



Highlights

Issues of Compliance

- The CIA is not collecting new entrant confidential financial disclosure reports as required (5 C.F.R. § 2634.903(b)(1)).

Model Practices

- Ethics officials provided comprehensive training for Deputy Ethics Officials who review confidential financial disclosure reports.
- Initial ethics orientation and annual ethics training creatively and effectively related ethics rules to employees' personal situations and engaged them in discussion.

OGE Suggests

- OGE suggests that the CIA review and certify each report filed by a Presidentially-appointed, Senate-confirmed employee as soon as possible after the intermediate review is completed and then immediately submit the report to OGE.
- OGE suggests that the CIA ensure that all authorizations granted under the authority of 5 C.F.R. § 2635.502(b) are specific as to the particular matter involved and the nature of the authorized participation.

OGE Recommends

- OGE recommends that the DAEO ensure that new entrant confidential financial disclosure filers are identified timely and that reports are collected within 30 days of the filers assuming covered positions, within both headquarters and NRO.

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Central Intelligence Agency

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Executive Summary

The Office of Government Ethics (OGE) has completed its review of the ethics program at the Central Intelligence Agency (CIA), including the National Reconnaissance Office (NRO), a joint CIA-Department of Defense activity. The purpose of a review is to identify and report on the strengths and weaknesses of the program by: (1) measuring agency compliance with ethics requirements found in the relevant laws, regulations, and policies; and (2) evaluating ethics-related systems, processes, and procedures in place for administering the program. OGE determined that there is reasonable assurance that the performance and management of the CIA's ethics program is effective, with the exception of the collection of new entrant confidential financial disclosure reports.

OGE recommends that the CIA's Designated Agency Ethics Official (DAEO) ensure that new entrant confidential financial disclosure filers are identified timely and that reports are collected within 30 days of the filers assuming covered positions, both within CIA headquarters and NRO. 5 C.F.R. § 2634.903(b)(1).

Additionally, public financial disclosure reports filed by Presidentially-appointed, Senate-confirmed employees are not submitted to the OGE as soon as they are approved, as required by OGE guidance issued in DAEOgrams DO-05-009, dated April 13, 2005, and DO-06-010, dated April 7, 2006. Further, authorizations granted under the authority of 5 C.F.R. § 2635.502(d) are not always specific as to the particular matter involved and the nature of the authorized participation. Therefore, the report suggests that the CIA strengthen its program further by taking actions to address these issues. The report also discusses some of the model practices the CIA's ethics officials have implemented.

This report has been forwarded to the CIA's DAEO and Inspector General.



**United States Office
Of Government Ethics**

Report Number 06-012

**Ethics Program Review
Central Intelligence Agency**

August 2006 Report

Introduction

OGE MISSION

The 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

An ethics program review identifies and reports the strengths and weaknesses of an executive branch agency's ethics program. An ethics program includes both substantive and structural aspects. For example, a review measures agency compliance with ethics requirements found in the relevant laws, regulations, and policies. A review also evaluates ethics-related systems, practices, processes, and procedures in place for administering the program. 5 C.F.R. § 2600.103(e)(1)(iii). A review does not investigate any particular case of employee misconduct.

REVIEW AUTHORITY AND SCOPE

OGE has the authority to evaluate the effectiveness of executive agency programs in preventing conflicts of interest. These programs may include the financial disclosure systems, ethics education and training, ethics agreements, advice and counseling, and the enforcement of ethics laws and regulations. Title IV of the Ethics in Government Act of 1978, as amended, and 5 C.F.R. part 2638.

In addition to reviewing the ethics program in place at the Central Intelligence Agency's (CIA) headquarters, OGE also reviewed the ethics program within the National Reconnaissance Office (NRO), a joint CIA-Department of Defense activity. The on-site portion of this review was conducted from October 2005 through February 2006.

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Findings

PROGRAM STRUCTURE

The CIA's Acting General Counsel serves as the Designated Agency Ethics Official (DAEO). The Chief, Administrative Law Division and the Ethics Counsel, both within the Office of General Counsel, have been appointed Alternate DAEOs. However, the ethics program is primarily administered by the Ethics Counsel, with support from the Ethics Compliance Officer. The Ethics Counsel and the Ethics Compliance Officer are the CIA's only full-time ethics officials. In addition, there are 31 Deputy Ethics Officials (DEO) throughout the CIA's various Directorates and remote activities, including the NRO. DEOs, who include attorneys within the Office of General Counsel, provide varying degrees of support to the ethics program. DEOs within the CIA's Directorates and remote activities are primarily responsible for reviewing public and confidential financial disclosure reports.

OGE's LAST REVIEW OF THE CIA

OGE last conducted a review of the CIA's ethics program in 2000. This review found that the CIA had many effective, and in some instances, exceptional ethics program elements. It was also our conclusion that ethics officials made every effort to ensure that the CIA's employees were supported with effective ethics services.

FINANCIAL DISCLOSURE SYSTEMS

Our current review found that the public and confidential financial disclosure systems are generally well-managed. Ethics officials have developed sophisticated electronic filing programs which allow the majority¹ of public and confidential financial disclosure report filers to electronically file their reports. Ethics officials also review and certify reports electronically. This provides for the efficient processing and tracking of filed reports.

The public and confidential electronic filing programs were approved by OGE in April 2002 and September 2001, respectively, as pilot programs. The examination of the programs during this review permits the conclusion that they have enabled ethics officials to effectively manage the financial disclosure elements of the ethics program.

The review also included an examination of ethics agreements made by public and confidential financial disclosure filers. These agreements were generally well-constructed; however, OGE suggests that the CIA be more consistent in providing specific guidance as to what constitutes a particular matter and permitted participation when granting authorizations under the authority of 5 C.F.R. § 2635.502(d).

¹Those who do not have access to the CIA's Intranet file their reports manually.

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Public Financial Disclosure System

The public financial disclosure system within both the CIA headquarters and NRO is well-managed. The review team examined a number of reports as indicated below and identified no substantive problems. However, OGE questions whether reports filed by Presidentially-appointed, Senate-confirmed (PAS) employees are being submitted to OGE as soon as possible.

PAS Reports

We examined all four PAS public reports required to be filed in 2005, consisting of three incumbent reports and one termination report. All were filed in a timely manner except for the termination report. The termination report was filed more than 30 days late, but the DAEO waived the late filing fee, as allowed by 5 C.F.R. § 2634.704(b). All of the reports were reviewed timely by an intermediate reviewer before being forwarded to the DAEO for final review and certification. However, the Alternate DAEO advised us that none of the reports are forwarded to the DAEO until the intermediate reviews of all of the reports have been completed. This has resulted in a delay in the final review and certification of the reports by the DAEO and submitting of the reports to OGE.

OGE's DAEOgram, DO-05-009, dated April 13, 2005, provided guidance (repeated in OGE's DAEOgram DO-06-010, dated April 7, 2006) to agencies regarding the prompt submission to OGE of PAS reports as soon as they are approved. While the CIA submitted reports in accordance with the DAEOgram's instructions that reports be submitted to OGE "as soon as approved by [an] agency or department, but no later than August 1, 2005," the intent of the DAEOgram was to encourage agencies to review and certify these reports as soon as possible so that they could be submitted to OGE at the earliest possible date. As these reports are filed by the highest-level executive branch officials, it is vital that they be reviewed and certified by both the CIA and OGE as soon as possible to bolster public confidence in Government processes, enhance employee respect for the ethics program, and prevent the embarrassment of the filers. Therefore, OGE suggests that the CIA review and certify each report as soon as possible after the intermediate review is completed and then immediately submit the report to OGE.

Non-PAS Reports

We also examined non-PAS reports filed by 118 CIA headquarters employees and 20 employees detailed to NRO. The reports were filed, reviewed, and certified timely. Reviewers' notations were attached to the reports and documented thorough conflict of interest analyses. It was clear that reviewers had to deal with issues unique to the intelligence community and appear to have addressed and resolved those issues in compliance with applicable regulations without impeding filers in the performance of their duties.

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Confidential Financial Disclosure System

The confidential financial disclosure system is well-managed except for ensuring that new entrant filers submit reports within 30 days of assuming covered positions. However, the program is highly effective in managing the filing, review, and certification of annual reports. Additionally, the CIA has an excellent training program for DEOs who review confidential reports.

New Entrant Reports

The CIA does not generally identify new entrant confidential financial disclosure filers within 30 days of the filers assuming covered positions, as required by 5 C.F.R. § 2634.903(b)(1). Failure to collect and review confidential financial disclosure reports in a timely manner puts employees at risk of running afoul of the ethics rules. During the annual filing cycle, supervisors typically re-evaluate positions to determine whether they meet the criteria at 5 C.F.R. § 2634.904 for filing a confidential report. As part of this process, new entrants are identified and then notified of the filing requirement.

We examined a sample of 23 new entrant reports filed at CIA headquarters and a sample of 5 new entrant reports filed at NRO. All reports in both samples were filed in 2004. All of the new entrant reports filed at CIA headquarters were filed during the annual filing cycle. Several new entrant reports appeared to have been filed timely because they indicated dates of appointment that were the same as the dates they were filed. The remaining reports indicated dates of appointment throughout the year, or did not indicate dates of appointment at all. Our findings in regard to the new entrant reports filed at NRO were consistent with those at CIA headquarters. Four of the five new entrant reports examined were filed during the annual filing cycle. Two noted dates of appointment in June and February; the remaining three reports did not indicate dates of appointment. Based on OGE's experience, this pattern generally indicates a weakness in identifying new entrant filers timely.

OGE recommends that the DAEO ensure that new entrant confidential financial disclosure filers are identified timely and that reports are collected within 30 days of the filers assuming covered positions, both within CIA headquarters and NRO. It is our experience that this may be accomplished through close coordination with other elements of the agency, such as:

- frequently reminding DEOs to monitor the assignment of new employees to their components,
- educating supervisors concerning the filing criteria at 5 C.F.R. § 2635.904,
- addressing the issue at initial ethics orientation sessions to encourage new employees to consider asking their supervisors if they should be filing a report, and

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- addressing the issue at annual ethics training presentations to remind supervisors of the new entrant filing requirement.

We identified no substantive concerns regarding disclosed interests. Reports were reviewed and certified timely. Notations by both reviewing and certifying officials indicated thorough conflict of interest analyses.

Annual Reports

Ethics officials have effective procedures for notifying annual filers of the requirement to file, providing guidance to filers, and tracking the submission of reports. The electronic filing program also provides definitive documentation of the filing, completion of review, and certification of reports.

We examined a sample of 110 annual reports filed at CIA headquarters and a sample of 25 annual reports filed at NRO. All reports in both samples were filed in 2004. We identified no substantive concerns regarding disclosed interests. The reports were reviewed and certified timely. Notations by both reviewing and certifying officials indicated thorough conflict of interest analyses.

Training for DEOs

The review team attended a training session for new DEOs who would be responsible for reviewing confidential financial disclosure reports. The Ethics Counsel explained the basic principles of financial disclosure reporting requirements, the reason for requiring supervisory (intermediate) review of reports, and the role of the DEO in the reporting process. The Ethics Counsel further explained the importance of conducting a thorough conflict of interest analysis for each report and how to determine whether a disclosed interest represents a real or potential conflict for the filer. DEOs were strongly encouraged to consult with more senior ethics officials at any time they may need assistance. We consider this type of formal training for reviewers of financial disclosure reports to be a model practice.

Ethics Agreements

There was one written ethics agreement, entered into by a PAS employee. The agreement, requiring the employee to divest of some interests and execute a recusal, was carried out in accordance with applicable regulations and the terms of the agreement. The recusal and the evidence of compliance made available to OGE were classified.

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We also examined six authorizations granted to non-PAS employees pursuant to 5 C.F.R. § 2635.502(d).² Four clearly specified the particular matters involved and the nature of the participation authorized, while two were relatively open-ended authorizations for the employees to participate in essentially any matters involving the specific parties.

The four that were specific emphasized that there was no violation of 18 U.S.C. § 208 because the interest was either (1) less than \$15,000 and exempted in accordance with § 208 (b)(2), and therefore no authorization was actually required, or (2) not a direct interest (e.g., spouse who is employed by a CIA contractor but does not work on the particular matter). However, although we concluded that all of the authorizations essentially complied with 5 C.F.R. § 2635.502(d), authorizations should always be specific as to the particular matters involved and the nature of the participation. This specificity is necessary to ensure that: (1) employees are aware of the particular matter in which they are authorized to participate, and (2) this participation does not exceed that which has been authorized. Consequently, OGE suggests that the CIA ensure that all such authorizations granted in the future be specific as to the particular matter and nature of the participation.

Finally, we examined 12 classified and 9 unclassified recusals executed by non-PAS employees. The recusals were completed with guidance from ethics officials. They were well-constructed and provided for screening arrangements. The screening arrangements specified the relevant matters to be referred to a subordinate, identified by name. Employees agreed to revise and update recusals, whenever appropriate, and advise immediate subordinates and others of any changes.

ETHICS EDUCATION AND TRAINING

The CIA provides initial ethics orientation (IEO) and annual training for all covered employees. The review team attended both an IEO and an annual training session, concluding that the training was comprehensive in terms of addressing all required content. More significantly, it was clear that ethics officials were dedicated to providing training that was meaningful to employees and would help them avoid inadvertently violating ethics rules. Beyond the formal training provided to employees, ethics officials often publish articles in the CIA's employee newsletter. Additionally, the Office of General Counsel's home page on the CIA's Intranet includes links to ethics information, including ethics officials' contact information.

²Where an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. § 208(a), but would raise a question in the mind of a reasonable person about his impartiality, the agency designee may authorize the employee to participate in the matter based on a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.

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Initial Ethics Orientation

IEO is conducted as part of a multi-day orientation course all new employees are required to attend. During the session attended by the review team, all required content was addressed in terms of its most likely application to CIA employees. The DEO who conducted the training used actual cases to illustrate the potential consequences of violating the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). 5 C.F.R. § 2635. The DEO also stressed that ethics officials are available to counsel employees should they have questions regarding ethics rules and that it is prudent to seek such counsel prior to engaging in any questionable activity. The DEO explained the provisions of 5 C.F.R. § 2635.107, which provide that disciplinary action will not be taken against an employee for violation of the Standards if the employee relied in good faith upon the advice of an ethics official and made full disclosure of all relevant circumstances. OGE considers this emphasis on § 2635.107 to be a model practice, which encourages employees to seek advice prior to engaging in potentially prohibited conduct. Ethics officials also provided handouts and Intranet site addresses where the full text of ethics laws and regulations, as well as other guidance and contact information, could be found.

The Ethics Counsel confirmed to us that all current PAS employees appointed during 2005 and the three previous calendar years received IEO.

Annual Ethics Training

CIA headquarters employees are generally trained by attending live presentations or completing interactive computer-based training modules, both of which qualify as verbal training. Videotapes of the live training sessions are provided to employees in remote locations. NRO employees are required to attend live presentations that are tailored to meet their needs. These tailored sessions also qualify as verbal training. Methods of tracking the completion of training both at CIA headquarters and NRO appear to ensure that all covered employees receive the required training. The Ethics Counsel and NRO DEO confirmed that all covered employees within CIA headquarters and NRO, respectively, received the required training in 2005.

Live and Videotaped Presentations at CIA Headquarters

Ethics officials conduct live presentations every year for public financial disclosure filers stationed at CIA headquarters. Confidential filers are also invited and encouraged to attend these sessions.³ These presentations meet the requirements for providing verbal ethics training and are videotaped for public filers located at remote sites. Training provided by videotape meets the requirements for verbal training, except where employees are located in time zones where they are not able to view the tapes during times when a qualified instructor is on duty and available to

³ Confidential financial disclosure report filers are required to receive verbal ethics training at least once every three years and to receive written ethics training in the intervening years. 5 C.F.R. § 2638.705.

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immediately answer questions from employees. In accordance with 5 C.F.R. § 2638.704(e), written determinations are made in these circumstances that providing verbal training to public filers with a qualified instructor available is impractical.

Ethics officials track completion of live training by providing instructions for attendees to self-certify in the ethics training database, via the CIA's Intranet. Remote sites provide CIA headquarters ethics officials with lists of employees who have completed the videotaped ethics training. Ethics officials enter the data into the ethics training database.

We attended a live presentation conducted by the Ethics Counsel. It covered all required content and, like the IEO session the team attended, there was an explanation of the provisions of 5 C.F.R. § 2635.107. The presentation creatively incorporated both humor and real-life examples of public officials who had committed ethics violations. This served to hold employees' attention and make the presentation more interesting. The movie clips and cartoons the Ethics Counsel selected to include in her presentation were relevant and illustrated the spirit of the rules being addressed. They also appeared to provide credibility to the Ethics Counsel as not just an ethics official, but someone who could relate to the ethical issues employees typically encounter and help them to avoid violating ethics rules. The manner of presentation encouraged employees to engage in discussion when they had questions. The questions employees asked indicated that their awareness and understanding of ethics rules had been improved as a result of the training. This is, of course, one of the primary objectives of ethics training.

In addition, we viewed the videotape of a 2004 annual training session provided to some employees as their annual training. The presentation was in plain English and integrated examples of real-life ethics violations that had appeared in news reports. The videotape included the address for the Office of General Counsel's home page and ethics officials' contact information. It was well-produced, informative, accurate, and incorporated relevant movie clips and cartoons in order to hold the employees' attention. OGE encourages this creativity as a model practice and an effective means of leveraging the limited amount of time ethics officials have to provide meaningful ethics training to employees.

Computer-based Presentations

Verbal ethics training in the form of a computer-based presentation is another option available to confidential filers who do not attend or view a videotape of a live presentation.⁴ Employees are presented with information covering a particular ethics topic, such as gifts or misuse of Government equipment, and are then asked a series of questions relevant to the information covered and based on scenarios constructed to demonstrate the practical applications of the rules. These questions must be answered correctly before the employee can progress from one topic to the

⁴ The training qualifies as verbal training because it was prepared by qualified instructors and presented by computer. 5 C.F.R. § 2638.705(c).

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next. Completion of the training is automatically recorded by the computer, creating a database which ethics officials use to verify that covered employees have completed training.

NRO Annual Training

While the review team was not able to attend one of the live presentations held for NRO employees, we examined the presentation slides and outline used by the presenter and determined that they addressed all required content. The training addressed issues relevant to the audience, and appeared well-designed to assist employees in applying the ethics rules to situations they were likely to encounter. The NRO DEO incorporated relevant movie clips into the training to effectively illustrate ethics issues.

Senior Employee Training

The Ethics Counsel provides verbal training to senior employees, including PAS employees. Training for these senior employees is tailored to address the issues they are most likely to encounter and is typically presented either one-on-one or in small groups. The Ethics Counsel confirmed that all current PAS employees received annual training in 2005 and the previous three years.

ETHICS ADVICE AND COUNSELING

Ethics-related advice and counseling are provided to CIA employees primarily by the Ethics Counsel and DEOs within the Office of General Counsel. The DAEO or Alternate DAEO may contribute when advice is provided to senior employees or when advice constitutes a policy decision. To evaluate the advice and counseling provided, a sample of approximately 100 written determinations rendered during the period covered by the review was examined. The advice pertained to every aspect of the ethics program: conflicts of interest; seeking and post employment⁵; authorizations pursuant to 5 C.F.R. 2635.502(d); fundraising; gifts from outside sources; gifts between employees; misuse of position; teaching, speaking and writing; and other outside activities. The advice was thorough, and appeared to be responsive to employees' needs. OGE acknowledges the CIA's policy of requiring employees seeking an opinion to do so in writing, unless the question is of a simple nature. Additionally, OGE would like to commend the agency for the development of a questionnaire that is provided to employees engaged in seeking non-Federal employment. The questionnaire seeks specific information to provide a complete picture of the employee's official duties. Upon receipt of the completed questionnaire, ethics officials are able to extract information from the form in order to provide comprehensive advice tailored to an employee's specific activities. OGE considers the use of the questionnaire to be a model practice.

⁵None of the advice and counseling included in the sample involved the application of the restrictions found in 18 U.S.C. § 207(c), which is the subject of a CIA request for an opinion from the Department of Justice's (DOJ) Office of Legal Counsel.

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The CIA has learned that one aspect of its interpretation of the post-employment restriction contained in 18 U.S.C. § 207(c) is not shared by OGE. Upon discovery of this difference of opinion, the CIA immediately coordinated with OGE and revised the advice it was providing to employees and former employees regarding § 207(c), in accordance with OGE's interpretation. However, the CIA has asked the DOJ's Office of Legal Counsel to render an opinion, which is currently pending.

ENFORCEMENT

Both ethics officials and the Assistant Inspector General for Investigations (AIGI) indicated that there was an effective working relationship between their two offices. This relationship allows for coordination to ensure that information developed by the AIGI's office regarding ethics violations is shared with ethics officials (insofar as it is permitted by security restrictions). 5 C.F.R. § 2638.203(b)(11) and (12). Ethics officials and the AIGI stated that the CIA takes effective action against those who commit ethics violations. 5 C.F.R. § 2638.203(b)(9). However, the review team was provided no documentation to support this statement, precluding OGE from assessing the CIA's compliance with § 2638.203(b)(9). The AIGI is aware of the requirement to concurrently notify OGE of referrals to DOJ of alleged violations of the criminal conflict of interest laws. 5 C.F.R. § 2638.603(b). According to both ethics officials and the AIGI, there have been no such referrals during the period covered by our review.

31 U.S.C. § 1353 TRAVEL PAYMENTS

The CIA consistently files with OGE timely semiannual reports of travel payments accepted from non-Federal sources of more than \$250 per event. This is based on a review of the three reports covering the period October 1, 2003 through March 31, 2005, on which nine acceptances of travel payments were reported. An examination of the supporting documentation for the three acceptances listed on the report covering October 1, 2004 through March 31, 2005, indicated that the payments were in compliance with the 31 U.S.C. § 1353 and the implementing regulation at 41 C.F.R. Chapter 304.

RECOMMENDATION

To bring the CIA's ethics program into full compliance with applicable laws and regulations, we recommend that the DAEO:

Ensure that new entrant confidential financial disclosure filers are identified timely and that reports are collected within 30 days of the filers assuming covered positions, both within CIA headquarters and NRO.