



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

Office of the Director of National Intelligence

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Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Office of the Director of National Intelligence’s (ODNI) ethics program intermittently between December 2011 and February 2012. The results of our review found ODNI’s ethics program to be sound with respect to relevant ethics laws and regulations. The one recommendation that OGE is making is that ODNI establish a supplemental regulation requiring prior approval for outside activities. OGE discusses this issue in more detail in the “Supplemental Requirement for Outside Activities” section below.

Highlights

- ODNI leadership supports ODNI ethics officials by incorporating specific ethical leadership strategies into the day-to-day management of the ethics program.
- ODNI training objectives provided for a mixture of ethics training covering a range of ethics issues, targeted to different audiences (both covered and non-covered employees).

Concerns

- ODNI needs to establish a supplemental regulation to require prior approval for outside activities.

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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.

To assess ODNI's ethics program, OGE examined a variety of documents provided by ethics officials, 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 the ethics advice and counseling rendered. In addition, the OGE review team met with the Alternate Designated Agency Ethics Official (ADAEO), a Deputy Ethics Official and a Senior Investigator from the ODNI's Office of the Inspector General to obtain information on the ethics program, seek clarification on issues, and verify data collected.

Program Administration

The ethics office is located within the Office of General Counsel (OGC), hereafter referred to as the Ethics Office. The Principal Deputy General Counsel serves as the agency's Designated Agency Ethics Official (DAEO) and a Senior Associate General Counsel as Alternate DAEO (ADAEO). Assisting the ADAEO in the operation of the administration of the ethics program are four attorneys that serve as Deputy Ethics Officials (DEO). In addition to these officials, there are also approximately 20 Organizational Ethics Officials (OEO) located throughout ODNI components who assist the Ethics Office with the administration of the financial disclosure program. OGE was advised that many of the larger ODNI components have more than one OEO.

Agency Leadership Support

During the course of our review, OGE was pleased to learn that ODNI leadership is involved in the support of the ODNI ethics program. OGE considers leadership involvement in an ethics program to be a model practice and was pleased to learn that agency leadership requests that the Ethics Office keep them apprised of employees who do not attend the required annual ethics training. In these instances, agency leadership notifies the individual directly through email of the requirement to attend a make-up session or face disciplinary action. OGE considers this type of leadership approach in ethics to be a model agency practice as it underscores the importance of an ethical culture.

Financial Disclosure

OGE found ODNI's financial disclosure program for both public and confidential filers to be well-managed. To evaluate the effectiveness of ODNI's financial disclosure program for both its public and confidential filers, OGE randomly selected 101 combined public and confidential reports filed in 2011 to examine. Based on our examination we found these reports to have been thoroughly reviewed for conflicts, as evidenced by reviewer notes we examined, and to have been filed and generally reviewed in a timely manner. As discussed during the on-site portion of the review, OGE did identify 12 confidential reports whose final certification dates were not within 60 days of receipt as required by 5 CFR § 2634.605(a). However, based on our discussions with the ADAEO regarding this matter, OGE is satisfied that improvements in this area will be corrected during future filing cycle. Therefore, OGE is making no formal recommendation for improvement.

In addition to the finding noted above, OGE noted two technical issues during its examination of the ODNI's financial disclosure program:

- During the examination of some public and confidential reports, OGE noticed a consistent technical error, the over-reporting of assets such as retirement benefits from TSP accounts on reports.
- During the review of ODNI's written procedures administering its financial disclosure program, OGE identified areas where they need to be strengthened. For example, OGE did not find the procedures to address the process for requesting and granting individual filing extensions nor the process for remedying possible violations when they are found. Once this was pointed out to the ADAEO, ODNI's written procedures were modified to be more fully comply with the prescribed requirement.

Education & Training

The education and training program is one of the strongest elements of ODNI's ethics program. OGE was pleased to see that ODNI's training objectives provided for a mixture of ethics training covering a range of ethics issues, targeted to different audiences (both covered and non-covered employees). In addition to conducting the requisite initial and annual ethics training, OGE was also pleased to see the host of discretionary training that the Ethics Office provides throughout the year to keep employees knowledgeable of the ethics laws and regulations and the high priority that ethics officials assign to maintaining a strong training program.

Initial Ethics Orientation and Annual Ethics Training

ODNI exceeds OGE's initial ethics orientation (IEO) requirements in that all new employees receive in-person training by the Ethics Office as part of ONDI's new employee orientation. During the on-site portion of our review, OGE observed one of the live training sessions conducted by the Ethics Office. The session OGE attended was found to be informative and well-gearred to the variety of ethics issues that new ODNI employees may face while on the job.

The instructor's use of creative elements within the presentation, such as the use of cartoon clipart, was also found to be effective toward engaging employees. IEO completion is tracked using an ODNI Ethics Training database. OGE was advised that badge access to suites within ODNI as well as computer access is prohibited until the new employee's attendance at the orientation is certified. OGE recognizes this as a model agency practice designed to ensure full compliance of the IEO requirement. OGE was also pleased to hear that all incoming ODNI Presidentially-Appointed, Senate –confirmed appointees (PAS) receive one-on-one ethics briefings to satisfy the IEO requirement.

At the time of OGE's examination, annual ethics training for 2011 was still ongoing. Therefore, we initially assessed compliance with OGE's annual training requirement for 2010. The Alternate DAEO indicated that all covered employees received annual ethics training in 2010. We subsequently also confirmed that all covered employees also received required annual ethics training for 2011. In 2010 and 2011, the Ethics Office provided multiple prescheduled opportunities for covered employees to attend live ethics training.

Additional Ethics Training Efforts

As noted, in addition to the requisite initial and annual ethics training, the Ethics Office also provides specialized ethics training that are targeted to different audiences. In 2011, ethics briefings were provided to new ODNI supervisors, Contracting Officer Technical Representatives, and mid-level security professionals. The Ethics Office also provided formal financial disclosure review training to OEOs.

Advice & Counsel

OGE found ODNI's advice and counseling services rendered to ODNI employees to have been accurate, timely, and consistent which is important in preventing conflicts of interest and other ethics violations from occurring. Employees are encouraged to contact the Ethics Office via all forms of communication, including e-mail, telephone, and in-person. However, most inquiries are made and advice rendered via e-mail correspondence. OGE reviewed a sample of written advice and counsel on the topics of publishing, post-employment restrictions, widely-attended gatherings, use of position and media contact.

The Ethics Office provides post-employment counseling to those departing from Federal service. An employee seeking post-employment advice is asked to complete a questionnaire which provides the Ethics Office with pertinent information needed to provide counseling to the employee on the post-Government service restrictions.

Supplemental Requirement for Outside Activities

OGE found ODNI requires all employees to receive permission to engage in an outside activity, including volunteer activities, court appearances, jury duty, political activity, legal action, speech/appearances, contact with media, and conference attendance/participation. According to the ADAEO, the basis for this requirement is ODNI's need to ensure that employees are not exposed to situations that could compromise security. However, each request is reviewed and

approved by the Ethics Office, among other interested parties within ODNI, for conflicts of interest and permission to engage in the outside activity is not granted unless the Ethics Office signs off on the request.

OGE notes that the requirement that a conflict of interest analysis be conducted and that approval of the outside activity is contingent upon a determination that there would be no conflict establishes this system as a prior approval for outside activities system. To establish such a system, an agency must have authority under a supplemental regulation under the Standards of Ethical Conduct for Employees of the Executive Branch or the agency's organic statutes, of which ONDI has neither.

OGE recognizes that the Intelligence Authorization Act for Fiscal Year 2010 (Authorization Act) has given the "Director of National Intelligence, in consultation with the Director of the Office of Government Ethics, the authority to issue regulations prohibiting an officer or employee of an element of the intelligence community from engaging in outside employment if such employment creates a conflict of interest or appearance thereof". During discussions with the ADAEO regarding this matter, OGE was advised that this regulation directed by the Authorization Act has not yet been established by ODNI, since there are still pending questions on how ODNI should draft this community-wide supplemental ethics regulations. Since the Authorization Act requires ODNI's consultation with OGE prior to issuing the regulation, OGE is making a formal recommendation that ODNI keep OGE informed on the status.

Recommendation

- Provide OGE with the plan for developing an intelligence community wide regulation in accordance with the Intelligence Authorization Act for Fiscal Year 2010. Alternatively, consider drafting a supplemental regulation specifically for ODNI until a more broadly applicable regulation can be implemented.

Conflict Remedies

ODNI has five PAS appointees. OGE found all PAS officials that had an ethics agreements in place to have satisfied the terms of the agreements.

Enforcement

OGE found ethics officials and the ODNI Office of Inspector General to share a good working relationship as evidenced by regular communication on matters of mutual interest. Both offices consider their coordination with one another fundamental to their respective missions. Based on discussions with both parties, OGE is satisfied that procedures are in place to effectively exchange ethics-related information and to resolve ethics issues.

OGE is also satisfied that ODNI has procedures in place to concurrently notify OGE of referrals made to the Department of Justice, including the U.S. Attorney's Office, on potential violations of the criminal conflict of interest statutes as required by 5 CFR § 2638.603. This is evident in the fact that in October 2011, OGE was concurrently notified of a referral made by ODNI to the

U.S. Attorney's Office regarding an alleged violation of 18 U.S.C § 205, which was later declined for prosecution. According to ethics officials, there were no disciplinary actions taken for violations of the standards of conduct provisions during the timeframe of our review.

1353 Travel Acceptances

ODNI has an established process for accepting travel payments from non-Federal sources under the authority of 31 U.S.C. § 1353. OGE notes that when travel payments are accepted, the Ethics Office is responsible for collecting the information to be reported, drafting ODNI's semiannual report of payments of more than \$250 per event, and forwarding the report to OGE.

OGE's current examination of the acceptances reported on the ODNI's last two semiannual travel reports submitted to OGE covering the periods from April 1, 2010 through September 10, 2011 identified 13 payments that were accepted during this timeframe. OGE found each semiannual report to have been submitted to OGE in a timely manner.

Agency Comments

A draft of this report was provided to the ADAEO for review and comment. In response to OGE's recommendation, the ADAEO responded by indicating that ODNI's Policy & Strategy Office has placed the intelligence community-wide guidance on outside employment as a priority with a plan to have something in place before the end of the year. While the Ethics Office will be involved in reviewing and coordinating with OGE on the proposed guidance, the Policy & Strategy Office will be primarily responsible for developing the guidance.