

United States Office of Government Ethics

Program Review Division

Ethics Program Review

Special Inspector General for Afghanistan Reconstruction

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Special Inspector General for Afghanistan Reconstruction (SIGAR) ethics program in July 2012. The results of the review indicated that SIGAR's ethics program generally appears to be effectively administered and in compliance with applicable laws, regulations, and policies. However, OGE is offering a few suggestions to strengthen the program further.

Highlights

- Initial ethics orientation and annual training are provided in-person.
- Written procedures for the administration of the ethics program are in place to ensure the continuity of the ethics program.
- Tracking systems are used to assist in monitoring compliance with financial disclosure and education and training requirements.
- New and departing employees are required to contact the Ethics office to ensure compliance with financial disclosure and ethics training requirements.

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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 (Ethics Act) and 5 CFR part 2638.

To assess SIGAR's ethics program, OGE examined a variety of documents provided by SIGAR's ethics officials, including the 2009, 2010, and 2011 annual questionnaires, public and

confidential financial disclosure reports for 2011 and 2012, agency background material, and advice and counsel provided to SIGAR employees. OGE also met with SIGAR's ethics officials to obtain additional insight on the strengths and weaknesses of SIGAR's ethics program, seek clarification on issues that arose during OGE's analysis of the documents collected, and verify data collected.

Agency Background

SIGAR is a temporary federal agency established to ensure accountability during the U.S. government's involvement in the reconstruction of Afghanistan. SIGAR's mission is to provide independent oversight under the authority of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) and the Inspector General Act of 1978, as amended. SIGAR accomplishes its mission primarily through audits and investigations to promote efficiency and effectiveness of reconstruction programs and detect and prevent waste, fraud, and abuse. SIGAR is also required to keep Congress, the Secretary of State, and the Secretary of Defense informed about problems and deficiencies relating to the administration of the reconstruction program.

Under the leadership of the Inspector General,¹ SIGAR supports its mission with a workforce consisting of 131 limited-term federal government employees who are hired under the temporary appointment provision found at 5 USC § 3161.² The most recent Inspector General was sworn in on July 2, 2012. In addition to its headquarters in Arlington, Virginia, SIGAR has staff in three locations in Afghanistan. These include an office at the U.S Embassy in Kabul and offices in Kandahar and Bagram. SIGAR sends investigators, auditors, and analysts on short-term temporary duty assignments to Afghanistan to oversee various aspects of reconstruction.

In 2009, during SIGAR's initial start-up period as a new federal agency, OGE worked with ethics officials to facilitate the operation of SIGAR's ethics program. OGE's assistance to SIGAR was limited to the identification of public and confidential financial disclosure filers, aiding in the distribution and collection of financial disclosure reports, creating written procedures for the operation of the ethics program, and drafting form letters.

Program Administration

SIGAR's ethics program is organizationally located within the Office of General Counsel (OGC). The General Counsel serves as the agency's Designated Agency Ethics Official (DAEO) and the Deputy General Counsel serves as the Alternate DAEO (ADAEO). Both the DAEO and ADAEO perform their ethics duties as collateral duties, and the program is supported by an Ethics Program Specialist who performs a variety of management support functions on a

¹ The Inspector General is Presidentially appointed, exempted from Senate confirmation.

² SIGAR's limited term employees are hired under 13-month appointment terms. However, if there is a continued need for the position, the appointment may be extended. This is contingent not only on need, but also on an agreement from the employee and his/her supervisor.

full-time basis. The Ethics Program Specialist's duties include maintaining records and tracking systems to facilitate the management and control of the ethics program, conducting preliminary reviews of public and confidential financial disclosure reports, assisting in the development, distribution, and delivery of ethics training, and addressing other matters arising out of the program.

While OGC's organization chart displayed 10 positions as of March 2012, including three positions assigned ethics duties, SIGAR's ethics program faced significant challenges in maintaining adequate staffing. The following conditions were observed during OGE's review.

- Since 2011, a Deputy General Counsel had been serving as DAEO and Acting General Counsel while another Deputy General Counsel served as ADAEO.
- In April 2012, the ADAEO left the agency leaving the DAEO as the only ethics attorney within OGC.
- In May 2012, an Associate General Counsel was hired and assumed the ADAEO position.
- In July 2012, the DAEO was called up for active military duty and was not expected to return to SIGAR.
- In August 2012, both the ADAEO hired in May 2012 and the Ethics Program Specialist left the agency.

While frequent staff turnover within the ethics program is not unusual due to SIGAR's temporary nature and limited-term appointments, shortages in ethics staff and the lack of experienced ethics officials create inherent risks for an ethics program, including the inability to routinely comply with regulatory requirements. For example, the turnover at SIGAR's Ethics Office has impacted the timely certification of financial disclosure reports, as discussed in the Financial Disclosure section of this report. For this reason OGE suggests that SIGAR designate additional certifying officials for financial disclosure reports to mitigate the effects of the staff turnover and ensure continuity of ethics program operations.

OGE also suggests that SIGAR's ethics officials develop a continuous learning strategy to ensure the continuity of the financial disclosure system. Ensuring consistent, timely, and accurate review of financial disclosure reports requires that reviewers supplement their experience and expertise by receiving specialized training. This is particularly important in view of SIGAR's unique organization structure. OGE offers financial disclosure review training and other training to executive agency ethics officials throughout the year, in addition to the OGE National Conference.

It is also important that agencies maintain clear written policies and procedures that govern the administration of the ethics program to help provide for consistency and continuity of the ethics program, especially during periods of frequent turnover. OGE found that SIGAR has established written procedures for the administration of its ethics program. The procedures are contained in *SIGAR Policy 5510 - SIGAR's Ethics Program* and cover the ethics program responsibilities of the IG, the DAEO, and the ADAEO. During OGE's review SIGAR updated its procedures to include the duties of the Ethics Program Specialist. These procedures provide new ethics

officials the opportunity to get familiarized quickly with the ethics program and promote effective succession planning.

OGE also observed that SIGAR has taken other positive steps to ensure the continuity of the ethics program:

- A new General Counsel was appointed in August 2012 and assumed the ethics responsibilities of DAEO;
- In August 2012, as a temporary measure, an attorney with ethics experience was brought on detail to SIGAR from the Inspector General's Office at the United States International Trade Commission to serve as the SIGAR's ADAEO. Subsequently, in November 2012, this attorney was hired as a permanent SIGAR Deputy General Counsel;
- A vacancy announcement was distributed to fill the Ethics Program Specialist position. Ethics officials were reviewing resumes for the position at the time of this report's issuance;
- User-friendly tracking systems are in place to assist in monitoring compliance within the financial disclosure and education and training systems; and
- Steps in the in-processing of new employees and the out-processing of departing employees include a required visit to the ethics office to ensure compliance with financial disclosure and ethics training requirements.

Suggestion

- Develop a continuous learning strategy that may include guidance for SIGAR ethics officials to attend OGE-sponsored training sessions.

Model Practice

- New and departing employees are required to contact the Ethics office to ensure compliance with financial disclosure and ethics training requirements.

Financial Disclosure

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate this by disclosing publicly their personal financial interests by completing OGE Form 278. Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest review. OGE implements this authority by requiring the covered executive branch personnel to complete OGE Form 450.

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective

officers and employees. The financial disclosure reports assist agencies in administering their ethics programs and also assist in providing counseling to employees. *See* 5 CFR § 2634.104(b).

Written Procedures

Written procedures are important to ensure that agency ethics officials consistently and efficiently administer the financial disclosure program. When properly used and updated, written procedures can provide ethics officials with the opportunity to plan for system improvement in advance. As required by the Ethics Act, SIGAR has developed written procedures for administering both the public and confidential financial disclosure systems. OGE found that these procedures comply with the requirements of the Ethics Act, as they provide the overall framework on how financial disclosure reports at SIGAR are collected, reviewed, certified, and maintained.

Electronic Filing System

In 2011, SIGAR began using the Army's Financial Disclosure Management System (FDM), or e-filing system, to help manage the financial disclosure requirements for both public and confidential filers. Public filers were required to use the FDM system to electronically prepare, submit, and digitally sign their financial disclosure reports during the 2011 annual filing cycle. Confidential filers were transitioned into FDM during the 2012 filing cycle. OGE's examination of the financial disclosure program occurred during SIGAR's transition to this new electronic filing system.

According to ethics officials, each filer's immediate supervisor is required to review the financial disclosure report to help identify any potential conflicts-of-interest. After completing their review, supervisors electronically forwarded the reports to SIGAR ethics officials for final review and certification. Once SIGAR's Ethics Office received the financial disclosure reports, the Ethics Program Specialist reviewed these reports for technical and substantive deficiencies. The DAEO and ADAEO conducted the final review and certification of public reports and confidential reports respectively.

Public Financial Disclosure System

OGE selected for review 57 of the 104 public financial disclosure reports that were required to be filed in 2011. Of the 57 reports reviewed, 22 were new entrant reports, 22 were annual reports, and 13 were termination reports. In addition, OGE selected for review the 12 new entrant and three termination reports filed in 2012 that were available at the time of the onsite review. OGE reviewed the selected reports to determine the timeliness of submission, review and certification. Additionally, OGE assessed the quality of the review to determine whether it was adequate to identify potential conflicts.

OGE found the vast majority of the reports selected for review, or 93 percent, to have been filed timely. However, 47 percent of new entrant reports, 86 percent of annual reports and five percent of termination reports, were either certified late or had not yet been certified at the time of OGE's review. The Ethics Program Specialist informed OGE that some reports were certified

late due to the staff turnover discussed earlier in the Program Administration section of this report. Reports were also certified late due to technical glitches within FDM that delayed the transfer of certification rights from the former DAEO to the former Acting DAEO. Prior to the conclusion of this review, OGE confirmed that the technical glitches within FDM had been resolved and all reports had been certified, including those reports within the OGE sample. OGE also did not find any technical or substantive areas of concern regarding the SIGAR ethics officials' review and certification of the public reports.

Another reason cited by the former SIGAR ethics official for late certifications was that the Ethics Program Specialist did not have the authority to certify financial disclosure reports. OGE identified this to be an area of high risk for the agency, especially during periods of staff turnover, when the DAEO or ADAEO positions may be vacant. Therefore OGE suggested that SIGAR consider designating the Ethics Program Specialist position as a third certifying official to address situations when the DAEO or ADAEO are unable to timely certify financial disclosure reports. Based on this suggestion, the Ethics Program Specialist was designated as a second ADAEO with the authority to certify all financial disclosure reports prior to her departure in August 2012. OGE suggests that this designation continue once a new Ethics Program Specialist is hired.

Unfiled Termination Reports:

In addition to the three termination reports selected for review, OGE found six 2011 termination reports that should have been filed. These reports had not been filed despite repeated attempts by SIGAR ethics officials to notify the filers of their requirement to file. All six termination filers were located in Afghanistan at the time they left the agency. As required by section 104(b) of the Ethics Act, individuals must be referred to the Department of Justice (DOJ) Attorney General when there is reasonable cause to believe that filers are willfully failing to file. However, prior to the conclusion of this review, SIGAR obtained all six reports. Based upon this information, OGE is making no formal recommendation for referral to the Attorney General.

Confidential Financial Disclosure System

To evaluate timeliness of filing, review, and certification, OGE examined all 49 confidential financial disclosure reports that were required to be filed in 2012. Of the 49 reports examined, 16 were new entrant reports and 33 were annual reports. OGE found that over half, or 55 percent, of the annual reports were submitted after the required February 15 deadline. Our review also found 21 percent of these reports had been certified late.

The late filings of the confidential reports were attributable to the challenges associated with transitioning confidential filers into FDM. For example, ethics officials used the contact information within FDM to notify all the filers of the report due date and had sent out an email with instructions to access FDM and file their financial disclosure reports. However, many of the filers had not updated their email addresses in FDM and the notification emails were not sent to the correct email address. As a result, some filers were notified late of their requirement to file.

Timely submission of financial disclosure reports is essential to ensure that the review process can be started promptly to identify potential or actual conflicts of interest. Since supervisors are involved in the process of reviewing financial disclosure reports, OGE suggests that SIGAR ethics officials involve supervisors earlier in the filing season, so that confidential filers receive more frequent, timely reminders about reporting deadlines. Supervisory support can mitigate the risk of filers not receiving the notifications to file due to outdated email addresses in FDM. Confidential reports were certified late for reasons identical to those already cited for late certification of public reports, specifically, the DAEO and ADAEO's recent departures, compounded by technical difficulties with providing FDM access to the Acting DAEO.

Suggestions

- Ensure that the Ethics Office warns public filers who fail to submit termination reports of the potential for referral to the DOJ.
- Continue to designate the Ethics Program Specialist position as a third certifying official to address situations when the DAEO or ADAEO are unable to timely certify financial disclosure reports.
- Involve the filers' supervisors when providing reminders about the due dates for submission of confidential reports.

Education & Training

OGE found SIGAR's education and training program to exceed the minimum training requirements found at subpart G of 5 CFR 2638, as evidenced by SIGAR's commitment to provide verbal in-person initial ethics orientation (IEO) briefings to new employees and annual ethics training to all employees. OGE also found SIGAR satisfying the requirement at § 2638.706 by documenting annually its ethics training plan.

Initial Ethics Orientation

According to 5 CFR § 2638.703, within 90 days from the time an employee begins work for an agency, the agency must provide the new employee with an IEO that includes the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards), any agency supplemental standards, contact information for the agency's ethics officials, and one hour to review the materials. SIGAR meets and exceeds the minimum IEO requirements of 5 CFR § 2638.703 by providing all new employees with an in-person briefing within the employees' first week of employment. IEO is completed at SIGAR in two parts.

- The first part is during in-processing. New employees are required to visit the ethics office where ethics officials discuss the Standards, the 14 General Principles of Ethical Conduct for Federal Employees (Principles), the Federal conflict of interest statutes, and the financial disclosure requirements. The names and contact information of ethics officials are also provided at this time. At the conclusion of each briefing, new employees are required to sign an attestation form that certifies that the employees have

read, and have been briefed on the Principles as part of their IEO. The attestation forms also certify that the employees understand that when ethics advice is needed they will seek guidance from an ethics official. OGE recognizes this to be a model practice.

- The second part of IEO is a follow-up from ethics officials to the new employee after in-processing. New employees are emailed a copy of the Standards and the Principles to keep. If a new employee is required to file a financial disclosure report, guidance on how to file and submit the report is included within the email. New employees are directed to review the Standards and to confirm by email upon their completion. Once the email has been received by ethics officials, IEO training for the new employee is considered complete.

Based on OGE's review of 1) SIGAR's internal tracking system, 2) samples of the attestation forms collected during IEOs, and 3) samples of emails sent to employees during the period from January 2011 to July 2012, OGE determined that IEO briefings were being provided to the required employees.

Annual Training

Executive agencies are required by 5 CFR § 2638.704 and 5 CFR § 2638.705 to provide covered employees annual ethics training that includes a review of the Principles, the Standards, any agency supplemental standards, the Federal conflict of interest statutes, and the names, titles, office address, and telephone numbers of the DAEO and other agency ethics officials available to advise the employee of ethics issues. Annual ethics training is a vital component of an agency's ethics program and is intended to assist employees carry out their official responsibilities in a manner consistent with ethics-related statutes and regulations. Additionally, annual training helps to prevent violations and maintain the public's positive perceptions of an agency and the executive branch.

In 2011, in-person annual ethics training was required for all SIGAR employees. The annual training consisted of an adaptation of the popular game show "*Who Wants to be a Millionaire*". The topics covered gifts, conflicts of interest statutes, including 18 U.S.C. 205 and 18 U.S.C. 207, SIGAR's supplemental regulations, misuse of position, financial disclosure requirements, and the Hatch Act regulations. Additionally, ethics officials referred employees to SIGAR's ethics intranet page to find the full content of the conflicts of interest statutes, the Standards and the 14 principles.

According to the Ethics Program Specialist, six training sessions were held in December 2011 to satisfy the 2011 annual training requirement. However, OGE identified 11 covered employees who received the 2011 annual training in early 2012, rather than in 2011, as required. OGE was informed that this occurred due to scheduling conflicts. Therefore, SIGAR held make-up training sessions in January 2012. Scheduling annual training in the last month of the calendar year makes it difficult to ensure that all covered employees receive timely annual training. Initiating annual ethics training earlier in the year provides filers with more time to complete their training by the end of the calendar year. Timeliness in training completion should improve since SIGAR started satisfying the 2012 annual training requirement in October 2012.

Advice & Counsel

The DAEO is required to ensure that a counseling program for agency employees that covers ethics and standards of conduct, including post-employment matters, is developed and conducted. See 5 CFR § 2638.203. To evaluate SIGAR's advice and counseling program, OGE examined five pieces of advice provided in writing in 2011 on matters pertaining to the Stop Trading On Congressional Knowledge Act of 2012 (STOCK Act), outside activity, and gift acceptance. OGE found the advice consistent with appropriate laws and regulations and rendered timely, which is key in preventing conflicts of interest and other ethics violations.

OGE also found written counseling files stored on a shared electronic drive accessible to all ethics officials. Given the limited terms of appointment for SIGAR employees and the turnover within the Ethics Office, OGE believes this valuable resource helps new ethics officials quickly understand the types of questions raised by employees and provides timely responses that are consistent and accurate.

Agency-Specific Ethics Rules

On June 29, 2012, SIGAR, with the concurrence of OGE, published a final rule in the Federal Register that required SIGAR employees to obtain prior approval for certain types of outside activities under 5 CFR part 9303. Employees who wish to engage in any outside employment must submit their requests in writing to the DAEO through normal supervisory channels.

Ethics officials have provided employees training on the new supplemental regulations during IEO and annual training sessions. OGE identified nine outside employment activities listed on the appropriate financial disclosure reports and verified with SIGAR ethics officials that approvals had either been granted or that prior approval was determined to be unnecessary.

Enforcement

SIGAR's procedures for dealing with a possible ethics violation are outlined in *SIGAR 5200, Policy and Procedures Regarding Complaints Against SIGAR Personnel and Related Referrals*. According to the procedures, if a possible ethics violation occurs, the General Counsel will direct an investigation. SIGAR's DAEO would be responsible for concurrently notifying OGE of referrals made to the DOJ on possible criminal conflict of interest violations. OGE determined that SIGAR's written procedures for dealing with potential ethics violations were sufficient to delineate clear responsibilities and ensure prompt and effective administrative or disciplinary action. There were no criminal conflicts of interest violations referred by SIGAR to the DOJ in 2011.

1353 Travel Acceptances

Federal agencies may allow its employees to accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under the authority of the General Services Administration (GSA) 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.

As a matter of SIGAR policy, employees are not permitted to accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under 31 U.S.C. § 1353. OGE examined SIGAR's last two semiannual travel reports submitted for the reporting periods from April 1, 2011 through March 31, 2012 and found both reports were submitted to OGE timely and did not contain any payments by non-federal sources.

Agency Comments

In its response to OGE's draft report, SIGAR's Ethics Office stated that the report was fair and accurate. The Ethics Office also stated that:

- 1) The backlog of reports awaiting certification and the delay in assignment of reports to new and departing employees has been eliminated;
- 2) All reports that have been submitted for certification have been certified in less than five days, with most being certified the same day they are submitted for review; and
- 3) SIGAR is reaffirming its dedication to providing outstanding training and ethics support to our employees by ensuring that all training is conducted in person, both in Washington and in the field.