

United States Office of Government Ethics

Program Review Division

Ethics Program Review

Department of the Army

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Department of the Army's (Army) headquarters ethics program between May and October 2012. Army's ethics program is divided into two sections: the Army Secretariat and the Army Staff. The results of the review indicated both the Army Secretariat and the Army Staff have ethics program challenges in the area of financial disclosure. Emphasis on timely filing and certification of financial disclosure reports by both the Army Secretariat and the Army Staff would reduce the Army headquarters' vulnerability to conflicts of interest.

Highlights

- Army Secretariat and Army Staff ethics counselors participate in the annual one-week Ethics Counselor Course conducted at the Army Judge Advocate General's Legal Center and School.
- Army Brigade Commanders receive 14 hours of ethics training prior to receiving their first commands.
- Army's electronic Financial Disclosure Management (FDM) system is a robust online system for electronic filing, review, and storage of financial disclosure reports that is in use by 25 executive branch agencies.
- The Army Secretariat and the Army Staff provide comprehensive and timely ethics advice on a wide variety of ethics issues.
- The Army Secretariat and the Army Staff have collected and submitted to OGE timely semi-annual reports of payments from non-Federal sources for travel expenses covering the periods of October 2010 through March 2012. These reports cover the entire Army.

Concerns

- The Army Secretariat and Army Staff have considerable difficulty with the timely collection and certification of public and confidential financial disclosure reports.
- The Army Secretariat and Army Staff could not confirm that annual ethics training was completed by all covered personnel, due to a significant tracking system limitation.
- The lack of dedicated funding for FDM has led to increased costs for program operation, maintenance, and improvement due to experienced FDM software developers transferring to programs with a secure budget.

Contents

Objectives, Scope, and Methodology.....	3
Program Administration.....	4
Financial Disclosure.....	6
Education & Training.....	14
Advice & Counsel.....	16
Agency-Specific Ethics Rules.....	17
Conflict Remedies.....	17
Enforcement.....	17
Special Government Employees.....	18
1353 Travel Acceptances.....	20
Agency Comments.....	21

Objectives, Scope, and Methodology

OGE provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance. 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 as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program. OGE has the authority to evaluate the effectiveness of executive agency ethics programs. See Title IV of the Ethics in Government Act and 5 CFR part 2638.

OGE’s review of the Department of the Army focused on the headquarters components of the Department: the Army Secretariat and the Army Staff. To assess Army’s ethics program, OGE examined a variety of documents provided by the various offices under review, such as training materials and policies and procedures governing elements of the program. OGE also examined a sample of public financial disclosure reports, confidential financial disclosure reports, and ethics advice and counsel.

In addition, OGE reviewers met with several officials to obtain additional information on the Army’s ethics program, seek clarification on issues, and verify data collected. These officials included the Army Designated Agency Ethics Official (DAEO); the Alternate DAEO (ADAEO); the Deputy General Counsel (Ethics & Fiscal) (DGC(E&F)); the Chief, Administrative Law Division (ALD); the Chief, Ethics, Legislation, and Government Information Practices Branch (ELGIP); the Financial Disclosure Management (FDM) Director; the Deputy Chief, Office of the Inspector General (OIG); and the Civilian Senior Leader Management Office (CSLMO) Director.

Program Administration

The Department of the Army (Army) is one of the three military departments within the Department of Defense (DoD). The Secretary of the Army is the Army's top civilian official, appointed by the President and confirmed by the Senate. The Chief of Staff of the Army (CSA) is the Army's highest-ranking military officer and a member of the Joint Chiefs of Staff. The Army's mission is to provide the necessary forces and capabilities to Combatant Commanders in support of the National Security and Defense Strategies. Army Headquarters exercises directive and supervisory control over the Army and is comprised of the Army Secretariat and the Army Staff.

The General Counsel is the Army's DAEO. The General Counsel is the legal counsel to the Secretary of the Army and chief legal officer of the Army. The General Counsel is responsible for oversight of the Army Ethics Program, and exercises final authority within the Army for all ethics matters. The Judge Advocate General (TJAG) serves as the Alternate DAEO and is the legal advisor to the CSA, the Vice Chief of Staff of the Army (VCSA), and members of the Army Staff.

The DAEO has delegated ethics authority to seven Deputy DAEOs (DDAEO) including the DGC(E&F) for the Secretariat and the Chief, ALD for the Army Staff. The duties and responsibilities of the DDAEOs in their respective organizations are to administer their ethics programs; provide advice and counseling; review, certify and maintain financial disclosure reports; provide ethics education and training to employees and service members; and appoint ethics counselors to assist in the performance of these functions.

Army Secretariat

The Secretariat's ethics program is housed within the Army's Office of the General Counsel (OGC) in the Ethics & Fiscal office (hereafter the "ethics office"). The Secretariat's ethics office provides ethics advice and support to personnel assigned to the Secretariat's 17 organizations.¹ In addition to administering the ethics program, the ethics office has other fiscal and non-ethics responsibilities including conference review, travel and transportation, and political activities.

The DGC(E&F) serves as DDAEO and manages the Secretariat's ethics program. The Secretariat's DDAEO is the primary ethics advisor to the DAEO and is responsible for working with the Office of the Secretary of Defense (OSD) and OGE on matters related to Government ethics. The DDAEO is also responsible for the operation of Army's Financial Disclosure

¹ The Army Secretariat consists of the following: Office of the Secretary of the Army; Office of the Under Secretary of the Army; Office of the Deputy Under Secretary of the Army; Office of the Deputy Under Secretary for Business Transformation; Office of the Assistant Secretary of the Army (Acquisition, Logistics & Technology); Office of the Assistant Secretary of the Army (Civil Works); Office of the Assistant Secretary of the Army (Financial Management & Comptroller); Office of the Assistant Secretary of the Army (Installations, Environment & Energy); Office of the Assistant Secretary of the Army (Manpower & Reserve Affairs); Office of the General Counsel; Office of the Administrative Assistant to the Secretary of the Army; Office of the Chief Information Officer; Office of The Inspector General; Office of the Auditor General; Office of the Chief of Legislative Liaison; Office of the Chief of Public Affairs; and Arlington National Cemetery.

Management (FDM) system, used for the electronic preparation, filing, and review of public and confidential financial disclosure reports.

The DDAEO is assisted by an Ethics Program Manager and two ethics counselors who provide advice and counseling, education and training and review and certify financial disclosure reports. The FDM Director and Deputy Director administer the daily operations of the electronic filing system. An attorney is responsible for fiscal appropriations, and an administrative assistant provides further support for the ethics office.

Several ethics office vacancies have impacted the Secretariat's capacity to provide the full range of timely ethics services. One ethics counselor position was vacant during the on-site review, and another ethics counselor, administrative assistant, and the Ethics Program Manager have since departed the agency. To backfill these vacancies, the DDAEO has recently hired one ethics attorney who will become the Ethics Program Manager and will be dedicated to full-time ethics duties and one attorney who will perform ethics duties part-time. In addition, the DDAEO has received authorization to hire another attorney who will perform ethics duties part-time. An Army Staff attorney was temporarily detailed to assist the Secretariat's ethics program, but that detail is expected to end by the close of 2012. Since the OGE Program Review, the FDM Program Director departed the Army to assume a position with OGE. According to Army ethics officials, a hiring action is currently ongoing, but in the meantime this vacancy will require ethics counselors to divert scarce resources to execute FDM Program Director responsibilities.

Army Staff

The Army Staff's ethics program is administered by the Office of The Judge Advocate General (OTJAG) through its Administrative Law Division's Ethics, Legislation, and Government Information Practices branch (hereafter "ELGIP" or "Army Staff ethics office"). The Judge Advocate General (TJAG), in a four-year rotating position, serves as the ADAEO. TJAG also serves as military legal advisor to the Secretary of the Army and members of the Secretariat, in coordination with the General Counsel. TJAG previously served five years as a DDAEO and served as head of the Army JAG School. He attends three weekly meetings with the CSA and senior Army leadership. TJAG is responsible for appointing ethics counselors within the Army Staff which is composed primarily of 16 organizations.²

The Chief, ALD is the DDAEO of the Army Staff's ethics program and has assigned the daily operation of the program to the Chief, ELGIP. The Chief, ELGIP is assisted by a civilian staff attorney dedicated to full-time ethics duties and a military attorney who performs ethics duties part-time. These ethics counselors provide advice and counseling, review and certify financial disclosure reports, distribute ethics information and memoranda via email, and provide assistance to ethics counselors in the field.

² The Army Staff consists of the following: Office of the Chief of Staff of the Army; Office of the Vice Chief of Staff of the Army; Office of the Sergeant Major of the Army; Office of the Director of the Army Staff; Office of the Deputy Chief of Staff, G-1; Office of the Deputy Chief of Staff, G-2; Office of the Deputy Chief of Staff, G-3/5/7; Office of the Deputy Chief of Staff, G-4; Office of the Deputy Chief of Staff, G-8; Office of the Assistant Chief of Staff for Installation Management; Office of The Surgeon General; Office of the Chief of Engineers; Office of The Chief, Army Reserve; Office of The Judge Advocate General; Office of The Chief of Chaplains; and Office of the Provost Marshal General.

Army Secretariat

Public financial disclosure

The public financial disclosure reports of Army's Presidentially appointed, Senate-confirmed (PAS) filers are reviewed by the Secretariat DDAEO and forwarded to OGE for certification. The Secretariat's non-PAS public financial disclosure reports are reviewed by the ethics staff and certified by the DDAEO. The Army mandates both public and confidential financial disclosure filers use the electronic FDM system, although in rare circumstances individuals may be exempted from using the electronic system.

Identification of Army personnel that must file public financial disclosure reports (OGE Form 278) is the responsibility of the General Officer Management Office (GOMO) and the Civilian Senior Leadership Management Office (CSLMO). GOMO and CSLMO send the FDM Director a monthly accession and separation report. A master list of current OGE Form 278 filers is maintained in FDM for those personnel assigned to a particular DDAEO. The FDM master list provides filer names and positions, and tracks financial disclosure submission, review and certification dates.

Secretariat ethics officials are notified by FDM when one of the filers assigned to them for review has filed their public report in the system. Two weeks before and two weeks after the filing deadline, the FDM system generates weekly "nag" reminders for filers to file and provides the due date and any extension information. After the two week due date has passed, FDM nag reminders are sent out monthly. However, these reminders are only sent to the filer and not to the filer's supervisor or responsible ethics official. The FDM team is currently building a reminder for ethics officials to inform them of delinquent filers. Ethics officials also proactively contact filers via email and telephone to remind them of their obligations.

The Joint Ethics Regulation (JER) requires each report receive a review by a filer's supervisor prior to ethics official certification. Ethics officials indicated supervisory review of reports is generally the least comprehensive of the multiple review levels. Supervisors ensure reports are collected from subordinate filers; ethics officials must also occasionally remind supervisors to complete their reviews so reports may be certified.

If a potential conflict of interest is identified during the certification review, ethics officials will contact the filer's supervisor to gather the details necessary to make a conflict of interest determination. Final review and certification is performed by an authorized certifying official, except for PAS filers. As mentioned above, PAS filers are reviewed by the Secretariat DDAEO and forwarded to OGE.

Army provided OGE with FDM-generated reports on the status of Secretariat and Army Staff's 2011 public and confidential financial disclosure reports. The reports indicated when financial disclosure reports were received, reviewed, and certified by Army ethics officials. The FDM report of the Secretariat's 115 new entrant, annual, and termination public financial disclosure

filers established that new entrant reports were filed late 54 percent of the time, annual reports were filed late 16 percent of the time, and termination reports were filed late 22 percent of the time. (See Figure 1).

Figure 1					
Army Secretariat Public Financial Disclosure					
	Total Filed	Filed Late		Certified Late	
New Entrant	13	7	54%	5	38%
Annual	93	15	16%	63	68%
Termination	9	2	22%	2	22%

A new entrant public report must be submitted no later than 30 days after a filer enters a position that requires the filing of a financial disclosure report. See 5 CFR § 2634.201(b). New entrant filers' names are sent to the FDM Director by GOMO and CSLMO at the end of each month. The FDM Director then notifies the DDAEOs responsible for that unit or organization of the new entrant public filer who is required to submit a public financial disclosure report. When a civilian employee is appointed into a public filing position, CSLMO will talk to the official about his or her public filing obligations. However, it is primarily the responsibility of the filer to submit a report within 30 days of entering a filing position. Neither the Secretariat's manual reminder emails nor FDM's automated notifications appear effective in achieving timely new entrant financial disclosure filing.

OGE requires that final certification of public financial disclosure reports occur within 60 days of report receipt when the reports do not require additional information or remedial action. The FDM report also established that Army Secretariat reports were certified beyond the 60-day deadline. New entrants were certified late 38 percent of the time, and annual reports were certified late 68 percent of the time. Termination reports were certified late 22 percent of the time. (See Figure 1, above).

Secretariat ethics officials said financial disclosure reports were certified late because of the limited number of ethics officials available to review and certify reports. Additionally, ethics office personnel have other responsibilities, such as review of conferences, travel and transportation, and gifts to the Army, that reduce the time available to complete a thorough conflict of interest review and certify the reports. Delegating certification authority to additional personnel is not currently an option, because the Army DAEO delegation to DDAEOs restricts further delegation at the headquarters level to two subordinates to certify reports.

Administering the public financial disclosure system is a continuing challenge for the Secretariat due to limited staff and competing responsibilities. In 2010, the office was short staffed and filing reminders were not sent to employees. In 2011, the Secretariat had one ethics counselor on extended leave and another ethics counselor retired. The Secretariat's primary OGE Form 278 reviewing official returned in 2011, but only on a part-time basis after a 2010 absence.

Limited personnel resources for financial disclosure review and certification hampered efforts to stay current with 2011 filing activities while also clearing the 2010 backlog.

Confidential financial disclosure

The identification of confidential financial disclosure filers, collection of reports, and initial conflict of interest analyses are conducted by supervisors and local ethics points-of-contact (POC) in the field. Prior to the financial disclosure filing deadline, the Secretariat’s ethics office sends out an FDM-generated list of the previous year’s confidential filers to all ethics POCs and filers’ supervisors. POCs are instructed to consult their organization’s Human Resources office and filers’ supervisors to determine if the current list of filers is accurate. The ethics office relies on supervisors’ judgment to update or remove filing positions from the master list. The POC will then make the necessary changes to the FDM master list.

When a filer completes the report and e-signs it, the supervisor, certifier, and administrative assistant are automatically notified that the report is ready for review. Final review and certification is completed by the ethics office. If an employee holds stocks, ethics officials review the DoD contractor list to screen for potential conflicts of interest. While there are no restrictions on confidential filers holding DoD contractor stocks, the list is still a useful conflicts analysis tool. If a potential conflict of interest is found, the certifying official contacts the filer and supervisor for more information.

A new entrant confidential report must be submitted no later than 30 days after a filer enters a position or office that requires the filing of a financial disclosure report. *See* 5 CFR § 2634.903(b). The FDM report reveals that of the Secretariat’s 517 confidential reports, new entrant reports were filed late 38 percent of the time and annual reports were filed late 9 percent of the time. (See Figure 2).

Figure 2					
Army Secretariat Confidential Financial Disclosure					
	Total Filed	Filed Late		Certified Late	
New Entrant	129	49	38%	34	26%
Annual	388	35	9%	284	73%

The Ethics Program Manager described the Secretariat’s difficulty in timely identifying new entrant confidential financial disclosure filers. The ethics office must completely rely on supervisors to identify new filers. Currently, the ethics office only has the capacity to provide standing instructions for supervisors to notify the ethics POCs of new employees who enter filing positions. Employees who assume covered positions but are not identified timely as financial disclosure filers could then perform their duties without submitting the required report for conflict of interest screening. Because annual filers are already identified and entered into the FDM system, they benefit from FDM’s notification process and reflect noticeably timelier filing.

The Secretariat's certification delays extend to confidential financial disclosure as well. The Secretariat's FDM-generated report established that 26 percent of new entrant reports and 73 percent of annual confidential reports were certified late. (See Figure 2, above). Ethics officials again indicated that the late certification of reports was caused by a combination of staffing limitations and the demands of other non-ethics responsibilities. The Secretariat had only two ethics officials available to certify 632 public and confidential financial disclosures in 2012.

While OGE recognizes staffing limitations can affect the timely review and certification of reports, it is imperative that these reports receive prompt conflict of interest reviews to identify where remedial action may be necessary. OGE recommends that the DDAEO develop and implement a plan to improve certification for the upcoming confidential financial disclosure filing season. The plan could include such steps as triaging reports by complexity and risk, expanding certification authority, and obtaining additional staff.

Recommendation

- Within 90 days of this report's issuance, Army Secretariat should develop a plan to ensure public and confidential financial disclosures are filed, reviewed, and certified by the required deadlines.

Army Staff

Public Financial Disclosure

Daily oversight of the Army Staff's financial disclosure program rests with the Chief, ELGIP. A master list of Army Staff's public financial disclosure filers is maintained in FDM. FDM is updated by Army Staff ethics officials through notices issued by GOMO for the General Officers and CSLMO for the civilian public filers.

FDM notifications and reminders function the same way throughout the Army. Army Staff ethics officials automatically receive notification when the filer has completed the report. An intermediate review for basic conflicts of interest is conducted by the filer's supervisor, although in some cases a reminder from the ethics office is necessary. Upon completing their review, the supervisor must electronically sign the report, indicating through a certification statement that the report is free from conflicts of interest.

When the supervisor signs the report, FDM automatically notifies the next level reviewer. An intermediate review is completed in the field by a Staff Judge Advocate (SJA) or civilian attorney. The report is then forwarded via FDM to the Army Staff ethics office for final review and certification. The ELGIP Chief and civilian staff attorney are assisted in the review process by two other ethics counselors, although only the ELGIP Chief, civilian staff attorney, and one other ethics counselor are authorized to perform the final ethics certification.

Of the Army Staff's 583 public financial disclosure filers, the FDM report indicated that new entrant reports were filed late 42 percent of the time, annual reports were filed late 2 percent of the time, and termination reports were filed late 15 percent of the time. (See Figure 3).

Figure 3					
Army Staff Public Financial Disclosure					
	Total Filed	Filed Late		Certified Late	
New Entrant	86	36	42%	43	50%
Annual	450	10	2%	174	39%
Termination	47	7	15%	17	36%

Achieving timely filing of new entrant public financial disclosures is a challenge for the Army Staff. Army Staff ethics officials rely primarily on FDM's reminders to notify personnel of their requirement to file. Additionally, the automated FDM reminder system only alerts the filer – and not the supervisor or ethics counselor – of an upcoming or past-due filing deadline. Army Staff ethics officials readily acknowledge the challenge of collecting financial disclosures from delinquent public filers with limited resources and staff.

The FDM report also established that public financial disclosure reports were certified beyond the 60-day deadline. New entrant reports were certified late 50 percent of the time, annual reports were certified late 39 percent of the time, and termination reports were certified late 36 percent of the time. (See Figure 3, above).

Part of the delay in Army Staff ethics officials' certification comes from the supervisory review requirement of the JER: ethics officials cannot certify a report without the filer's supervisor first reviewing the report. The ethics office has little ability to control the responsiveness of supervisors in the field, beyond reminders to review a particular report.

Additionally, when the volume of reports submitted exceeds the capacity of ethics official to certify in a timely manner, they are limited – like the Secretariat – in the number of certifying officials they can employ. In 2011, the Army Reserve deployment of one of the Army Staff's certifying officials further delayed financial disclosure certification. The Army Staff ethics office administers the ethics program while concurrently performing other legislative and government information practice duties. Competing priorities, like responding to legal counsel requests from the CSA and VCSA, take precedence over other ethics responsibilities, including financial disclosure certification. The ADAEO is aware of the ethics office's resource limitations and its impact on financial disclosure review. The ADAEO is working with the Army's OGC to expand financial disclosure certification authority to more personnel within the Army.

Also of note, Army Staff ethics officials informed OGE that – prior to Army's implementation of FDM – paper financial disclosure forms were stored off-site in Suitland, MD. Written

procedures instruct the office to destroy data and any printed rendering at the end of a six-year period. Although FDM has been in use for six years, ethics officials were unable to confirm that records were destroyed according to record retention requirements. Army Staff ethics officials indicated they would determine the status of these financial disclosures and take the appropriate destruction action, if necessary.

Confidential financial disclosure

Like the Secretariat, the Army Staff depends on confidential filers’ supervisors to identify and provide input into the master list of filers in FDM. Each year, field ethics officials send an instructional email to supervisors in their element or directorate. The email directs supervisors to submit the names of new filers and their supervisors to the ethics point of contact or the Army Staff ethics office so that FDM may be updated. Supervisors are instructed to use the confidential filing criteria to determine if an individual needs to file a confidential report.

As with public reports, the supervisor is notified by FDM when the confidential filer has completed and signed the report. The ethics office relies on the electronic certification statement to remind supervisors of the requirement for them to look for conflicts of interest. Some supervisors will contact Army Staff ethics officials for assistance with their conflict of interest reviews, when needed.

The Army Staff ethics office is responsible for the review and certification of 273 confidential financial disclosure reports. The FDM report provided to OGE presented the data for all 16,586 confidential filers throughout the Army Staff. OGE received a second report identifying the 273 confidential filers, but it did not contain FDM filing and certification dates. To assess timeliness of filing and certification, OGE selected 55 financial disclosures from the list of 273 filers for direct review. OGE’s review indicated that 59 percent of sampled new entrant reports and 9 percent of sampled annual reports were filed late. (See Figure 4).

Figure 4					
Army Staff Confidential Financial Disclosure					
	Total Reviewed	Filed Late		Certified Late	
New Entrant	22	13	59%	5	23%
Annual	33	3	9%	14	42%

Army Staff ethics officials indicated that there were still challenges in identifying new confidential filers. Similar to the Secretariat, it is incumbent upon Army Staff supervisors to ensure new entrant filers are accurately identified and the information timely entered into FDM. In addition, the Army Staff’s financial disclosure written procedures, similar to the financial disclosure written procedures of the Secretariat, do not adequately emphasize the process for collecting new entrant confidential reports. Army Staff ethics officials acknowledge that

sometimes only the annual filing reminder reminds supervisors that an employee should have filed a new entrant report earlier in the year.

OGE's review indicated that 23 percent of new entrant reports and 42 percent of annual confidential reports were certified late. (See Figure 4, above). Timely certification of confidential reports is a challenge for the Army Staff as well. As with public financial disclosures, limited certification personnel, the absence of one of Army Staff's primary ethics officials, and late supervisory reviews delayed the report certification process.

Recommendation

- Within 90 days of this report's issuance, Army Staff should develop a plan to ensure public and confidential financial disclosures are filed, reviewed, and certified by the required deadlines.

Suggestion

- Confirm the destruction of financial disclosures maintained off-site that no longer meet the retention requirements.

Other Financial Disclosure Issues

Supervisory Conflict of Interest Review

Supervisors function as first-line reviewers for financial disclosures reports and are best-positioned to identify any potential conflicts of interest between an employee's duties and his or her financial interests. However, Army Staff and Secretariat ethics officials could not express full confidence that first-level reviewers analyzed reports at a level sufficient to consistently identify potential conflicts of interest. Because financial disclosure review is typically an annual requirement, supervisors have limited opportunity to reinforce these analysis skills throughout the year. To mitigate this, FDM includes electronic training material which provides basic conflict of interest analysis instruction.

To improve the quality and consistency of supervisory financial disclosure reviews, OGE suggests Army actively encourage supervisors to review the training material available in FDM as well as material available on OGE's website. Army Staff and Secretariat ethics officials should consider direct email reminders to all supervisors and telephone reminders to supervisors in areas of increased risk for conflicts of interest. Expanding supervisors' skills could allow ethics officials to place more reliance on the work of supervisors, and improve the timeliness of final report certification.

Suggestion

- Actively remind supervisors to review available conflict of interest training material prior to conducting financial disclosure reviews.

Financial Disclosure Management System (FDM)

FDM is the Army's electronic financial disclosure management system and has been an integral component of the Army's ethics program since the application was put into widespread use in 2005. FDM is used for public and confidential financial disclosure reports by the Army, the other branches of the Armed Services, and agencies throughout the Executive branch. FDM includes the capability to track completed ethics training for FDM users. The Department of Defense also uses FDM to support AGEAR, an advice repository for Section 847 post-government employment advice. Army is the DoD Executive Agent for FDM/AGEAR as assigned by the Deputy Secretary of Defense and the Secretariat's DDAEO has overall responsibility for FDM program. Daily operations of the system are managed by the FDM Director and FDM Deputy Director.

FDM is housed wholly within the budget of the Army OGC, costing approximately \$4 million per year to operate and accounting for 40 percent of the OGC budget. Because funds are not dedicated to FDM as a stand-alone program, the DDAEO and the FDM Director must continuously compete for funding against the other budgetary needs of the OGC. Although funding to date has been sufficient to maintain FDM operations and make measured improvements to the system, significant changes require research and development funding that is not typical of an OGC allocation. Furthermore, the uncertainty of FDM funding has led some experienced FDM software developers to leave Army for programs with a secure budget leading to increased costs for FDM program operation and improvements.

To address FDM's funding challenges, the FDM Director stressed the need for the program to be recognized as a separate line item in the budget. Establishing FDM as a stand-alone program with a dedicated budget would provide FDM personnel with more stability when identifying, obtaining, and deploying available resources. Although efforts have been made since 2009 to make FDM a separate line item in the budget, FDM remains wholly within the OGC budget and is subject to the limitations already noted.

Suggestion

- Revisit efforts to establish FDM as its own budget line item and/ or establish separate funds that are made available to the ethics program.

Initial Ethics Orientation (IEO)

Secretariat

New employees receive *The Department of the Army Employees' Guide to the Standards of Conduct 2012*, used by the Army Secretariat and Army Staff for IEO. All civilian, non-public financial disclosure filers who join the Secretariat attend required in-processing on their first day conducted by the Army Civilian Personnel Advisory Center (CPAC). SES members receive IEO from CLSMO. CPAC and CLSMO distribute written IEO material provided by the Secretariat's ethics office and track the number of new employees receiving IEO training. PAS officials receive one hour of in-person IEO, conducted by the Secretariat's ethics office. Training material is also available on the OGC website. Military personnel who join the Secretariat receive IEO in the same manner as those who join the Army Staff, described below. The Secretariat's IEO met the applicable content requirements. Secretariat ethics officials confirmed with CPAC and CLSMO that all new employees received IEO.

Army Staff

New Army Staff civilian personnel receive IEO material from the Army Civilian Personnel Advisory Center (CPAC) during in-processing. Personnel are also provided electronic links to view the Standards of Conduct and the JER in their entirety and contact information for their ethics counselors. New civilian personnel are further instructed to see their ethics counselor as part of their initial in-processing. Every January, the Army Staff contacts Army CPAC to gather the data on how many new civilian employees received IEO training the previous year. The numbers of new personnel receiving IEO from Army legal offices in the field are also collected and reported in the OGE Annual Agency Ethics Questionnaire. Army Staff ethics officials confirmed with CPAC all new employees received IEO training. The ELGIP Chief and the civilian attorney verified the IEO material consisted of *The Department of the Army Employees' Guide to the Standards of Conduct 2012*. The Army Staff's IEO met the applicable content requirements.

Army Staff military personnel receive IEO in basic training at the beginning of their careers, designed by the U.S. Army Training and Doctrine Command (TRADOC). Army Staff ethics officials confirmed all new military members received IEO training during officer basic courses or during enlisted basic training.

Annual Ethics Training

Secretariat

OGE reviewed the Secretariat's annual training plan and determined it provided the applicable information, including the estimated number of employees who will receive verbal training, written training, and those who will receive written training instead of verbal training. The Secretariat conducts in-person annual ethics training in the Pentagon Auditorium. PAS officials

and other Secretariat Principals are provided with one-hour of in-person training conducted by the DDAEO or an ethics counselor. The annual ethics training provided by the Secretariat met the applicable content requirements.

The Secretariat usually records each employee's completed training in FDM. However, the FDM training module tracker only displays training data from the current calendar year. It does not display historical information from prior years. All training data must be entered consistently and a report must be generated by the ethics office prior to the end of the calendar year to confirm all employees received training. Although the Secretariat uses sign-in sheets to track live training attendance, it does not consistently maintain them once the data is entered into FDM. The Secretariat was only able to provide OGE with a representative sample of sign-in sheets that identified 185 personnel out of approximately 500 employees who required annual ethics training. Because the Secretariat did not generate a FDM report at the end of 2011 to document completed annual ethics training, OGE was unable to verify all covered employees received training.

Army Staff

Army Staff ethics personnel provide in-person annual ethics training to the CSA and the VCSA. For other Army Staff personnel, annual training is provided through an on-line training module prepared by the DoD Standards of Conduct Office (SOCO)³. Army Staff also encourages employees to attend the live annual training in the Pentagon Auditorium conducted by the Secretariat. The annual ethics training provided by Army Staff met the applicable content requirements of 5 CFR § 2836.706.

The Army's Staff's annual training plan cites JER Chapter 11, Army Regulation 350-1, and provides a brief description of the agency's annual ethics training. The Army Staff's 2012 training plan omitted some minor administrative details. Prior to the review's completion, Army Staff provided OGE with an updated plan that met the applicable requirements.

The Army Staff also tracks completed training through the FDM system and, like the Secretariat, did not generate a training report at the end of 2011 before the data reset on January 1, 2012. Therefore, OGE was unable to verify all covered employees received training.

Specialized Training

DoD SOCO sponsors an annual, week-long Ethics Counselor Course managed and hosted by the Army at The Judge Advocate General's Legal Center and School. New ethics counselors from all the armed services and DoD SOCO attend the program. Guest instructors are provided by the Army, Navy, Air Force, and other federal agencies. Army JAGs attend an ethics course as part of the JAG graduate curriculum. Army Brigade Commanders receive fourteen hours of ethics training during their pre-command course. Army Staff also provides ethics training at the

³ The DoD Standards of Conduct Office (SOCO) administers the DoD ethics program, prepares policy guidance for DoD-wide application, and provides counseling to individuals assigned to the OSD, the Joint Staff, and affiliated agencies. SOCO supports the Ethics Oversight Committee, which is composed of senior ethics officials from the major DoD components and is chaired by the SOCO Director.

General Officers Transition Course. Both Secretariat and Army Staff ethics personnel participate regularly in the DoD Ethics Coordinating Group.

Recommendation

- Both the Secretariat and Army Staff should ensure all covered employees receive annual training by consistently entering training data into FDM, generating a report to identify incomplete training prior to the year-end data reset, and accomplishing the outstanding training.

Advice & Counsel

Both the Secretariat and Army Staff ethics offices provide advice and counsel on a daily basis to their respective organizations. Collaboration between Army Staff and Secretariat ethics offices helps ensure consistency and uniformity of Army advice and counsel. In novel or complicated advice situations, the determination of the Secretariat's ethics office will take precedence over that of the Army Staff. Both Secretariat and Army Staff ethics counselors also coordinate ethics matters with DoD SOCO.

OGE reviewed a sample of 60 pieces of written advice and counsel from the Secretariat and Army Staff ethics offices on the subjects of gifts, misuse of position, fundraising, endorsement, speaking engagements, widely attended gatherings and gifts, post-employment restrictions, and outside teaching, speaking and writing. Both Secretariat and Army Staff ethics officials responded to employee requests for advice and counsel in a timely manner.

Secretariat

The Secretariat DDAEO and ethics counselors are responsible for providing ethics advice and counsel. The DAAEO will personally review ethics advice rendered to PAS and Presidentially appointed officials. The DDAEO oversees ethics advice rendered by the Ethics Program Manager and ethics counselors. Ethics advice is provided to Secretariat personnel primarily through email. If an employee calls with a question, the ethics official requests the employee memorialize the question with an email.

The Secretariat records rendered advice in a searchable Access database located on a shared network drive and maintains duplicate records outside the database on an internal network. Prior to issuing ethics opinions, the Ethics Program Manager and ethics counselors consult the database for relevant memorialized advice and counsel.

During the review, OGE identified a misinterpretation of the gift exception at 5 CFR § 2635.204(g)(1) in the advice and counsel sample. OGE issued Legal Advisory LA-12-05 to clarify the exception in September 2012. OGE advises the Army to refer to the published Legal Advisory on the gift exception at 5 CFR § 2635.204(g)(1) when providing advice and counsel on the subject.

Army Staff

Army Staff ethics officials provide advice to the Army Staff and serve as subject matter experts for subordinate commands. Ethics advice for the CSA and VCSA takes priority over all other ethics matters and generally has a required 24-hour turnaround. A paralegal assistant documents ethics advice in ELGIP's Administrative Law Tracking System database, which provides ethics personnel with an extensive, searchable archive of ethics advice. The ELGIP Chief reviews all ethics advice prior to release.

Agency-Specific Ethics Rules

The Army is subject to the JER. Financial disclosure filers are required to obtain written approval from an agency designee before engaging in business activities or compensated outside employment with a prohibited source, in accordance with DoD supplemental regulations at 5 CFR § 3601.107 and the JER. DoD employees also incur additional restrictions on gifts between employees and solicited sales to personnel who are junior in rank, grade, or position. IEO and annual ethics training used by the Secretariat and Army Staff addressed elements of these supplemental ethics rules.

OGE reviewed a random sample of 151 financial disclosure reports from the Secretariat and Army Staff and identified 35 outside business or employment activities. Secretariat and Army Staff ethics officials confirmed for OGE that 26 outside activities were not with prohibited sources, 3 did not involve compensated outside employment, and 5 were not otherwise prohibited by regulation. Army Staff ethics officials provided proper written approval for the one remaining outside activity involving a prohibited source, in accordance with the supplemental regulation.

Conflict Remedies

The Ethics in Government Act expressly recognizes the need for PAS nominees to address actual or apparent conflicts of interest by requiring written notice of the specific actions to be taken in order to alleviate the conflict of interest. Army has seven PAS officials. All have satisfied the terms of their ethics agreements in accordance with 5 CFR § 2634.802(b). In addition, all requisite evidence of action taken was submitted timely to OGE, in accordance with 5 CFR § 2634.802(a). The Army DAEO was the most recent PAS official to comply with his ethics agreement, satisfying the terms of the agreement in 31 days – well under the 90-day deadline.

Enforcement

Army follows the guidance in Chapter 10 sections 1 and 2 of the JER on enforcement of ethics laws and regulations, which includes prescribed penalties and reporting requirements. Additional guidance is provided by a Memorandum of Understanding between DoD and the Department of Justice (DOJ), DoD Instruction 5525.07, and Army Regulation 195-1.

The roles of the Army Inspector General (IG), the Army Criminal Investigation Command (CID), and the ethics offices are clearly defined. CID investigates matters involving suspected violations of the criminal conflict of interest statutes, while the IG addresses suspected violations of the standards of conduct. Both the IG and CID may receive allegations of suspected violations and will determine the responsible office accordingly.

The Secretariat's ethics office is the primary coordination point with investigative agencies. CID and the Secretariat's ethics office inform the DAEO of any investigations related to the conflicts of interest statutes. CID and the IG notify the DAEO, Secretariat, and Army Staff of the results of significant investigations involving senior civilian officials. CID also initiates referrals to the DOJ and drafts and forwards the OGE Form 202 referral notification to the Secretariat's ethics office which concurrently notifies OGE of such referrals.

According to Secretariat ethics officials, communication between CID and the ethics office was interrupted and OGE notification of referrals was suspended between early 2009 and late 2011. The Secretariat's ethics office contacted CID, identified the responsible parties, and reestablished communication. OGE began receiving referral notifications again in late 2011.

In 2011, Army reported 154 disciplinary actions based wholly or in part upon violations of the standards of conduct provisions and six violations of the criminal conflict of interest statutes. CID made four referrals to DOJ of potential violations of the criminal conflict of interest statutes. Secretariat ethics officials appropriately notified OGE of all four 2011 referrals.

Special Government Employees

The Secretariat's ethics office provides ethics services such as review and certification of financial disclosure reports and education and training for United States Army Science Board (ASB), the Civilian Aides to the Secretary of the Army (CASA), and the Army National Cemeteries Advisory Commission (ANCAC). All SGEs are subject to various ethics rules including requirements for annual financial disclosures and ethics training.

Army Science Board

The ASB is the senior scientific advisory body that advises and makes recommendations on scientific and technological matters of concern to the Army. ASB members are confidential financial disclosure filers whose information is captured in the Army's FDM system. The ethics counselor responsible for ASB financial disclosure review and certification departed the Secretariat in mid-2012. Those responsibilities have shifted to the DDAEO and the ethics staff, as assigned. Army provided a list maintained outside of FDM that identified 43 ASB members who were to file a financial disclosure report in 2012. However, four filers were either not in the FDM system at all or listed with no associated data. Of the 39 reports, 82 percent were filed on time and 92 percent were certified on time.

Initial ethics training consists of the handout *An Ethics Guide for Army Science Board (ASB) Consultants & Advisory Committee Members*. An ethics counselor from the Secretariat's ethics

office gives annual training verbally at the beginning of the board's first meeting. ASB members who miss the initial briefing are given an opportunity to receive verbal annual training at a subsequent plenary session. During the review, the DDAEO was unable to confirm all ASB members received annual ethics training in 2011, since training records in FDM were not available as previously noted. Of the 55 ASB members identified for 2012, 47 have received annual ethics training from the DDAEO.

Civilian Aides to the Secretary of the Army

The Secretary of the Army has appointed 93 civilians to serve as Civilian Aides to the Secretary of the Army (CASA). CASAs are typically business or civic leaders who link the Army to the pulse of the general public and local communities. CASAs act largely independent of ethics office oversight and submit activity reports every six months to the CASA Program Manager.

CASAs file an OGE-approved alternate OGE Form 450 outside of the FDM system. The CASA Program Manager provided OGE with a list of the 93 CASAs required to file financial disclosure reports in 2011. 72 CASAs filed financial disclosure reports on time, 6 filed late, and 15 did not file a financial disclosure for 2011. Of the 15 reports that were not filed in 2011, 12 belonged to CASAs who have held that position for more than 16 years and have received the designation Civilian Aide Emeriti and retain a lifetime appointment. Six CASA Emeriti have not filed financial disclosures since 2008 and have been unreachable by the CASA Program Manager.

Although CASAs who do not submit financial disclosures will not be reappointed to their positions, CASA Emeriti hold their designations for life. Whenever CASA Emeriti resume CASA activities, the Secretariat must still collect financial disclosure reports and provide ethics training. To address the situation, the CASA Program Manager indicated the Army is considering changing the status of Civilian Aide Emeritus to an honorary, but inactive position.

The Secretariat has also had difficulty providing final ethics office certification for CASA financial disclosure reports. The ethics counselor responsible for CASA report certification departed the Secretariat in February 2012. Because of the workload, CASA reports submitted in 2012 were not reassigned. Additionally, five uncertified CASA reports from 2011 were discovered among the former ethics counselor's materials – each with possible conflicts of interest that had not been addressed. According to the DDAEO, when a new ethics counselor is hired to the Secretariat's ethics office, that person will be assigned the duty of reviewing and certifying the CASA reports. Until that time, the technical review and certification of 2012 CASA reports will remain the DDAEO's responsibility.

The Administrative Assistant to the Secretary of the Army (AASA) schedules verbal IEO training for new CASAs that is conducted at the Pentagon by the DDAEO. Annual ethics training is also provided at the CASA annual conference. For those who do not attend the conference, the CASA Program Manager forwards them the training materials. Because the 2011 CASA annual conference was cancelled, the annual ethics training materials were forwarded to all CASAs. However, the Program Manager could not verify that the CASA members actually reviewed the material that was sent to them. Without a tracking mechanism in place, the CASA program office cannot confirm that annual training was completed by CASA

members for 2011. The AASA has recently developed an acknowledgement form to be included with the ethics materials provided to CASA members which must be returned to the program office to confirm completion of annual ethics training.

Army National Cemeteries Advisory Commission

The ANCAC was established by Federal Advisory Commission Charter in October 2010 to provide the Secretary of the Army independent advice and recommendations for the operation and strategic planning for development of Arlington National Cemetery. The seven Commission members were sworn into their positions in November 2011. The DDAEO is responsible for the collection, review, and certification of all ANCAC financial disclosures. Army's FDM report indicated that five of the seven commission members' new entrant financial disclosure reports were filed and certified by the statutory deadlines. Two commission members who were not listed in FDM still have outstanding reports.

The DDAEO is also responsible for ANCAC members' ethics training. In November 2011, an ethics counselor from the Secretariat's ethics office delivered an initial ethics briefing to members. However, the DDAEO was unable to confirm which ANCAC members received initial ethics training in 2011, since training records in FDM were not available as previously noted.

Recommendations

- Develop a plan to collect, review, and certify all financial disclosure reports from SGEs.
- Conduct initial and annual ethics training for SGEs who have not yet received training and develop a plan to meet training requirements.

Suggestion

- Improve mechanisms to track annual training and financial disclosure completion for CASA SGEs⁴.

1353 Travel Acceptances

Federal agencies may accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under the authority of the General Services Administration regulation at 41 CFR chapter 304, implementing 31 U.S.C. § 1353. Semiannual reports of payments accepted under 31 U.S.C. § 1353 must be submitted to OGE by May 31 and November 30 of each year.

⁴ Financial disclosure for ASB and ANCAC members will be tracked in FDM. ASB and ANCAC members' training will be tracked in FDM as well, but is subject to the system limitations noted elsewhere in this report.

The Army Staff collects and reports payments from non-Federal sources for travel expenses for the entire Army. Army has a detailed memorandum regarding the analysis and acceptance of payments from non-federal sources. Accepting a travel payment requires the review and approval of a travel authority with written concurrence from an ethics counselor.

The Army Staff ethics office conducts a final review of the reports collected from all Army commands and organizations, prior to submission to OGE. The reports are then submitted electronically by the Army Staff paralegal assistant. OGE reviewed the Army's last three semi-annual 1353 reports covering the periods of October 2010 through March 2012 and found the reports were submitted in a timely manner.

Agency Comments

1. Reference pages 2, 7, 8, 10, and 11 regarding late certification, we note that the FDM report data is incomplete in that it does not capture intermediate review dates. Although in many cases financial disclosure reports were certified more than 60 days after submission, in most cases an intermediate review occurred within the 60 day period, thereby reducing the Army's vulnerability with respect to conflicts of interest.
2. Reference pages 11-12 concerning destruction of aged financial disclosure reports. The financial disclosure forms were obtained from the off-site storage location. The forms that no longer meet retention requirements are in the process of being destroyed.
3. Reference pages 12-13 concerning training supervisors in conflict of interest reviews of financial disclosure reports. OGE's suggestion is noted and the Army intends to include a reminder that the training is available in its FDM notices to supervisors and in its ethics training materials.
4. Reference pages 14-16 concerning record keeping for ethics training completion in FDM. The Army acknowledges that prior year ethics training data was not viewable by users in FDM after the end of the calendar year. The Army has taken corrective action in the form of two upcoming FDM system changes. As of December 2012, training records for a given calendar year will remain viewable in FDM until approximately August of the following year. The Army also anticipates that as of the summer 2013 FDM release, FDM will have an archive feature for training records.