



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

July 7, 1997

Stephen R. Colgate
Assistant Attorney General
for Administration
Department of Justice
10th Street and Constitution Avenue, NW.
Room 1111
Washington, DC 20530

Dear Mr. Colgate:

The Office of Government Ethics (OGE) has recently completed its first review of the United States Marshals Service's (USMS) ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Act). Our objectives were to determine the ethics 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 education and training program, the ethics counseling and advice services, the acceptance of gifts of travel from non-Federal sources, and the relationship with the Office of Internal Affairs (OIA) and the Office of the Inspector General (OIG). Our review was conducted during May and June 1997 and this report summarizes our findings and conclusions.

Our review found that USMS' ethics program is generally sound and well managed. Ethics officials at the USMS are to be commended for their proactive approach and commitment towards carrying out their various ethics program responsibilities. Both the General Counsel and the one Associate General Counsel--who serves as an ethics official--demonstrated dedication towards providing high-quality services to employees of the USMS and towards administering a worthwhile and useful ethics program. We were particularly impressed with advice services offered by these ethics officials which we believe assists in ensuring that employees are given timely, useful, and correct information concerning ethics issues.

Though the requirements of the financial disclosure laws and regulations are essentially being met at the USMS, we found two parts of the financial disclosure systems that need correcting. First, ethics officials need to begin forwarding to OGE the annual public reports of U.S. Marshals whose positions are classified as

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senior-level (SL) positions.¹ Second, they need to develop a method to ensure that confidential reports are collected within 30 days of when employees assume confidential filing positions outside the incumbent filing time frame.

To assist in ensuring effective disclosure systems, ethics officials depend on the written procedures which were developed by the Department of Justice's (Justice) ethics officials for administering both public and confidential systems. Though these procedures meet the requirements of section 402(d)(1) of the Act, we discussed with ethics officials the benefits of supplementing or clarifying these procedures to document the way in which the financial disclosure systems are specifically administered at the USMS. We explained though the Act does not require them to supplement the existing procedures, we believe that by doing so it could aid in easing the transition of USMS ethics officials in the future or may serve as a concise guide for use by other USMS employees.

Our suggestions on supplementing procedures include addressing and documenting (1) who notifies employees and how they are notified to file required financial disclosure reports, (2) when and how ethics officials obtain information on employees who have assumed or terminated from public filing positions, (3) the confidential disclosure filing designation process and identification of current covered positions, (4) how ethics officials will obtain timely information on employees who have assumed a confidential filing position, (5) who reviews and who certifies both the confidential and public reports, (6) where reports are maintained, and (7) the process used for forwarding certain public reports to Justice and OGE. We also encourage that if procedures are documented, they should be routinely updated to reflect changes in processes.

ADMINISTRATION OF THE ETHICS PROGRAM

For the approximately 4,000 USMS employees who are located in headquarters in Arlington, VA and in 94 Federal judicial districts nationwide, the ethics program is centrally administered by the Office of the General Counsel (OGC) in headquarters. The General Counsel serves as the USMS' Deputy Designated Agency Ethics Official and an Associate General Counsel serves as the ethics director. Both ethics officials administer all aspects of the ethics program. On an occasional basis, however, other OGC attorneys assist in performing ethics-related duties. In addition, some employees' supervisors are responsible for initially reviewing confidential

¹SL positions are positions classified above the General Schedule (GS)-15 level pursuant to 5 U.S.C. 5108 that are not covered by other pay systems.

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reports and are also responsible for reviewing and approving certain types of outside activities requests from their unit's employees.

BACKGROUND ON U.S. MARSHAL POSITIONS

For the 94 Federal judicial districts, there are 93 U.S. Marshals. Of those 93, 92² are Presidential appointee positions approved by the Senate (PAS). It was our understanding until the start of this review that all U.S. Marshals were paid at the GS-15 level. However, we learned that beginning in late 1992, 19 U.S. Marshal positions were elevated to SL positions. Since then, four additional U.S. Marshal positions were elevated to SL--two in 1994 and two in 1996.

As you know, nominee reports for U.S. Marshals who are PAS employees are transmitted to our Office for review, as required under 5 C.F.R. 2634.602(c)(1)(vi). Based on our understanding that all these PAS employees were in GS-15 positions, we did not expect annual reports to be forwarded to our Office. As far as we knew, U.S. Marshals met the criteria for filing annual confidential reports with the USMS. However, now that we understand that 23 U.S. Marshal positions meet the criteria for and are, in fact, filing public reports,³ we are clarifying for you and USMS ethics officials that our regulation requires the forwarding of these reports to OGE.

We have determined that for now ethics officials should forward to OGE the public reports filed in 1997 by SL U.S. Marshals. This includes reports from those who were required to file as incumbents in May 1997 and reports from those who left or may leave their positions during the year. At a later date, our Office will determine and will advise you on whether reports from prior years will also need to be forwarded.

PUBLIC SYSTEM

Our review of the public system was generally confined to how the system is currently administered and was limited to examining the 33 public reports filed in 1996. We found that the USMS' public

²According to ethics officials, one U.S. Marshal is appointed by the Attorney General.

³These U.S. Marshals meet the definition of public filers since their positions are classified above the GS-15 level, at a rate equal to or greater than 120 percent of the minimum rate of basic pay for GS-15.

system is generally strong and that most reports were filed and reviewed timely. In addition, the Director's report which is required to be forwarded to OGE annually was transmitted to our Office timely. The general thoroughness of ethics officials' review of reports was evidenced by the fact they contained only a few minor technical deficiencies and no conflicts of interest.

We discussed with ethics officials that though they are generally aware through informal communication channels when employees assume or leave public filing positions, the Human Resource Management Division (HRMD) is formally responsible for providing this type of information to them. Ethics officials stated that until recently they were receiving quarterly status reports from HRMD on employees who occupied, were promoted to, or terminated from public filing positions. However, this quarterly reporting resulted in ethics officials occasionally being unaware that an employee had assumed or left a public filing position until several months had past.

Within the past year this status report timing problem was corrected and ethics officials started receiving status reports on a monthly basis. Based on discussions concerning the timing of these status reports, ethics officials informed us at our exit meeting that they requested that HRMD provide reports to them every two weeks (on a pay-period basis).⁴ Notwithstanding the effectiveness of the ongoing informal communications within the USMS, we maintain that the current monthly (or planned every two weeks) status reporting assists in ensuring that ethics officials can advise employees of their filing responsibilities and collect required reports timely.

Though we primarily focused on public reports filed in 1996, we found that a termination report from an employee who left the USMS in 1995 had not been collected. When we advised ethics officials of this administrative oversight, they took immediate action and notified the former employee of his filing responsibilities. Ethics officials plan to assist him in seeking a late filing fee waiver from OGE in accordance with 5 C.F.R. § 2634.704(b).

CONFIDENTIAL SYSTEM

Our review of the confidential system was generally confined to how the system is currently administered and limited to examining 65 of the approximately 270 (24 percent) reports filed in 1996. We found that the confidential system is generally well maintained and strong in that reports were filed and reviewed

⁴This request was pending at the time of our exit meeting which was held on June 10, 1997.

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timely. In addition, we found only a few technical reporting deficiencies but no conflicts of interest. One area needing improvement, however, is that ethics officials need to develop a process to ensure that employees entering covered positions file confidential reports within 30 days. We also suggest that ethics officials consider redesignating confidential filing positions.

Ethics officials were aware that a process was not in place to ensure the filing of new entrant confidential reports within 30 days of employees assuming covered positions. They advised us that, currently, status information similar to what is provided to them from HRMD on public filers is not available on confidential filers.⁵ Therefore, we suggested that they rely on supervisors to provide information to them on employees assuming covered positions.

Primarily due to USMS' reorganization efforts, for the 1996 incumbent filing cycle, all positions were reexamined for coverage under the confidential system. Supervisors were responsible for designating positions and identifying employees in those positions. We support the practice of supervisor involvement in designating positions, especially when supervisors are--as is the case at USMS--responsible for initially reviewing their employees' confidential reports before they are forwarded to ethics officials for final review and certification.⁶ However, we believe that supervisors may have identified more positions requiring confidential filing than necessary.

We suggested to ethics officials that they consider redesignating positions for the upcoming 1997 filing cycle or in the near future and apply the filing exemptions at 5 C.F.R. § 2634.905 to their full extent.⁷ Our review of reports showed that many were required from employees who appeared to fit the exemption categories. However, ethics officials believe that there

⁵Ethics officials explained that HRMD is backlogged and working on more pressing demands resulting from a recent reorganization effort. Until HRMD can code position descriptions, so that they are identifiable as covered positions, it will not be able to provide the required status information to ethics officials.

⁶For regional confidential filers, U.S. Marshals review the reports of their Chief Deputies and, if applicable, for their Assistant Chief Deputy U.S. Marshals. In headquarters, each Assistant Director reviews the reports for those filers within their division.

⁷We also discussed the guidance OGE offered in its DAEOgram, dated September 14, 1994 (DO-94-031).

are benefits to broadly designating positions. In addition, they stated that they are not burdened by their responsibilities of reviewing and certifying confidential reports. We support confidential systems that are meaningful and serve as a tool in conflict prevention and counseling. Redesignation of positions may serve ethics officials' needs at some later time, if they choose to not make adjustments for the upcoming filing cycle.

EDUCATION AND TRAINING

Systems are in place at the USMS to meet the initial ethics orientation and annual ethics training requirements. Orientation requirements are primarily met by HRMD officials for new headquarters' employees and by administrative officers for new employees in regional locations. New employees receive the required materials, including the standards of conduct and other ethics-related materials developed by Justice. During 1996, ethics officials conducted many ethics training sessions and those employees who were required to receive training did so. In addition, other employees not required to receive annual training were in attendance at some of these sessions.

Ethics officials primarily accomplish the annual training requirements by including an ethics session as part of other regularly scheduled training or at meetings held for groups of USMS employees. For example, ethics sessions were included at Marshall regional conferences held in different parts of the country. In addition, for headquarters' employees who are not typically in attendance at one of these other conferences or meetings, separate ethics training sessions are conducted specifically for them. During 1996, ethics training was provided by a variety of methods, including lecture, showing videotapes, and/or playing the Justice-developed game--which USMS ethics officials refer to as "Jamboree." Ethics officials generally tailor lectures to the audience and focus on issues pertaining to those in attendance. In addition, lectures may cover an ongoing Justice or USMS initiative, such as off-duty misconduct issues. The Jamboree game, which is used primarily for headquarters' employees, covers many of the issues and questions addressed by ethics officials during the year that are raised by USMS employees. According to officials, they have received positive feedback from attendees on the various training formats used.

Ethics officials were anticipating using the computer game being developed by Justice officials as one of their main sources of meeting the 1997 training requirement. However, since this game is not yet up-and-running, they are now using and plan to continue to use the combination of training formats from 1996.

COUNSELING AND ADVICE

Ethics officials maintain an active counseling and advice program for USMS employees. Mostly oral advice is provided, however, formal written determinations are also rendered when needed or asked for by employees. In addition to the oral advice provided, the ethics director maintains a log of the advice given to employees. We found that ethics officials have provided advice on a full range of ethics-related issues, including restrictions on giving or accepting gifts, travel, use of Government vehicles, post-employment, outside activities, use of position, and fund-raising matters.

Our examination of the written determinations and other records provided to us, including phone logs and electronic mail covering 1996 to the present revealed that the advice was correct, timely, and appeared to be meeting employees' needs. We were impressed to see that ethics officials are also routinely distributing useful ethics-related information to all USMS employees by writing an ethics column in the USMS newsletter. Over the past year, this column--entitled Ethically Speaking--has addressed issues covering official travel and the use of the Government American Express card, financial conflict of interest, and the Hatch Act. We encourage ethics officials to continue writing their column because we believe that efforts such as this heighten employees' awareness of ethics issues.

Generally, approvals of outside activity requests are handled by supervisors. However, ethics officials become involved when legal advice or assistance is requested. Justice's supplement⁸ to the standards of conduct, which includes prohibitions and an outside activity approval process, applies to USMS employees. In addition, the USMS operates under an interim policy, dated November 3, 1994, which affects outside activities of criminal investigators. Basically, this policy allows those criminal investigators whose outside activities were approved prior to the policy's date to continue pursuing those activities. However, no new requests from criminal investigators can be approved.

GIFTS OF TRAVEL FROM NON-FEDERAL SOURCES

We reviewed the payments accepted by the USMS over the past approximate 18 months under the General Services Administration's Interim Rule 4, at 41 C.F.R. part 304-1, implementing 31 U.S.C. § 1353. We found that all payment offers were appropriately reviewed and accepted.

⁸At 5 C.F.R. part 3801.

RELATIONSHIP WITH OIA AND OIG

Ethics, OIA, and OIG officials stated that good working relationships exist between the offices concerning matters involving the criminal conflict of interest statutes or the standards of conduct. As necessary, or on a case-by-case basis, officials from one office discuss matters with officials from another office. Routine contact most frequently occurs between ethics officials and officials from the OIA. According to officials, there have been infrequent occasions where allegations of violations of the conflict of interest statutes or the standards of conduct have been raised or needed investigating. Officials also stated that there have been no recent conflict of interest referrals to Justice's Public Integrity Section or to U.S. Attorney Offices' involving the USMS.

CONCLUSIONS AND RECOMMENDATIONS

USMS' ethics program generally complies with applicable ethics laws and regulations. Priority is placed on maintaining strong financial disclosure systems, providing required ethics education and training, and providing useful ethics counseling and advice to ensure that employees are knowledgeable of ethics laws and regulations. We believe that the USMS' ethics program will be strengthened by accomplishing the actions we recommend, in addition to adopting the other suggestions which we noted in this report.

We recommend that USMS ethics officials:

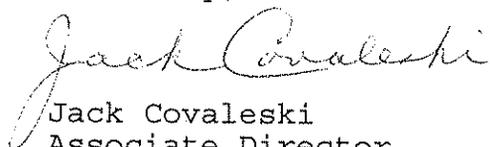
1. Forward to our Office the public reports filed in 1997 by SL U.S. Marshals.
2. Develop a process to ensure that employees entering covered positions file confidential reports within 30 days.

In closing, I would like to thank you for all the efforts taken on behalf of the ethics program. Please advise me within 60 days of the specific actions the USMS has taken or plans to take concerning our two recommendations. A brief follow-up review will be scheduled six months from the date of this report to review the actions taken. In view of the corrective action authority vested with the Director of OGE under subsection 402(b)(9) of the Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that ethics officials implement actions to correct these deficiencies in a timely manner. A copy of this report is being

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sent to the USMS' General Counsel, OIA, and the OIG. Please contact
Ilene Cranisky at 202-208-8000, extension 1218, if we may be of
further assistance.

Sincerely,



Jack Covalesski
Associate Director
Office of Agency Programs

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