and employee benefits. Specifically, the Mission Area Ethics Advisor was concerned that because the Employee Relations Branch deals with administrative action, some employees may have a negative feeling about the ethics office. In addition, the Mission Area Ethics Advisor feels that the ethics program is not given sufficient resources for staffing or to provide ethics training. At the end of OGE's fieldwork, the organizational placement of the REE ethics program was being addressed by OE as part of a larger ethics program reorganization at USDA.

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

## Ethics Program Review: USDA – ARS

### 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 REE ethics office collects, reviews, and certifies all confidential financial disclosure reports filed by ARS employees. OE collects, reviews, and certifies public financial disclosure reports filed by ARS employees.<sup>2</sup> Upon request, ARS ethics officials aid public filers in filling out their SF 278.

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

OGE's examination of confidential financial disclosure at ARS found that comprehensive written procedures are in place and that REE uses a computer program called the Financial Disclosure Tracking System (FINDIS). FINDIS tracks the date confidential reports were received, the date they were initially reviewed, and the date they were certified. FINDIS also tracks extension requests; collateral duties for Authorized Departmental Officer's Designated Representative, Contracting Officer's Representative, or Contracting Officer's Technical Representative with the start and end date of the contracts; and approved outside employment requests. Comprehensive written procedures and an effective financial disclosure tracking system contribute to a confidential financial disclosure system that is well managed. However, ARS needs to improve the timeliness of filing for new entrant confidential financial disclosure filers.

The process for reviewing and certifying ARS confidential financial disclosure reports is a highlight of the confidential financial disclosure program. Area Ethics Advisors come to ARS headquarters for a week to review and certify reports. This process for review and certification of confidential financial disclosure reports has many benefits, including that:

1. Area Ethics Advisors receive regular hands-on training,
2. confidential financial disclosure reports are certified by officials familiar with the duties of the filer, and

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<sup>2</sup> OGE's examination of the public financial disclosure program at USDA is summarized in OGE's report on the ethics program at USDA's OSEC.

## Ethics Program Review: USDA – ARS

3. the Mission Area Ethics Advisor is available to consult with Area Ethics Advisors on any complex substantive or technical questions that may arise in the course of the financial disclosure review.

This practice results in a high quality conflict of interest review while also strengthening the relationship between the Mission Area Ethics Advisor and Area Ethics Advisors.

Prior to its fieldwork, OGE discovered that ARS was using an alternative confidential financial disclosure form that had not been approved by OGE. With prior written approval from OGE, an agency may use an alternative procedure in lieu of the OGE Form 450. *See* 5 CFR § 2634.905(c). REE ethics staff was unaware that the REE Form 102 was never approved by OGE. According to REE ethics staff, the REE Form 102 may have been used for as many as 10 years without OGE approval. As a result of using the unapproved form, filers may have been subjected to more stringent reporting requirements than those authorized by OGE's financial disclosure regulation. The REE Mission Area Ethics Advisor submitted an official request to use REE Form 102 to OGE on November 2, 2006. OGE has since approved the use of REE Form 102.

To evaluate the filing, review, and certification of confidential reports at ARS, OGE examined 299 out of the 1,562 confidential reports required to be filed in 2005. The 299 reports consisted of:

### Type of Report

- 126 annual reports
- 161 confidential certificates of no new interests.
- 12 new entrant reports

299 total

### Filing Timeliness

- 264 reports were filed in a timely manner.
- 23 reports were filed fewer than 30 days late.
- 12 reports were filed more than 30 days late. Of the 12 reports that were filed more than 30 days late, 5 were new entrant reports. This represents 42 percent of ARS' new entrant reports. Timeliness could not be evaluated for an additional 3 new entrant reports due to a lack of a date of appointment on these forms. It is clear that ARS needs to improve the filing timeliness of new entrant filers.

299 total

## Ethics Program Review: USDA – ARS

### Review Timeliness

- 298 reports were reviewed in a timely manner.
- 1 report was reviewed 60 or more days after the date of filing.

299 total

### Certification Timeliness

- 298 reports were certified in a timely manner.
- 1 report was certified 60 or more days after the date of filing.

299 total

### 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 REE ethics office.

## 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.

ARS offers a variety of education and training opportunities for its employees including instructor-led presentations, Web modules,<sup>3</sup> and written materials. Ethics training is tracked using a computer program called the Modular Ethics Training Tracking System Agriculture Learning (AgLearn) Service<sup>4</sup> and ethics training sign-in sheets.

In calendar year 2005, all ARS employees required to receive annual ethics training did so.

### 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:

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<sup>3</sup> OE determined that three Web modules meet the one-hour requirement for initial ethics orientation and annual ethics training.

<sup>4</sup> AgLearn provides educational services for USDA Federal employees, contractors, partners, and customers.

## Ethics Program Review: USDA – ARS

- 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.*

To meet the initial ethics orientation requirement, within 90 days from the time an employee begins work at USDA, the employee is provided with:

- a Web module titled *New Employee Orientation*, and
- a compact disc containing a large number of documents covering a wide range of ethics issues.<sup>5</sup>

### 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)*.

OGE reviewed the following USDA ethics training courses:

- 17 Web modules and
- Slides of the instructor-led course titled *Participating in Non-Federal Organizations*.

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<sup>5</sup>The compact disc includes USDA Ethics Issuances, REE policies and procedures, contacts for the REE ethics office, ethics laws and regulations, and forms associated with the ARS ethics program. The compact disc also includes additional information on financial disclosure, gift acceptance, letters of recommendation, outside employment, post-employment restrictions, and acceptance of travel expenses from non-Federal sources.

## Ethics Program Review: USDA – ARS

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

### 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.

All ethics counseling rendered by ARS is memorialized in counseling files. Area Ethics Advisors give only basic counseling, all other counseling goes through ARS headquarters. A post-employment package is given to all departing employees.

To evaluate the counseling provided by the REE Ethics Office to employees at ARS, OGE analyzed samples of memorialized ethics counseling. These samples were reviewed by OGE's USDA Desk Officer. With two minor exceptions, OGE's USDA Desk Officer found the counseling to be well-researched, thoroughly analyzed, and cogently explained. The Desk Officer has discussed her analysis with USDA ethics officials; her chief concern dealt with the technical accuracy of two samples. These concerns do not rise to the level that would require OGE to make a recommendation for improvement. In fact, OGE's USDA Desk Officer found the memorialized counseling at ARS to be some of the most consistently well written and thorough she has seen.

### OUTSIDE EMPLOYMENT

Prior 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. ARS uses a form titled Application for Approval to Engage in Non-Federal Employment or Activity (REE-101) for the approval process. To analyze whether confidential filers at ARS were receiving prior approval before engaging in outside employment, OGE examined Part III of the confidential financial reports and cross checked the outside employments listed there with the Applications for Approval to Engage in Non-Federal Employment included in the confidential filer's files. OGE's examination showed that employees were receiving approval, when appropriate, before engaging in outside employment, in compliance with 5 CFR § 8301.102.

## Ethics Program Review: USDA – ARS

### 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).

While ARS does not have any written procedures for meeting the requirements of 5 CFR § 2638.203(b)(11) and (12), the Mission Area Ethics Advisor described the procedure ARS usually follows when dealing with possible violations of the criminal conflict of interest statutes or the Standards. ARS' Mission Area Ethics Advisor contacts USDA's Office of Inspector General (OIG) explaining the possible ethics violation. The Employee Relations Branch does a preliminary investigation and may gather affidavits if employees resist the ethics advisor's request for information. In instances of declination to prosecute by the Department of Justice, ARS may seek administrative action against employees through the Employee Relations Branch.

In a case involving a possible violation of criminal conflict of interest statutes, OE would be responsible for referring the case to the Department of Justice; ARS has never had such a situation. If USDA's OIG declines to pursue the possible ethics violation, the allegation may be forwarded to the Employee Relations Branch and an Employee Relations specialist may investigate.

### 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.

USDA's OE is responsible for overseeing written ethics agreements entered into by ARS Presidentially-appointed, Senate-confirmed employees.<sup>6</sup> The REE Mission Area Ethics Official informed OGE that ethics agreements for ARS confidential filers are handled by the REE ethics office; the Mission Area Ethics Advisor follows-up with the employee and his/her superior after the agreement is entered into to monitor compliance with the ethics agreement.

### 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.

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<sup>6</sup> OGE's examination of USDA's ethics agreement program is summarized in OGE's report on the ethics program at USDA's OSEC.

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

ARS accepts travel payments from non-Federal sources under authority of 31 U.S.C. § 1353. The process for this acceptance is detailed in the written procedure 341.2. Area Ethics Advisors are responsible for determining whether it is appropriate to approve the acceptance of an offer from a non-Federal source to finance the travel expenses of an employee within area office. The REE ethics office is responsible for this determination for ARS headquarters employees. REE uses the General Services Administration's SF 326 for acceptance of travel payments from non-Federal sources. Each area office has a travel and transportation specialist who collects the required data and forwards it to ARS headquarters. ARS then sends this data electronically to OE. OE subsequently uses this information to fill out the required semiannual reports. USDA filed the six required semiannual reports for the period covering April 2005 through September 2007 with OGE.

### **Summary**

OGE's review identified several model practices that ARS has implemented. The model practices include:

- a process for certifying confidential financial disclosure reports that results in a high quality conflict of interest review. The process strengthens the relationship between the Mission Area Ethics Advisor and Area Ethics Advisors and
- a system for financial disclosure that tracks the date a report was received, the date it was initially reviewed, and the date it was certified. The system also tracks extension requests, collateral duties with the start and end dates of the contracts, and approved outside employment requests.

### **Recommendation**

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

1. improve the filing timeliness of new entrant confidential financial disclosure reports.

USDA's DAEO is to advise OGE within 60 days of the specific actions ARS has taken or plans to take to address OGE's recommendation. OGE stands ready to assist ARS in implementing the recommendation, as well as other program initiatives that ARS 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 recommendation.

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



### PRD ROUTING/APPROVAL SHEET

Document Report: USDA – Agricultural Research Service

Originator Paul Bergstrand Date of Origination 4-14-08

#### Routing

To	From (Initials)	Date	Comments
Megan Granahan	PHB	4-14-08	Megan, please reference the ARS report. My deadline for Chip is the 16 <sup>th</sup> so I would appreciate a quick turnaround. Thank you.
PB	MG	4/14	Some clarification needed
MG	PHB	4/14	See my notes
PB	MG	4/14	Referencing Complete
Marie Farnsworth	PHB	4/14	Marie, please edit this report.
PB	PHB	4/14	make corrections please
Marie	PHB	4/15	Corrections made - with noted exceptions. See the program structure section also. It has been re-worded.
Marie	PHB	4/15	Hyphens & extra spaces eliminated.
Chip	PHB	4/15	The ARS Report for your approval
PHB	CHIP	6/5	MINOR EDITS & PLEASE TRANS LETTERS.
chip	PHB	6/5	chip, please see corrections and transmittal letters.
JG	CHIP	6/10	Joe, for your review.

Chip JG 7/17/08 Done Approvals OK

Title	Initials/Signature	Date
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