



United States Office
Of Government Ethics

Report Number 08 - 015

Highlights

Model Practices

- AMC leadership provides significant support for the ethics program.
- AMC implements an education and training program that exceeds the minimum requirements at subpart G of 5 CFR 2638.
- AMC keeps employees aware of ethics-related issues through a variety of methods.
- AMC utilizes its own written training plan to help focus its training efforts.

OGE Suggests

- AMC continually monitor the steps that were taken to ensure compliance with the new entrant confidential filing requirements of 5 CFR § 2634.903(b).

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.

Ethics Program Review

U.S. Army Materiel Command

October 2008 Report

Executive Summary

The Office of Government Ethics (OGE) has completed its review of the ethics program at the U.S. Army Materiel Command's (AMC). 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 determined that there is reasonable assurance that the performance and management of AMC's ethics program is effective.

OGE's review also identified several model practices that AMC has implemented. The model practices include significant agency leadership support for the ethics program, an education and training program that exceeds the minimal training requirements found at subpart G of 5 CFR part 2638, the routine use of various methods to keep employees aware of ethics-related issues, and the utilization of an agency-specific training plan to help focus training efforts.

OGE's review found that timely new entrant confidential financial disclosure report filing has remained challenging since OGE's last review of AMC's ethics program in March 1998. As one of the most common findings of OGE's reviews of agencies with large, decentralized confidential systems, OGE recognizes the challenges AMC faces in addressing the issue of timely new entrant filing. The steps that were taken prior to and during OGE's current review should help to ensure that employees entering covered positions will file new entrant confidential financial disclosure reports in a timely manner, in accordance with 5 CFR § 2634.903(b).

This report has been forwarded to the Department of the Army's Designated Agency Ethics Official, AMC's Commanding General, and AMC's Inspector General.



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Ethics Program Review

U.S. Army Materiel Command Department of the Army

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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. Army Materiel Command (AMC) focused on the elements listed below.

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

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In view of AMC's decentralized ethics program structure, OGE limited its review scope to only the program elements associated with the Headquarters (HQ), AMC ethics program. The fieldwork for this review was conducted intermittently between September and December 2006 and focused on calendar year 2005 and 2006 activities.

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. As part of OGE's ethics program review, the OGE review team met with AMC's Commanding General to discuss the scope of the OGE review and the importance of agency leadership involvement in an ethics program, in accordance with 5 CFR § 2638.202(a). The Commanding General is significantly involved in supporting AMC's ethics program. This support has included the Commanding General providing announcements and giving speeches in support of the activities of the Ethics Office, having ethics discussions during senior staff meetings, and providing occasional "all hands" memoranda that reiterate AMC's dedication to maintaining an ethical culture. OGE finds the Commander General's support to be a model practice.

ETHICS PROGRAM STRUCTURE

The Department of the Army's (Army) General Counsel serves as the Army's Designated Agency Ethics Official (DAEO) and the Deputy General Counsel (Ethics & Fiscal) serves as the Alternate DAEO, exercising direct supervision over the Army's Standards of Conduct Office (Army SOCO). To help accommodate the Army's size, mission, and organizational culture, Deputy DAEOs and Ethics Counselors are appointed throughout the Army's military services and agencies to assist in the administration of the ethics program at their respective components.

Within AMC, the ethics program is organizationally located within the Office of the Command Counsel, HQ, and is administered by the Command Counsel who serves as the agency's Deputy DAEO. Of the 24 attorneys within the Office of the Command Counsel, hereafter referred to as the Ethics Office, 6 attorneys are appointed as Ethics Counselors and perform ethics functions to some degree. At the time of OGE's fieldwork, two of the six Ethics

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Counselors were principally responsible for managing the day-to-day operation of the HQ, AMC ethics program on behalf of the Command Counsel.¹

The Ethics Office is also supported by approximately 100 other AMC employees, mostly attorneys, who work both full- and part-time on ethics within the various legal offices of the 10 Major Subordinate Commands and 25 subordinate legal field offices. While the Ethics Office provides oversight and technical guidance to the legal offices during both the financial disclosure and ethics training cycles, the legal offices also receive support from other attorneys, paralegals, and administrative staff within their own commands and field offices.

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).

Confidential Financial Disclosure (OGE Form 450)

During the review, OGE noted that the timely filing of new entrant confidential financial disclosure reports required improvement. The steps taken by AMC prior to and throughout the review should help AMC to fully comply with the new entrant filing requirements in the future. Therefore, this report makes no formal recommendation for improvement. OGE reminds ethics officials that late filing diminishes an agency's ability to provide timely and specific conflict of interest advice to help prevent employees from committing ethics violations. Therefore, AMC must continually monitor the new entrant confidential filing process to ensure that the steps established to address new entrant filing remain effective in operating as designed.

¹Of the two principal Ethics Counselors, one functions as the primary Ethics Counselor and was dedicated to ethics on a full-time basis, while the other spent approximately 50 percent of her time on ethics.

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Confidential Financial Disclosure - New Entrant System

To evaluate the effectiveness of the confidential system for new entrants, OGE examined 10 new entrant reports filed in 2005.

Filing Timeliness

- 1 report was filed timely.
- 9 reports were filed late, 2 of which were filed more than one year late.

10 total

Review/Certification Timeliness

- All 10 reports were reviewed and certified in a timely manner.

Quality of Review

- All 10 reports appeared to have been reviewed properly for potential conflicts of interest.

To address the issue of new entrant filing, the Ethics Office established new procedures to timely identify new entrants and to provide them with a blank OGE Form 450. New entrants will now be identified in one of the following two ways: 1) prior to the hiring process for civilian employees and 2) during the military in-processing for military personnel. The Ethics Office will also begin to query the AMC senior staff at staff calls throughout the year to ensure that all new AMC employees who enter into a covered position timely submit a confidential financial disclosure report.

Identifying New Entrant Civilian Employees Prior to the Hiring Process

- Prior to a supervisor requesting personnel action to hire a new civilian employee, the supervisor will be responsible for determining whether or not the duties of the position will require the employee to file a confidential report. If the position will require the employee to file, the requirement to file will be added to both the position description and the vacancy announcement prior to the position being advertised.
- At the time of offer, the servicing civilian personnel specialist will inform the employee of the filing requirement, provide the employee with a blank confidential report, and instruct the employee to complete the report and bring it

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to the employee's in-processing. If the employee was in a covered position in his or her previous position, the employee will be asked to bring a copy of his or her previously filed report.

- The civilian personnel office will ensure the forwarding of the completed report through the supervisor to the Ethics Office within 30 days after in-processing.

Identifying New Entrant Military Employees

- Utilizing the Supervisor's Determination Form, AMC supervisors will be responsible for determining whether military employees will be entering a position that will require the filing of a confidential report.
- If filing is required, the servicing military personnel office will inform the new employee of the filing requirement and provide a blank confidential report to complete and return to the Ethics Office within 10 days after entering a covered position.
- If new military personnel are not required to file, Supervisor's Determination Forms are required to be returned to the Ethics Office within five days.

While these procedures were not fully operative during the time of OGE's fieldwork, the Ethics Office advised OGE since the completion of the fieldwork that at least four new entrant confidential filers were identified and their reports were filed timely through the use of these new procedures.

Confidential Financial Disclosure – Annual System

To determine the effectiveness of the confidential system for annual filers, OGE selected for examination 68 of the 127 annual confidential reports that were required to be filed in 2005.

Filing Timeliness

- 57 reports were filed timely
 - 11 reports were filed late.²
- 68 total

²OGE is not considering these 11 late reports to be an egregious matter, since the majority of the reports were filed fewer than 10 days after the established deadline. However, the Ethics Office must remain diligent in ensuring that all annual reports are filed timely in view of the role financial disclosure plays in preventing employees from committing ethics violations.

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Review/Certification Timeliness

- All 68 reports were reviewed within the required 60 days and certified soon after review.

Quality of Review

- All 68 reports appeared to have been reviewed properly for potential conflicts of interest.

Public Financial Disclosure System (SF 278)

For the 2006 annual public filing cycle, HQ, AMC public filers were required to use the Financial Disclosure Management (FDM) system to electronically prepare, submit, and digitally sign their public reports and then forward them to their immediate supervisors for review. Upon completing their review, supervisors electronically forwarded the reports to the Ethics Office for review and signature prior to being forwarded to Army SOCO for final review and certification.³

To evaluate the effectiveness of the public system, OGE examined the 17 HQ, AMC public reports that were required to be filed in 2006, inclusive of the report filed by the AMC Commanding General. These 17 reports consisted of:

Type of Report

- 16 annual reports
- 1 new entrant report

17 total

Filing Timeliness

- All 17 reports were filed timely.

Review/Certification Timeliness

- All 17 reports were reviewed and certified timely.

³Public reports from filers outside of HQ, AMC are forwarded to AMC's Deputy Commanding General for initial review and are then forwarded to Army SOCO for final review and certification.

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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.

In view of the importance of ethics education and training in preventing employees from committing ethics violations, the Army trains all Army employees on the importance of ethical conduct. In particular, the Army requires all Army military activities and agencies to give face-to-face annual ethics training to *all* military personnel and civilian employees, regardless of rank, grade, or position, and to give those who are involved in the acquisition process an additional hour of annual face-to-face acquisition ethics training.⁴ (See the Acquisition Ethics Training section below.) The Army also requires all Army employees to review the Federal Oath of Office (5 U.S.C.S. § 3331), the U.S. Army Statutory Requirement of Exemplary Conduct (10 U.S.C.S. § 3583), and the Principles of Ethical Conduct for Government Officers and Employees (as modified by E.O. 12731, 55 FR 42547) to help reaffirm the Army's commitment to these and all other provisions of Federal and DoD requirements.

OGE considers the Army's training initiatives to be model practices that OGE will recommend to other agencies when discussing the importance of educating and training employees regarding ethics.

In addition to the formal training requirements highlighted above, AMC routinely keeps employees aware of ethics-related issues through a variety of methods including: sending ethics advisories and routine e-mails to employees regarding various ethics topics, providing verbal ethics training at new employee briefings, conducting new supervisor courses, and conducting retirement briefings to departing employees.

Finally, OGE noted another model practice at AMC; AMC utilizes its own written training plan to help focus its training efforts, although the requirement in OGE's training

⁴In a 2004 memorandum, the Acting Secretary of the Army directed all Army military and civilian employees, regardless of their grade, rank, or position, to receive face-to-face ethics training to help impart the principles of ethical conduct expected of all Army personnel. Since that time, the Army has reaffirmed and continued this requirement to satisfy the annual training requirement for both 2005 and 2006. The one exception to the face-to-face training requirement is for Army employees who are serving in a combat zone. Though the ethics rules are still applicable within combat zones, employees are required to schedule the training either before deployment or as soon as practicable after returning to their home station.

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regulation at 5 CFR § 2638.706 for developing a written training plan is not clearly applicable to a subunit of an agency, such as AMC.

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 of Ethical Conduct for Executive Branch Employees (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.*

Initial ethics orientation (IEO) at HQ, AMC is accomplished primarily through the servicing civilian or military personnel offices as part of each employee's new employee orientation. However, at various times throughout the year, the Ethics Office also renders face-to-face IEO presentations to new employees.⁵ During IEO, new employees are given copies of:

- the 14 Principles of Ethical Conduct for Government Officers and Employees;
- internet links to the DoD supplemental regulation and the Army's Soldiers' and Civilian Employees' Guide to the Standards of Conduct, which provides a brief overview on ethics;
- contact information for the Ethics Office; and
- one hour of official time to review the materials.

Upon completion, employees are required to submit a "Statement of Understanding" form, which certifies their receipt of IEO. IEO completion is tracked through the collection of this form, which is maintained by the Ethics Office.

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

⁵OGE was advised that because HQ, AMC does not have military personnel who are new to the Army, those personnel who are assigned to HQ, AMC have already received their required IEO as part of their initial training. However, AMC still provides IEO to all new AMC military personnel.

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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).

In compliance with the Army's directive to provide face-to-face annual ethics training to all military and civilian employees, for 2006, the Ethics Office identified 872 HQ, AMC employees who were required to receive face-to-face annual ethics training. The Ethics Office faces unique challenges in meeting this annual requirement due in large part to the agency's geographically dispersed workforce and the various categories of AMC employees who have specialized training needs. To meet these challenges, the Ethics Office incorporates a variety of methods, including video teleconferencing (VTC) and pre-recorded videotaped footage with live connectivity via telephone or VTC to help ensure that training is made available and is accessible to all AMC employees.

During its review, OGE attended one of the training sessions conducted by the Ethics Office and found it to be informative and well-g geared to the variety of employees in attendance. The session included an overview of the required content and issues regarding:

- the use of Government communication equipment;
- personal and official participation in private organizations;
- seeking employment; and
- post-Government employment.

Attendance is tracked using a sign-in sheet, and periodic reports are run to help identify those employees who have not yet been trained. While not all HQ, AMC employees, inclusive of some financial disclosure filers, had been trained by the conclusion of OGE fieldwork, OGE confirmed with the Ethics Office prior to the issuance of this report that all covered employees had been trained.

Acquisition Ethics Training

In light of a past high-profile investigation involving a procurement official at a military department and in recognition of recurring and emergent acquisition and contracting issues, the Army now requires that all Army personnel involved in the acquisition process receive one hour of annual face-to-face acquisition ethics training in addition to the annual ethics training. Employees required to receive this training are both military personnel and civilians who work

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within acquisition offices, Contracting Officer's Representatives and Contracting Officer's Technical Representatives (COR/COTR), Government purchase card holders, and any other employees who occupy significant acquisition-related positions that may be identified by a supervisor, manager, or commander.

According to the Ethics Office, 296 HQ, AMC employees were required to receive annual acquisition ethics training in 2006. The training included discussions regarding the Procurement Integrity Act, the role of the COR/COTR, bribery and gifts, and organizational conflicts of interest. Acquisition ethics training was provided by the Ethics Office via monthly training sessions that were held either immediately after certain annual ethics training sessions or during stand-alone sessions. Sign-in sheets were used to track training attendance. Prior to the issuance of this report, OGE confirmed that all but seven employees who were subject to this training had been trained.

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 examined an extensive sampling of the counseling memorialized via e-mail and written memoranda by the Ethics Office in 2006. The majority of the counseling OGE examined pertained to topics such as post-employment, gifts from outside sources, and widely-attended gatherings. Much of what OGE examined appeared to be timely and consistent, and accurately addressed relevant laws and regulations. However, two opinions involving the provisions of 18 U.S.C. § 207 prompted questions from OGE. OGE's questions were resolved with the assistance of the OGE Desk Officer assigned to AMC by the conclusion of the review.

OGE found that AMC's approach to providing guidance on the relevant Federal and DoD post-Government service employment restrictions to departing AMC employees to exceed the requirement at subsection 9-502 of the JER. The Ethics Office provides in-person, post-employment counseling to employees who were contemplating retirement, as well as those departing from Federal service. AMC uses creative methods to ensure that employees are apprised of the relevant post-employment restrictions to which they may be subject upon leaving AMC. For example, the Ethics Office provides those who are considering or who are departing

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from Federal service with an overview of the relevant post-employment restrictions on a business card, which serves as a convenient reference for employees when needed. Employees are also given a post-employment restrictions guide, a summary of AMC's 20 Basic Rules for Personnel Leaving the Army, and a post-Government service ethics questionnaire, which is used to provide written counseling on the post-Government service restrictions. OGE considers AMC's post-Government service counseling program to be another agency model practice.

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 Ethics Office and AMC's Inspector General Activity (AMC IG Activity) share a strong working relationship that results in regular communication on matters of mutual interest. Both offices consider their coordination with one another fundamental to their respective missions.

During the period covered by OGE's review, there were no matters referred by AMC for prosecution to the Department of Justice involving alleged violations of the criminal conflict-of-interest statutes. It appears that both the Ethics Office and the AMC IG Activity are aware of the procedures prescribed in 5 CFR § 2638.603 and Chapter 10 of the JER to ensure that OGE is concurrently notified of all referrals, declinations to prosecute, and disciplinary or corrective actions initiated, taken, or to be taken. OGE was also advised that there were no violations of the Standards during the period covered by OGE's review.

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.

AMC permits its employees to accept travel payments from non-Federal sources under the authority of 31 U.S.C. § 1353. However, in August 2005, the Commanding General determined that only under "extraordinary circumstances" would AMC continue to accept payments under this authority. According to the Ethics Office, though some travel has and will

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remain essential, the intent of this policy is to help minimize travel, whenever possible, and give consideration to using other means to accomplish AMC missions.

To meet the semiannual reporting requirement, the Ethics Office is responsible for collecting the information to be reported, drafting AMC's semiannual report of payments of more than \$250 per event, and forwarding it to Army SOCO for further processing. Army SOCO is responsible for reviewing these payments and forwarding them for inclusion in the Army's semiannual report to OGE.⁶

During its review of the 2 semiannual reports that the Army submitted to OGE covering the periods from October 1, 2005 – March 31, 2006 and April 1, 2006 - September 30, 2006, OGE identified a total of 30 payments accepted by HQ, AMC. The payments were reported using the appropriate General Services Administration Standard Form 326. Based on OGE's examination of selected written authorizations and other supporting documentation, OGE concluded that the HQ, AMC payments were accepted in compliance with relevant requirements.

Summary

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

- significant agency leadership support for the ethics program;
- an education and training program that exceeds the minimum training requirements found at subpart G of 5 CFR part 2638;
- the routine use of varying methods to keep employees aware of ethics-related issues; and
- utilizing an agency-specific training plan to help focus training efforts.

OGE's review found that timely new entrant confidential financial disclosure report filing has remained challenging since OGE's last review of AMC's ethics program in March 1998. As one of the most common findings of OGE's reviews of agencies with large, decentralized confidential systems, OGE recognizes the challenges AMC faces in addressing the issue of timely new entrant filing. The steps that were taken prior to and during OGE's current review

⁶While the procedures for accepting travel payments from non-Federal sources under the authority of § 1353 are specified in Chapter 4 of the JER, they are also detailed in internal written travel procedures developed by the Army and AMC.

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should help to ensure that employees entering covered positions will file new entrant confidential financial disclosure reports in a timely manner, in accordance with 5 CFR § 2634.903(b).

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