



June 30, 2004

Edgar M Swindell
Designated Agency Ethics Official
Department of Health and Human Services
700-E Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Dear Mr. Swindell:

The Office of Government Ethics (OGE) recently completed a review of the Substance Abuse and Mental Health Services Administration's (SAMHSA) ethics program within the Department of Health and Human Services (HHS). Our objective was to determine the program's compliance with applicable laws and regulations. We also evaluated SAMHSA's systems and procedures for ensuring that ethics violations do not occur. The review was conducted during March and April 2004. The following is a summary of our findings.

HIGHLIGHTS

Our review of SAMHSA's ethics program disclosed that all elements are in compliance with applicable laws and regulations. Since our last review improvements were made to ensure timely public filing, timely confidential filing for regular and special Government employees (SGE), and timely approval of outside activity requests. These improvements, which would not have been possible without the support of SAMHSA's Administrator, can be directly attributed to the ethics advisor whose time is now fully devoted to the ethics program and who has been with the program since 1995.

PROGRAM STRUCTURE

SAMHSA's Director of the Office of Program Services serves as the Deputy Ethics Counselor (DEC) for SAMHSA's ethics program. She is assisted by an ethics advisor who is responsible for administering the day-to-day duties and for ensuring the efficient and effective operation of SAMHSA's ethics program. Although the ethics program is primarily centralized with the ethics advisor, each center within SAMHSA has an ethics contact (CEC).¹ The CEC assists the ethics advisor in determining potential conflicts that relate to the health programs, and is responsible

¹SAMHSA is comprised of three centers that carry out the agency's mission: the Center for Mental Health Services (CMHS), the Center for Substance Abuse Prevention (CSAP), and the Center for Substance Abuse Treatment (CSAT).

for the initial approval of outside activity requests. In addition, each of SAMHSA's six Federal Advisory Committee Act committees (committees) has an executive secretary who assists the ethics advisor with the collection of members' financial disclosure reports.²

PUBLIC FINANCIAL DISCLOSURE SYSTEM

Our examination of the public financial disclosure system disclosed that the system appears effective and is in compliance with applicable laws and regulations. This was based on our examination of 20 of the 22 public financial disclosure reports required to be filed in 2003. Our examination excluded two reports that were required to be reviewed by you.³ We found that the reports were filed, reviewed, and certified timely. Additionally, we found that three employees with potential conflicts had recusal agreements on file and four current employees who listed outside activities had corresponding outside activity approvals on file.

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

Although some problems were found with the collection, review, and certification of reports from the advisory committee members, our examination of the confidential financial disclosure system overall disclosed that the system appears effective and is in compliance with applicable laws and regulations. We found that the advisory committee members who did not file a confidential report in 2003 represented less than two percent of all the confidential filers. To avoid a recurrence of these problems, the ethics advisor took immediate action to implement new procedures. We suggest that the ethics advisor closely monitor the new process to ensure full compliance.

Non-Advisory Committee Employee Reporting

Our examination of approximately 370 non-advisory committee employees' confidential reports, which were comprised of the OGE Form 450 (450) and the OGE Optional Form 450-A (450-A) reports required to be filed in 2003, disclosed that less than 3 percent filed late and less than

²SAMHSA's six committees are: the SAMHSA National Advisory Council, the CMHS National Advisory Council, the CSAP National Advisory Council, the CSAT National Advisory Council, the Advisory Committee for Women's Services, and the Drug Testing Advisory Board.

³The two public reports were filed by one Presidentially-appointed, Senate-confirmed (PAS) employee and one Schedule C employee.

1 percent were reviewed and certified late ⁴ Additionally, our examination of the reports did not identify any potential conflicts that needed to be remedied. We questioned information listed on 18 reports that we thought posed potential conflicts, but we were informed that only one asset would have posed an actual conflict had the employee not had a recusal agreement already on file. We also confirmed that 18 employees who listed outside activities on their reports had corresponding outside activity approvals on file

As for four new entrant reports required to be filed since the 2003 annual filing cycle, we found that two reports were filed, reviewed, and certified timely, one report was in the process of being collected, and one report was filed timely and in the process of being reviewed

Our examination disclosed that 35 percent, or 128, of the 370 confidential filers, filed the 450-A in lieu of filing the 450 Only one 450-A filer did not have a corresponding 450 on file Subsequently, the ethics advisor informed us that he collected the missing 450

Advisory Committee Member Reporting

On November 13, 1997, OGE approved SAMHSA's use of an alternative system in the form of a verification certificate In lieu of filing a new entrant 450 each year, SGEs who serve terms of more than one year on advisory committees file a 450 upon appointment and reappointment, and the verification certificate is required in intervening years However, executive secretaries actually collected verification certificates prior to each committee meeting, which, depending on the number of meetings attended by a member, could result in up to four verification certificates filed in a year by the member ⁵

We found that not all advisory members filed in 2003 Our examination disclosed that 88 percent, or 49, of the 56 advisory committee members filed either a 450 in 2003 or a verification certificate in 2003 and a corresponding 450 in a prior year Additionally, we found that not all attendees filed prior to each meeting Our examination disclosed that 79 percent, or 88, of the 111 reports or verification certificates required to be filed in 2003 were filed by members who attended meetings Of total reports filed, 18 percent, or 16 reports, were filed late and 8 percent, or 7 reports, did not indicate that they were reviewed or certified.⁶

⁴Although the 450-A does not need to be reviewed and certified, we noted that most 450-As were reviewed and signed by the DEC

⁵Verification certificates are not collected more often than once a quarter

⁶The total excludes the reports required from members participating in teleconference meetings since a log of participants was not kept

Upon learning of our findings, the ethics advisor immediately revised the written procedures for the collection, review, and certification of advisory committee members' 450s and verification certificates, and forwarded the procedures to the centers' executive secretaries for implementation. These procedures stipulate that 450s and certificates should be filed no later than two weeks before a meeting to give reviewers sufficient time to analyze them and take any needed actions (e.g., recusals or waivers). To facilitate out-of-town members filing prior to the meeting, facsimile copies may be accepted.

As for the advisory committee reporting in relation to the overall confidential financial disclosure system, we found that the advisory committee members who did not file a confidential report in 2003 resulted in less than two percent of all the confidential filers. Although this number is low, it is important to remember that delinquent or missing reports impair an agency's ability to provide timely and specific conflict of interest advice, a fundamental purpose of an agency ethics program.

ETHICS ADVICE AND COUNSELING

SAMHSA's counseling program appears to be effective. We examined approximately 80 pieces of written advice provided to employees over the last year, including notes to the file. Although a few of the ethics advisor's analyses appeared ambiguous, we found that the advice was consistent with the applicable laws and regulations. The types of issues addressed included conflicts of interest, fundraising, gift acceptance, impartiality, seeking and post employment, outside activities, recusal and waiver agreements, and general guidance.

ENFORCEMENT

Both the ethics advisor and Senior Counsel to the Inspector General informed us that there have not been any criminal conflict of interest referrals to the Department of Justice from January 1, 2003 to present. However, within the last year the ethics advisor referred two alleged standards of conduct violations to HHS' Office of Inspector General which resulted in administrative actions. One case involved a seeking employment issue for which the employee received verbal counseling. The other case involved a business relationship with a previous employer and resulted in the employee attending a four-day basic project officer training course.

ETHICS TRAINING

SAMHSA's ethics training program appears to be effective. Most filers completed annual ethics training in the 2003, those who did not were granted extensions and completed 2003 annual training in early 2004. New employees receive the agency's initial ethics orientation within 90 days from the time an employee begins work.

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Initial Ethics Orientation

The ethics advisor is responsible for new employees initial ethics orientation. SAMHSA's personnel office sends an the entry-on-duty notice to the ethics advisor when new employees come on board. Employees are then instructed via e-mail to complete computer-based ethics training. The ethics advisor is available during regular working hours to answer questions.

Annual Ethics Training

The ethics advisor made ethics guidance available to filers throughout 2003 via ethics information on the SAMHSA intranet, and e-mails on outside activity policy updates, and seeking and post-employment guidance. According to the ethics advisor, SAMHSA's Administrator and his Special Assistant met their annual ethics training requirement by attending your small group annual ethics training session held on November 20, 2003. Advisory committee members were sent written materials in 2003, as authorized under 5 C F R § 2638.705(d)(2). The remaining filers were notified via e-mail to complete the computer-based annual ethics training on the National Institute of Health's Web site. The ethics advisor was available during regular working hours to answer questions.

We examined SAMHSA's records for employees trained for 2003 and found that 77 percent, or 10, of the 13 remaining public filers completed the 2003 annual ethics training in 2003 and the remaining (23 percent, or 3) public filers completed the training in early 2004. Also, 84 percent, or 308, of the 366 confidential filers completed training in 2003 and the remaining (16 percent, or 58) confidential filers completed training in early 2004. The ethics advisor informed us that the filers who completed training in early 2004 were granted extensions and certified that they completed the training within the extended time.

Administrator's Support

On October 3, 2003, SAMHSA's Administrator demonstrated his support of the ethics program by sending an e-mail to filers. In that message, he emphasized that he considered knowledge of and adherence to Federal ethics principles to be a critical component of each employee's job. He also emphasized the importance for those who must file financial disclosure reports, take ethics training, and file outside activity requests to comply with all regulatory deadlines.

ACCEPTANCE OF GIFTS OF TRAVEL FROM NON-FEDERAL SOURCES UNDER 31 U S C § 1353

The process of approval and reporting of the acceptance of gifts of travel from non-Federal sources under 31 U.S.C. § 1353 appears effective. We examined SAMHSA's last semiannual report to HHS for the period ending September 30, 2003. With the HHS Program Support Center's permission, SAMHSA provides the information in Excel file format instead of using the Standard

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Form 326 We found that the payments were properly approved The types of travel consisted of attendance at conferences, courses, meetings, and symposiums

In response to our discovery that one employee accepted a personal reimbursement of taxi fare and per diem allowances from a non-Federal source, SAMHSA plans to send periodic reminders to employees that they cannot personally accept payment from non-Federal sources for gifts of travel under 31 U S C § 1353. This issue should have been raised during the review of the employee's confidential disclosure report because, as part of that review, the ethics advisor advised the employee that § 1353 travel was not reportable

In closing, I would like to thank you and the SAMHSA staff for your efforts on behalf of SAMHSA's ethics program A brief follow-up review is typically scheduled within six months from the date of this report However, as this report contains no formal recommendations to improve the program, no such follow-up will be necessary A copy of this report is being forwarded to HHS' Inspector General via transmittal letter Please contact Jean Hoff at 202-482-9246 if we may be of further assistance

Sincerely,



Jack Covalesski
Deputy Director
Office of Agency Programs

Report Number 04-⁰¹⁵012