

United States Office of Government Ethics

Compliance Division

Ethics Program Review

Federal Emergency Management Agency

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Federal Emergency Management Agency's (FEMA) ethics program in February and March 2013. The review found that FEMA must make improvements to ensure that its ethics program is fully compliant with applicable laws and regulations. Specifically, OGE is concerned about the lack of compliance in the areas of financial disclosure and tracking of required ethics training. Additionally, FEMA must determine the employment status of certain employees. OGE believes that FEMA's ethics officials are working to make the necessary improvements and supports them in their efforts. However, OGE is making recommendations and suggestions for the improvement of FEMA's ethics program and will continue to monitor ethics officials' progress in bringing the ethics program to a state of compliance.

Highlights

- FEMA has established an Ethics Counselor program to train and delegate Office of Chief Counsel (OCC) attorneys as ethics counselors assigned to FEMA programs throughout the agency. A number of these ethics counselors are embedded with their clients at Headquarters.
- FEMA provides all new Headquarters employees with a comprehensive Pocket Ethics Guide.
- All FEMA employees are required to complete ethics training each year to improve their familiarity with ethics rules and regulations.
- The Ethics Division provides discretionary training throughout the year tailored to emphasize specific ethics rules and requirements most relevant to different audiences within FEMA.
- All employees leaving FEMA headquarters are required to visit the ethics office to receive post-employment counseling.

Concerns

- FEMA does not have written procedures for the administration of its financial disclosure program.
- A significant number of public and confidential financial disclosure reports that were filed in 2011 and 2012 were not certified, including reports filed by SGEs.
- FEMA does not have a reliable process in place to identify and track incoming and departing employees who are required to file a confidential report.
- FEMA does not have a reliable process in place to identify incoming and departing IPAs detailed to FEMA.
- FEMA could not confirm that all covered employees received annual ethics training.
- The status of Reservists under 18 U.S.C. § 202(a) was not formally determined.

Contents

Objectives, Scope, and Methodology.....	3
Agency Background.....	3
Program Administration.....	4
Financial Disclosure.....	6
Education and Training.....	12
Advice and Counsel.....	15
Agency Specific Ethics Rules.....	16
Enforcement.....	17
Special Government Employees.....	18
1353 Travel Acceptance.....	22
Agency Comments.....	22

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, 5 U.S.C. app. § 402 and 5 C.F.R. § 2638.

OGE limited the scope of its review to include only the FEMA Headquarters ethics program located in Washington, D.C. To assess FEMA’s ethics program OGE examined a variety of documents provided by FEMA ethics officials, including the 2011 and 2012 agency ethics program questionnaires, public and confidential financial disclosure reports filed in 2011 and 2012, and advice and counsel provided to FEMA employees. In addition, OGE’s Program Review Branch staff met with FEMA officials in the Office of Chief Counsel, and the Office of the Chief Component Human Capital (OCCHCO). OGE’s Program Review Branch staff also met with the Director of Risk Management & Compliance, Duty Readiness and the Deputy Associate Chief Counsel, Personnel Law to obtain additional information, clarify certain matters, and verify the accuracy and origin of data collected.

Agency Background

On March 1, 2003, FEMA became part of the U.S. Department of Homeland Security (DHS). FEMA was one of the 22 different Federal departments and agencies combined into a unified, integrated Department under the passage of the Homeland Security Act in November 2002.

FEMA coordinates the federal government's role in preparing for, preventing, mitigating the effects of, responding to, and recovering from all domestic disasters, whether natural or man-made, including acts of terror. FEMA locations across the country include its Washington D.C. Headquarters, ten regional offices, the National Emergency Training Center, and the Center for

Domestic Preparedness/Noble Training Center, among others. FEMA's diverse workforce is comprised primarily of three types of employees:

- Approximately 7,400 Permanent Full Time Federal Employees with Competitive Service appointments.
- A Cadre of On-Call Response/Recovery Employee (CORE) employees. CORE employees are hired under the authority and provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). CORE positions are temporary, excepted service appointments with specific "Not to Exceed" dates. The appointments are two and four-year terms and are typically renewed if there is ongoing disaster work and funding is available.
- Reservists, formerly known as Disaster Assistance Employees. Reservists are Federal employees who work on an on-call, intermittent basis forming the major workforce for FEMA in times of emergency or disaster. Reservists help complete FEMA's mission by staffing Joint Field Offices (JFOs) and Disaster Recovery Centers (DRCs), interviewing disaster victims, conducting and verifying damage assessments, providing administrative, financial and logistical support and performing a wide variety of other tasks as identified by staffing needs and operational requirements.

Program Administration

FEMA is a DHS component, therefore; FEMA's ethics program operates under the authority of the DHS Designated Agency Ethics Official (DAEO). DHS' Principal Deputy General Counsel serves as the DAEO. The DHS Associate General Counsel for Ethics serves as the Alternate DAEO. Chief Counsels within the various DHS components serve as Chief Deputy Ethics Officials (CDEO) and manage the ethics program within their respective DHS components. The DAEO has delegated authority to the CDEOs within each component to establish and administer financial disclosure, ethics counseling and ethics training programs.

FEMA's ethics program is organizationally located within the Office of Chief Counsel (OCC) at Headquarters. OCC advises the Administrator and all FEMA directorates on legal matters related to agency programs and operations. To carry out its mission, OCC is organized into sections that roughly correspond to FEMA's various components and focus on specific agency programs and functional areas. This includes the Ethics Division.

In keeping with DHS policy, FEMA's Chief Counsel serves as the CDEO and heads FEMA's Ethics Division and ethics program. The CDEO has delegated authority to the Deputy Counselor to the Chief Counsel (Deputy Counselor) to supervise and manage the day-to-day operations of the ethics program under the supervision of the Counselor to the Chief Counselor. The Deputy Counselor was hired in July 2012 as a CORE employee, served as an ethics attorney and was subsequently promoted to her current position in January 2013, approximately one month before the start of the review. The Deputy Counselor is assisted by a full-time ethics program specialist. Additionally, a cadre of 36 Adjunct Counselors assists the Deputy Counselor

within FEMA Headquarters and the regions on a collateral-duty basis. A number of these adjunct counselors are embedded with their clients at Headquarters. The Ethics Division also includes a Senior Ethics Attorney for Ethics Training (senior ethics attorney). The senior ethics attorney was the day-to-day manager of the ethics program until January 2013 when he was assigned to concentrate solely on the development and maintenance of FEMA's ethics training materials

The Deputy Counselor is responsible for ensuring that all FEMA public financial disclosure reports, except those filed by Presidentially Appointed and Senate-Confirmed (PAS) employees, and all headquarters' confidential financial disclosure reports are filed, reviewed, and certified. Public reports filed by PAS employees are reviewed at DHS Headquarters. The Deputy counselor also ensures that employees complete initial ethics orientation (IEO) and annual ethics training requirements. The Deputy Counselor is further responsible for ensuring that ethics officials render ethics advice, provide ethics services to special Government employees (SGE) and process travel payments from non-federal sources accepted under the authority of 31 U.S.C. § 1353. The ethics program specialist assists the Deputy Counselor in all of these areas, while the senior ethics attorney has primary responsibility for developing ethics training materials to meet the ethics training requirements. The cadre of adjunct counselors renders ethics advice to employees within their respective offices throughout FEMA. Additionally, in the regions, adjunct counselors review the confidential financial disclosure reports from their respective regions. Administrative officers from each office in headquarters form a network of points of contact (POC) to the Ethics Division, assisting with the collection of confidential reports and tracking of ethics training. At the time of the on-site portion of this review, FEMA was in the process of hiring another CORE attorney to render ethics advice and counseling related to presidentially-declared disaster and emergency events. FEMA has since selected an attorney for this position and anticipates her entry on duty in September 2013.

Ethics Counselor Program

FEMA has established an Ethics Counselor program to train and designate OCC attorneys as ethics counselors assigned to FEMA programs throughout the agency. The Certification process consists of three parts: 1) Self-Study Coursework; 2) Open-Book Certification Exam; and 3) Delegation of Authority by Chief Counsel as FEMA's Chief Deputy Ethics Official. Once OCC attorneys complete these three steps they become certified as Adjunct Ethics Counselors.

Independent Auditor's Report

OGE encourages agencies to use self-assessment as a tool to evaluate their ethics programs. Agency self-assessments help ethics officials improve the efficiency of their programs by identifying potential weaknesses and directing resources to where they are most needed. Each year, an outside private public accounting firm, under contract with the DHS Office of Inspector General (DHS OIG), performs an integrated audit of DHS's financial statements and internal control over financial reporting of DHS' headquarters and components. This is done as part of the OIG's oversight responsibilities. As part of the audit, the Ethics Division's procedural guidance on financial disclosure reporting and samples of financial disclosure reports are examined to assess whether internal controls are effective in ensuring that financial disclosure reports are timely filed and properly reviewed and certified.

The DHS Independent Auditor's Report (Auditor's Report) on DHS' FY 2012 Financial Statements and Internal Control over Financial Reporting found FEMA lacks written procedures for administering the financial disclosure program and has ineffective controls to ensure the proper and timely filing, review and certification of public and confidential reports. Additionally, the Auditor's Report found that FEMA did not formalize a process to ensure that personnel attend required ethics training. Further, the Auditor's report found that FEMA has not fully developed and implemented policies and procedures for required ethics training. OGE's findings were consistent with those described in the Financial and Training sections of this report.

Model Practices

OGE identifies model practices and shares them when it appears they may benefit an agency's ethics program. The following are model practices OGE noted FEMA implemented to enhance its ethics program:

- FEMA has established an Ethics Counselor program to train and designate OCC attorneys as ethics counselors assigned to FEMA programs throughout the agency.
- DHS OIG conducted an assessment of FEMA's ethics program through a private consulting firm.

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 certain 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.

Significant Findings and Methodology

The Ethics Division is taking steps to implement a financial disclosure program that will meet the requirements of OGE's financial disclosure regulation at 5 C.F.R. § 2634.104(b) for FEMA Headquarters employees. However, the lack of written procedures has impaired the administration of the financial disclosure program. Additionally, the timely identification of confidential financial disclosure filers and the timely review and certification of financial disclosure reports presents a challenge for FEMA headquarters.

The Ethics Division is responsible for the review and certification of the approximately 90 public reports and 1,550 confidential reports that are required to be filed at headquarters. To evaluate the administration of FEMA's financial disclosure program, OGE examined a sample of public and confidential financial disclosure reports that were required to be filed, reviewed and certified within FEMA Headquarters in 2012. OGE's review of the selected samples of public and confidential financial disclosure reports included an examination of the timeliness of filing, review, and certification, as well as an assessment of the overall quality of review.

Written Procedures for the Financial Disclosure Program

Section 402(d)(1) of the Ethics in Government Act of 1978 requires that executive branch agencies establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available, financial disclosure reports filed by the agency's officers and employers.¹ OGE found that FEMA has not developed written procedures for the administration of its financial disclosure program. To assist FEMA in meeting the requirement to establish written procedures, OGE provided the Deputy Counselor with samples of written procedures for financial disclosure. In April 2013 DHS issued a written financial disclosure program policy requiring all components to draft written procedures. FEMA was awaiting DHS' headquarters written procedures to use as a model for their own. Ethics officials expected the DHS' headquarters procedures to be officially issued and distributed in July or August 2013. Establishing written procedures is an essential step in ensuring the integrity of the financial disclosure program. Therefore, OGE recommends FEMA promptly develop written procedures for the administration of its financial disclosure program.

Recommendation

- Implement written procedures for the administration of the financial disclosure program.

Public System

The ethics program specialist performed an initial technical review of public reports filed in 2012. During her review, the ethics program specialist contacted filers directly to correct reporting omissions and errors, as necessary. Then, the senior ethics attorney performed the conflict of interest analysis and certified each report. To conduct the conflict of interest analysis, the senior ethics attorney relied on his knowledge of the public filers' official duties and previous reports. He also applied his knowledge of FEMA operations and contracts. The senior ethics attorney drafted advisory letters, and provided filers with other advice as required.

In the fall of 2012 the Deputy Counselor, then a CORE ethics attorney, assisted with the review and certification of public reports. The Deputy Counselor and reviewers used a variety of online and internal resources that provided information regarding FEMA contracts. This information was compared against filers' assets as part of ethics officials' conflict of interest analyses. Currently, the CDEO delegates the responsibility for managing the financial disclosure program within FEMA's headquarters to the Deputy Counselor and the ethics program specialist pursuant

¹ See, OGE's DAEGRAM 09-03-92: Developing written procedures for the public and confidential financial disclosure systems.

the provisions of 5 C.F.R. § 2638.204 (a). The CDEO also delegates to the Deputy Counselor the authority to review and certify all public financial disclosure reports filed with the Ethics Division, other than nominee reports filed by PAS employees.

Electronic Filing System

FEMA began using the Army's Financial Disclosure Management System (FDM) to help manage the public financial disclosure system in 2012. Public filers were encouraged to use the FDM system to electronically prepare, submit, and digitally sign their financial disclosure reports during the 2012 annual filing cycle. Approximately half of FEMA's public filers submitted their reports using FDM. All FEMA public filers were required to submit their public reports in FDM in 2013. The Deputy Counselor has reported that all filers submitted reports timely in 2013.

Examination of Public Reports

OGE examined 73 public reports required to be filed in 2012.² OGE found that 90 percent of these reports were filed timely. However, OGE also found that 86 percent of the 73 public reports were certified late. Generally, reports should be reviewed and certified within 60 days of the date they are filed. On average, the reports in the sample were certified over 200 days after the date of submission. This included 33 reports (45%) within the sample that had not yet been certified by the time of our on-site examination in February 2013. Of the 40 reports that were certified, 53% were certified beyond the required 60-day deadline.

To determine whether the late review and certification of reports in 2012 was an anomaly, OGE selected 30 additional public reports required to be filed in 2011. OGE found that five of these reports had not been certified as of February 2013. Ethics officials confirmed that their own review of reports required to be filed in 2011 revealed that at least 12 reports had not yet been certified. Ethics officials acknowledged that each year FEMA typically carried a backlog of reports that were not certified by the end of the year in which the reports were filed. OGE is concerned that these employees performed their government duties without the safeguards of a timely conflict of interest review. It is vital that financial disclosure reports be filed, reviewed, and certified in a timely manner to ensure that potential conflicts of interests are promptly identified and remediated.

OGE recognizes that during most of 2012 only the senior ethics attorney certified public reports, in addition to his other ethics duties. In some instances, the late certifications were necessary because ethics officials were seeking additional information from filers. However, OGE noticed that in many instances ethics officials did not initiate the review of the reports or request the additional information until late 2012, when the current Deputy Counselor began to assist in certifying reports. Additionally, OGE observed instances in which filers promptly provided the requested information, but the reports were not certified. Ethics officials explained that they

² OGE selected 10 new entrant reports, 60 annual reports due in May 2012 and 3 termination reports. The Ethics Division maintains the master list of FEMA personnel required to file public reports. This list is updated based on monthly reconciliations with the list of senior executives and political appointees provided by FEMA's Office of Chief Human Capital Officer (OCHCO).

intended to review and certify the uncertified 2012 reports during the review of the filer's 2013 report.

As noted, the Deputy Counselor is now responsible for reviewing and certifying public reports. The Deputy Counselor anticipates that the use of FDM will address the financial disclosure issues that were identified during OGE's review. For example, FDM automatically records when ethics officials first review the reports. Subsequent correspondence and follow-up with the filer is also recorded. FDM also automatically generates an email to the certifier once the report has been submitted, which should help prevent late certification. In addition, FDM also allows ethics officials to review a list of reports by the date received by the agency. Ethics officials can use this feature to prioritize reports for review. In addition, the Deputy Counselor has dedicated blocks of time to complete the review of the public reports. Ethics officials continue to explore ways to distribute the financial disclosure workload more efficiently. OGE always encourages agency ethics officials to review and improve their ethics programs.

Recommendations

- Certify all uncertified public reports filed in 2011 and 2012.
- Ensure that all public reports filed in 2013 are reviewed and certified timely.
- Implement sufficient safeguards to ensure that all public reports are reviewed and certified timely in the future.

Confidential System

The Ethics Division relies on the ethics POCs to identify confidential filers, notify the filers regarding their responsibility to file reports, and to collect and track confidential reports. In 2012, ethics POCs forwarded the confidential reports to the ethics specialist.

The senior ethics attorney and the ethics program specialist were responsible for reviewing and certifying the confidential reports filed by headquarters employees in 2012.³ The ethics program specialist conducted a technical review of the reports and contacted filers directly to correct reporting omissions and errors as necessary. Then, the senior ethics attorney performed the conflict of interest analysis and certified the reports. To conduct the conflict of interest analysis, ethics officials used the same online and internal resources used in reviewing public reports to compare the assets of filers against information regarding FEMA contracts. They also used OGE online resources such as *Guidance for Reviewers of the OGE Form 450*. Ethics officials issued advisory letters and provided filers with other advice as required.

Examination of Confidential Reports

To evaluate the administration of the confidential system, OGE selected for examination 120 confidential reports required to be filed in 2012. However, FEMA could only provide 90 of the requested reports for examination during OGE's on-site review. With regard to the 30 reports that FEMA could not locate, ethics officials explained that three employees were mistakenly on the master list, and therefore, not required to file a confidential report. Subsequent to the on-site

³ They received limited assistance from adjunct counselors.

portion of the review, the Ethics Division was able to locate 8 of the remaining missing reports, leaving 19 reports unaccounted for.

Of the 90 reports examined, OGE found that 91% were filed timely. The majority of the reports examined were also certified timely (76%). However, 22 reports had not been certified as of the time of our on-site review. To evaluate whether the lack of certification of reports in 2012 was an anomaly, OGE selected 109 additional confidential reports required to be filed in 2011. OGE found that 98 of the reports required to be filed in 2011 had not been certified as of February 2013.

Ethics officials certified the majority of the uncertified reports in the sample of 2012 reports after the on-site portion of this review. However, OGE is concerned that the 2011 reports are still uncertified. The Deputy Counselor speculated that a combination of factors prevented ethics officials from completing the review of the confidential reports. The Deputy Counselor noted the lack of formal review processes and she explained that the Ethics Division is currently drafting standard operating procedures to prevent this protracted review from happening in the future. Ethics officials also plan to assign certain reports to the adjunct ethics counselors for review and certification. Additionally, ethics officials expect that the new full-time attorney who is in the process of being hired can also assist in reviewing reports.

OGE also noted that all the reports in the selected samples were annual reports. OGE reviewers inquired about the lack of new entrant confidential reports. According to ethics officials and the Director of Risk Management and Compliance, OCC has been trying to obtain new entrant data from OCCHCO unsuccessfully for at least two years. However, according to the Acting Chief Component of OCCHCO, the confidential filer designation is included in vacancy announcements and coded into position descriptions. Based on the position description coding, the Acting Chief believes that a list of confidential filers can be generated periodically. However, he acknowledged that this report would be accurate only if the proper code had been assigned to the position description.

Employees who enter positions whose incumbents are required to file either a public or confidential financial disclosure report must file the required report within 30 days of entering that position. To meet this requirement, new filers must be timely notified. Typically, the office responsible for providing Human Resources services, in FEMA's case OCCHCO, plays a significant role in the identification of new entrant filers. OCCHCO knows when new employees are entering the agency and when employees are promoted or detailed to new positions. This information is necessary for the Ethics Division to comply with the requirements of ensuring that filers satisfy their financial disclosure requirements and receive counseling regarding the conflicts of interest laws and the Standards. In accordance with 5 C.F.R. 2638.202, the ethics office must be provided with sufficient resources to enable the agency to administer its ethics program in a positive and effective manner. OGE recommends that the Ethics Division and OCCHCO develop an action plan to ensure that ethics officials are provided with timely notification when new entrants enter into positions requiring a confidential financial disclosure report.

To ensure the proper designation of filers, potentially reduce the volume of confidential reports and increase the reliability of the master list, ethics officials are revisiting the designation of

confidential filers on the current master list. Instead of managers designating entire office staffs as confidential filers, ethics officials want to ensure that filers meet the criteria found in 5 C.F.R. 2634.903. In 2013, POCs were given a copy of an OGE job aid to provide to filers along with the confidential report. Both prospective confidential filers and supervisors were required to complete the OGE designation form to help improve the accuracy of confidential filer determinations. According to ethics officials, this process has already reduced the number of confidential filers. Because of the burden inherent in administering the confidential disclosure system, it is important that agencies are judicious in designating employees as confidential financial disclosure report filers. Therefore, OGE encourages ethics officials and supervisors to continue efforts to reduce the number of confidential financial disclosure report filers, as appropriate.

Recommendations

- Ensure that all confidential reports filed in 2011 and 2012 are reviewed and certified after any potential conflicts of interest have been addressed and resolved.
- Ensure that all confidential reports filed in 2013 are reviewed and certified timely.
- Implement sufficient safeguards to ensure that all confidential reports are reviewed and certified timely and to prevent backlogs of uncertified confidential reports in the future.
- Develop an action plan in coordination with OCCHCO to ensure that new entrant confidential filers are identified timely and ethics officials are notified.

IPAs

State, Tribal and Local Government workers are detailed to FEMA under the Intergovernmental Personnel Act (IPA), 5 U.S.C. §§ 3371-3376. Ethics officials explained that currently they do not have a way to track the entry or exit of these employees. Ethics officials explained that they plan to work with OCCHCO to develop a tracking system for IPAs.

A non-Federal employee appointed to a Federal position under the IPA is considered a Federal employee for all purposes, including all applicable ethics provisions. Additionally, in December 2001, Congress amended section 3374(c)(2) of the IPA, to specify that an IPA detailee to a Federal position is a Federal employee for purposes of the Ethics in Government Act. This provision subjects certain IPA detailees to file public financial disclosure reporting requirements. An IPA detailee who is assigned to an established designated public filer position, and who reasonably is expected to perform the duties of that position for more than 60 days in a calendar year, must file an OGE 278 in accordance with 5 U.S.C. app. § 101(f). *See* DO-06-031.

Any IPA detailee who is not required to file an OGE 278 may be required to file a confidential financial disclosure report if assigned duties and responsibilities meet the criteria set forth at 5 C.F.R. § 2634.904(a)(1).⁴ It is important that ethics officials readily identify these individuals to ensure that they are aware of and comply with all applicable ethics requirements. OGE recommends that FEMA establish a tracking mechanism for IPAs.

⁴ *See* OGE's December 9, 2002, Memorandum to Designated Agency Ethics Officials.

Recommendations

- Establish a tracking mechanism for IPAs.
- Ensure IPAs file financial disclosure reports, as required.

Education & Training

The Ethics Division is taking steps to implement an ethics education and training program to meet the requirements of OGE's training regulation at subpart G of 5 C.F.R. § 2638.

The Ethics Division is responsible for initial ethics orientation (IEO), developing an annual ethics training plan, and conducting annual ethics training for all covered employees within FEMA Headquarters. PAS employees are provided training by DHS headquarters ethics officials. OGE has reasonable assurance that all new headquarters employees receive IEO but encourages FEMA to take additional steps to document employee participation. OGE considers the distribution of a Pocket Ethics Guide to all FEMA headquarter employees a model practice. However, the tracking of annual training presents a challenge for the ethics office.

Initial Ethics Orientation

Agencies must provide new employees with an initial ethics orientation (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. This training must be provided within 90 days from the time an employee begins working for an agency. *See* 5 C.F.R. § 2638.703. OGE found that the content of FEMA's IEO process exceeds the minimal training requirements found at § 2638. However, the Ethics Division does not track and record the completion of IEO.

IEO is provided during in-processing, usually on an employee's first day on duty. Every two weeks during new employee in-processing, the ethics specialist introduces employees to the Ethics Division. Employees are given a CD containing a copy of the PowerPoint presentation provided by the ethics specialist, the 14 General Principles of Ethical Conduct (Principles), a copy of OGE Form 450, and OGE's *A Brief Wrap on Ethics*. They also receive a copy of the Ethics Guide for FEMA Employees (Ethics Guide) which is a pocket ethics guide for employees and includes a comprehensive summary of the Standards. The Ethics Guide is a practical way to ensure that employees have ready access to ethics information. The names and contact information of ethics officials are also provided at this time. The ethics specialist briefly discusses general ethics rules and Principles. During the presentation, the ethics specialist refers new employees to the Initial Ethics Training online module (online module) on the FEMA Knowledge Center (FEKC) website. Employees are also given one-hour of in-processing time to review the materials, including an on-line training module that provides further ethics-related training. This satisfies the basic requirement of 5 C.F.R. § 2638.703. The online training also covers a summary of the criminal conflict-of-interest statutes and guidance on post-employment, political activities, and misuse of position, which exceeds the content requirements for IEO.

Ethics officials could not provide OGE with the total number of new employees who were required to receive IEO or the number of employees who actually received IEO in 2012. Therefore, OGE could not independently verify FEMA's compliance with the requirement that all new employees receive IEO. However, according to the Employee Readiness Program Specialist, who facilitates the on-boarding of employees in the National Capital Region, new employees in headquarters are in-processed during the first day of duty. He also explained that during each in-processing session, a sign-in sheet must be signed by attending employees. The Employee Readiness Program Specialist passes the sign-in sheet information to the OCCHCO POC. If an employee misses the on-boarding session, the division POC will follow-up with the new employee. Therefore, OGE has reasonable assurance that all new headquarters employees attend the in-processing sessions and receive in-person IEO and the required materials. Currently the sign-in sheets are not shared with the Ethics Division. OGE suggests the Ethics Division develop an action plan to ensure that they receive confirmation that new employees receive IEO and that an effective tracking mechanism is put in place. This may be accomplished by coordinating with OCCHCO to obtain the in-processing sessions' sign-in sheets or a report containing similar information. This will allow FEMA to assess programmatic needs and obtain accurate and data necessary to satisfy OGE reporting requirements as provided in 5 C.F.R. § 2638.602 (a).

Model Practices

- FEMA provides all new entrant employees with a comprehensive Pocket Ethics Guide.
- FEMA provides all new entrant headquarters employees with access to an online training module that supplements the required ethics materials provided during IEO. In addition to addressing the Standards, Principles and required contact information, which satisfies the basic requirements of 5 C.F.R. § 2638.703, the online training also covers a summary of the criminal conflict of interest statutes and guidance on post-employment, political activities, and misuse of position, which exceeds the content requirements for IEO.

Recommendation

- Ensure that all new employees receive IEO and put in place an effective IEO tracking mechanism.

Administrator's Training Initiative

Commitment and action by agency leadership is critical to ensure the integrity of an agency's ethical culture and for fostering public confidence in the decision-making processes of Government. Underscoring his commitment to high ethical standards, the FEMA Administrator has made the determination that all FEMA employees will be required to attend ethics training each year to refresh their familiarity with ethics rules and regulations.

Annual Training in 2012

Executive agencies are required by 5 C.F.R. § 2638.704 and 5 C.F.R. § 2638.705 to provide covered employees with 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 regarding ethics issues.

Annual ethics training is a vital component of an agency's ethics program and is intended to assist employees in carrying out their official responsibilities in a manner consistent with ethics-related statutes and regulations. Additionally, annual training helps to prevent violations and promote the public's positive perceptions of an agency and the executive branch. OGE found that the content of FEMA's annual training is in accordance with regulations. However, OGE found FEMA had challenges tracking and recording the completion of annual ethics training. Additionally, FEMA did not satisfy the requirement at 5 C.F.R. § 2638.706 to document its ethics training plan in 2012.

The online module used to provide IEO was also the primary method for providing annual ethics training to covered employees in 2012. The Deputy Counselor explained that because of FEMA's initiative to provide all employees, including Reservists and Local Hires, with annual ethics training, many employees are also referred to the online module to fulfill this requirement. However, the Deputy Counselor explained that currently, the system does not track training by employee profile. Therefore, ethics officials cannot determine from the online module reports whether users who completed the online module were new employees, covered employees or local hires. In an effort to track the ethics training of covered employees in 2012, confidential filers were required to notify ethics POCs upon completion of ethics training. The ethics POCs were then required to provide the Ethics Division with the employees' dates of completion of annual ethics training. However, ethics officials acknowledged that in 2012 the Ethics Division did not have a comprehensive training tracking system. Therefore, ethics officials could not provide OGE with evidence that all financial disclosure filers received required annual ethics training in 2012.

The Deputy Counselor indicated that as part of FEMA's actions to respond to the recommendations on the Independent Auditors' Report, the Ethics Division is working with FEKC administrators and the independent auditors to explore the FEKC system's capabilities in providing employee profiles and generating reports to assist the Ethics Division in tracking ethics training.

The Ethics Division has requested that FEKC set up three separate training modules for: 1) confidential filers; 2) public filers; and 3) all other employees. By assigning filers to take the appropriate dedicated module, the Ethics Division will be able to use FEKC's current tracking capabilities to monitor compliance with ethics training requirements. Ethics Division officials also provided ethics training in addition to what is required by OGE regulations. This included podcasts and information papers throughout the year to help educate employees regarding ethics laws and regulations.

As the Ethics Division prepares to satisfy the annual training requirement for 2013, OGE is recommending that ethics officials ensure that all covered employees receive annual ethics training by the end of this year and that an effective ethics training tracking mechanism is developed and implemented.

OCC's 2013 Training Initiative

According to ethics officials, each year a small number of critical agency matters are designated as Strategic Legal Priorities (SLPs) for OCC. The ethics training program is one of OCC's SLPs in 2013. The Senior Ethics Attorney for ethics training was designated as the Champion of the ethics training program SLP. As the Champion, he will concentrate exclusively on building and maintaining a robust dedicated ethics training program within FEMA. One of his responsibilities is to reevaluate the way FEMA conducts ethics training and identify and implement solutions to problems. At the time of the on-site portion of this review, the Senior Ethics Attorney was drafting a training plan for 2013. The annual training plan will address mechanisms to track ethics training.

Model Practices

- All FEMA employees are required to complete ethics training each year to improve their familiarity with ethics rules and regulations.
- The Ethics Division provides training in addition to what is required by OGE regulations.

Recommendations

- Ensure that all covered employees receive annual ethics training by the end of this year.
- Implement an effective ethics training tracking system.

Advice and Counsel

The DAEO is required to ensure that a counseling program for agency employees concerning all ethics and standards of conduct matters, including post-employment matters, is developed and conducted. *See* 5 C.F.R. § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 C.F.R. § 2638.204. OGE found that the ethics counseling and advice services provided by ethics officials generally meet the requirements of 5 C.F.R. § 2638.203(b)(7) and that records are kept, where appropriate, on advice rendered, as required by 5 C.F.R. § 2638.203(b)(8). However, FEMA needs to ensure that employees receiving advice and counseling understand that disclosures made to an ethics official are not protected by attorney-client privilege.

The Deputy Counselor and the adjunct Counselors are primarily responsible for providing advice to FEMA headquarters employees, with the CDEO rendering advice to the Administrator.⁵ According to ethics officials, headquarters employees are encouraged to contact the Ethics Division via e-mail and telephone. Most inquiries are made via e-mail. Written counseling files are stored on a shared computer drive to which all ethics officials within the Ethics Division have access. The Ethics Division does not currently have a written policy that outlines the circumstances under which ethics advice is to be provided in writing.

⁵The new CORE Ethics attorney will also be expected to render advice and counseling to employees.

OGE examined 31 examples of advice provided via e-mail and written memorandums by Ethics Division officials and regional adjunct counselors in 2012. The advice pertained to a variety of topics, e.g., conflicts-of-interest, participating in widely attended gatherings, and post-employment issues. Other issues addressed included endorsements, accepting gifts, the standards of conduct, and teaching and speaking. OGE found the advice was consistent with ethics laws and regulations and was provided promptly.

However, OGE noticed that the majority of the advice included the statement: “attorney-client privileged and confidential communication.” OGE had some concern that the statement may cause an employee seeking ethics advice to erroneously believe that such a relationship exists. Disclosures made by an individual to an ethics official are not protected by attorney-client privilege. Ethics officials are required by 28 U.S.C. § 535 to report any information they receive relating to a violation of the criminal code, Title 18 of the U.S. Code.⁶ In response to these concerns, FEMA ethics officials explained that they were aware of their obligation to disclose certain information. According to ethics officials, the statements relating to attorney-client privilege and confidential communications were never meant to apply to disclosures made by an individual to an ethics official, but rather in the context of third-party access to the information, such as a Freedom of Information Act request. Since OGE completed its field work, the Counselor to the CDEO has reiterated in writing the rules relating to disclosures made to ethics officials, asked FEMA ethics counselors to ensure that clients are aware of the rules, and instructed ethics counselors to limit use of such disclaimers to those situations where a privilege legally applies.

With regard to post-employment counseling, ethics officials explained that all employees leaving FEMA headquarters are required to visit the ethics office and meet with an ethics official before departing as part of their out-processing responsibilities. Employees who are leaving for non-federal positions are provided counseling and a handout with a summary of the rules and ethics counsel contact information. All headquarters employees are required to complete a written out-processing checklist. The checklist includes meeting with an ethics official before leaving the agency.

Model Practice

- All employees leaving FEMA headquarters are required to visit the ethics office to receive post-employment counseling.

Agency Specific Ethics Rules

As authorized by Executive Order 12674 and implemented by 5 C.F.R. § 2635.105, an agency may modify or supplement the Standards of Ethical Conduct, with the concurrence of OGE, to meet the particular needs of that agency. A supplemental agency regulation is issued jointly by the agency and OGE and is published in title 5 of the Code of Federal Regulations.

⁶ See Standards of Ethical Conduct for Employees of the Executive Branch Final Regulation issued by the U.S. Office of Government Ethics Codified in 5 C.F.R. Part 2635 As amended at 76 FR 38547 (July 1, 2011).

As a DHS component, FEMA will be affected by any supplemental standards of ethical conduct regulations established for DHS. On October 12, 2011, DHS, with the concurrence of OGE, published in the Federal Register a proposed supplemental standards of ethical conduct regulation for its employees. The proposed rule will replace legacy supplemental ethics regulations of those previously existing component agencies that were incorporated into DHS and who have continued to apply the legacy regulations to employees whose duties and organizational structure have remained largely unchanged after their incorporation into DHS. Two significant areas to be addressed by the proposed DHS supplemental regulation will be to require prior approval for outside employment and a prohibition on the purchase of Government-owned, seized, or forfeited property by DHS employees.

Additionally, the proposed regulations:

...would prohibit certain FEMA employees, except special Government employees, both intermittent or non-intermittent, from working for a FEMA contractor.

The supplemental regulation also provides the procedures for requesting a waiver of these additional restrictions. OGE notes that by the time of the issuance of this report, a final rule had not been published.

Enforcement

Agencies must concurrently notify OGE when a case involving an alleged violation of a criminal conflict-of-interest statute is referred to the Department of Justice (Justice). Agencies are also required to report when Justice declines to prosecute a potential violation, any follow-up actions on a referral, and the disposition of the referral. *See* 5 C.F.R. § 2638.603. OGE's review of FEMA's system of enforcement focused primarily on these requirements. In 2012, FEMA made two referrals to the DHS OIG, reporting potential violations of the criminal conflict of interest statutes. OGE received notification of only one of these.

The DHS OIG is responsible for referring potential violations to Justice and for concurrently notifying OGE of the referral. After OGE met with the DHS Counsel to the Inspector General and members of the IG's staff (in the course of conducting an ethics program review at DHS Headquarters in 2012) OIG began to send the required notifications of referrals to OGE. OIG officials also agreed to notify the DHS' DAEO and Chief Counsels concurrently whenever a referral is made. OGE's review also addressed enforcement of the Standards. FEMA officials took one disciplinary action based wholly or in part upon violations of the standards of conduct provisions in 2012.

Additionally, OGE's review examined the working relationship between the Ethics Division and OIG officials. The review team discussed the working relationship between FEMA and OIG with the CDEO and the Deputy Associate Chief Counsel (ACC), Personnel Law. OGE learned that, generally, a good working relationship exists between FEMA ethics officials and the OIG. However, OCC and the Ethics Division do not consistently receive timely notification when the

DHS OIG declines to accept a case for referral to Justice. At the time of the on-site review, the CDEO was preparing to meet with OIG officials to address these concerns. Also, FEMA officials were considering drafting a memorandum of understanding between FEMA and the OIG to establish which offenses would not be referred to the DHS OIG because of the likelihood they would be declined for investigation. FEMA officials would administer any disciplinary actions for ethics violations that meet these criteria.

Special Government Employees

A special Government employee (SGE) is defined in 18 U.S.C. § 202(a) as “an *officer or employee*... who is retained, designated, appointed, or employed” by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. SGEs are Government employees for purposes of certain conflict of interest laws.⁷

OGE examined the ethics training and financial disclosure services provided to SGEs. Additionally, OGE evaluated FEMA’s processes and procedures for identifying and tracking SGEs. OGE concludes that the ethics services provided to SGEs should be improved. OGE found that FEMA provided committee SGE members with ethics training that met the applicable requirements. However, OGE found that many of the confidential reports filed by committee SGE members in 2012 were not certified by ethics officials. Additionally, FEMA has not determined whether Reservists are SGEs.

FACA Committee SGEs

FEMA charters and maintains two active advisory committees: the National Advisory Council (Council) and the Board of Visitors for the National Fire Academy (Board). The Council advises the FEMA Administrator on all aspects of emergency management. The Board advises the Administrator regarding the operations of the National Fire Academy. The Ethics Division is responsible for providing ethics services to both advisory committees. Pursuant to 18 U.S.C. § 202(a), and the committee’s charters, Ethics Division officials determined that 14 advisory committee members serving on the Council and all those serving on the Board are SGEs.

SGEs file new entrant confidential reports upon nomination and subsequently file new entrant confidential reports each year thereafter on a date established by FEMA for each committee. Reports are submitted by potential committee members and collected by each committee’s Designated Federal Officer (DFO).⁸ The DFO then forwards the financial disclosure reports to the Ethics Division’s for review and certification. OGE examined 12 confidential reports

⁷ See *DAEOgram DO-00-003A* and OGE’s informal Advisory Memoranda 82 x 21, 82 x 22, and 00x 1, and *DAEOgram DO-04-022*.

⁸ A Designated Federal Officer or employee of the Federal government chairs or sits in attendance of each advisory committee and is so designated and authorized, whenever she/he determines it to be in the public interest, to adjourn any such meeting. The law further requires that no advisory committee shall conduct any meeting in the absence of that officer or employee.

required to be filed in 2012 by Council members and 8 confidential reports that were required to be filed by Board members in 2012.

OGE found technical weaknesses in the completion of the confidential financial disclosure reports. For example, ethics officials did not note on reports the date they were filed. To estimate timeliness of filing, OGE reviewers used the dates filers indicated they signed the reports as the dates of filing. OGE found that all the reports for members of both committees were filed before their respective committees' first meeting of fiscal year 2013. OGE also found that ethics officials reviewed and certified the majority of the Board members' reports timely. However, of the reports filed by members of the Council, only one was reviewed and certified by ethics officials. OGE recommends that FEMA certify all uncertified reports for committee members. OGE also recommends FEMA ensure that all confidential reports are reviewed and certified by ethics officials within 60 days of filing and before a committee's first meeting.

OGE also noticed that many SGEs serving multiple-year terms marked the "incumbent" box, indicating they were filing an annual report. This is a very common mistake. SGEs are required to file new entrant confidential reports every time they file. The distinction is important because the type of report filed determines both the content of the report and the period covered by the report. Incumbent reports cover the previous calendar year. OGE reminds FEMA to instruct all SGEs to check the "new entrant" box on their financial disclosure reports and observe the proper reporting period.

OGE determined that ethics training is provided to the members when they first come on board and annually thereafter in accordance with 5 C.F.R. § 2638.703 and § 2638.705. Ethics training for SGEs is provided in-person by the Senior Ethics Attorney and an adjunct counselor during the first meeting held by each advisory committee. As part of this training, the Senior Ethics attorney and an adjunct counselor provide a presentation which includes an overview of the conflict-of-interest statutes and ethics regulations and how they apply to SGEs. Both advisory committees active for 2012 had received the required training.

Recommendations

- Certify all uncertified SGE confidential reports required to be filed in 2012.
- Ensure that all SGE confidential reports are reviewed and certified within 60 days of their submission and before the filer's first committee meeting each fiscal year.
- Ensure that reappointed SGEs mark the "new entrant" box on their confidential financial disclosure reports and complete their reports accordingly.

Experts and Consultants

FEMA has also identified five experts/consultants as SGEs. FEMA refers to three of these experts/consultants as private sector representatives. The representatives assist FEMA in planning for disaster recovery and relief efforts for future storms. These individuals receive 90-day appointments. New representatives are appointed each year.

OGE inquired about the SGE status of the representatives. Usually the term “representatives” is used for individuals who are not SGEs because they represent to the Government the views of outside groups and or entities. FEMA explained that the representatives are hired by the Office of External Affairs pursuant to the Stafford Act. FEMA also indicated that these individuals are not hired to advocate for a particular industry or group. Rather, FEMA utilizes their knowledge and experience in private sector emergency management.

All five of the experts/consultants filed confidential financial disclosure reports in 2012. Four of the five SGEs received ethics training in 2012. OGE reminds FEMA to ensure that all SGEs, including experts/and consultants, receive ethics training.

Recommendation

- Ensure that all SGEs, including experts/and consultants, receive ethics training.

Reservists

In 2012, FEMA ended its DAE program and implemented the FEMA Reservist Program.⁹ As previously noted, Reservists are nonpermanent, excepted service Federal employees who work on an on-call, intermittent basis and form the major workforce for FEMA in times of emergency or disaster. Reservists help complete FEMA’s mission by staffing Joint Field Offices (JFOs) and Disaster Recovery Centers (DRC), interviewing disaster victims, conducting and verifying damage assessments, providing administrative, financial, and logistical support and performing a wide variety of other tasks based on staffing and operational requirements. Reservists are managed by Reservist Program Managers (RPMs) from FEMA Headquarters. Reservists work with minimal supervision under national or regional cadres that focus on different functions such as administration, contracting and acquisitions, finance, individual assistance, and logistics. Some examples of the positions that Reservists hold are: contracting officer’s technical representative specialist, supply specialist, and funds control specialist.

Because of the “sporadic nature of disasters,” opportunities for work are limited and Reservists are advised to consider the potential income from this work as intermittent. Therefore, OGE believes that it is likely that many Reservists perform work for FEMA for not more than 130 days during any period of 365 consecutive days. OGE inquired about the employment status of Reservists. FEMA has not designated the Reservists as SGEs. FEMA officials had different opinions about the risk associated with the reservist positions. For example, the Director of Risk Management and Compliance indicated that the Reservists do not manage large warrants or contracts and therefore the risk for ethics violations is low. However, ethics officials noted that Reservists working in the field deal with contracts and prohibited sources, which could give rise to inadvertent or intentional ethics violations. Ethics officials noted that under the DHS proposed supplemental regulations, Reservists would be prohibited from engaging in outside employment with any FEMA contractors. Ethics officials expect this would mitigate some of the potential for violations of ethics rules.

⁹ See FEMA Directive 010-6.

OGE learned that some Reservists filed confidential disclosure reports in 2012 because they performed functions that met the criteria for determining who should be required to file. Ethics officials explained that until 2012, under its DAE program, DAEs (now Reservists) were managed from the Regions. Therefore, the Ethics Division relied on the Regions to identify DAEs who needed to file confidential reports. Regional Counsels collected these reports, reviewed them, and retained them at their respective regional offices.

Now, as noted, Reservists are managed by RPMs. Ethics officials explained that they do not have a system in place yet to identify Reservist who should file confidential reports. Ethics officials are planning to meet with the RPMs to discuss ways to provide ethics training to Reservists, to identify positions whose incumbents should file confidential reports, and to collect, review, and certify the required confidential reports. The Deputy Counselor has since attended a conference call with all RPMs and briefed them on ethics training requirements. The Deputy Counselor will be working with the Reservist Program representatives to include the required initial ethics orientation materials to all on-boarding reservists.

Given the unique circumstances of the Reservists' employment with FEMA, OGE recommends that FEMA make a formal determination as to the status of the Reservists based on the provisions of 18 U.S.C. §202(a). Also, while determining if an employee should file a confidential report is at the agency's discretion, based on specific regulatory guidelines published by OGE and found at 5 C.F.R. § 2634.904(a), OGE suggests ethics officials review the confidential filing requirements to determine if any reservist positions meet the confidential filing criteria and document their analysis. OGE stands ready to assist FEMA in this endeavor through OGE's Desk Officer for DHS.

Since Reservists' work assignments are often sporadic and at unpredictable locations, it may be difficult to ensure that the confidential disclosure reports from Reservists are timely filed, reviewed and certified. It may also be difficult to anticipate the potential conflicts of interest for a reservist. Therefore, OGE suggested the use of an agency-specific form for the Reservists based on 5 C.F.R. § 2634.905(a). With the prior written approval of OGE, an agency may use an alternative procedure in lieu of filing the OGE Form 450 or OGE Optional Form 450-A. The alternative procedure may be an agency-specific form to be filed in place thereof. An agency must submit for approval a description of its proposed alternative procedure to OGE. OGE can assist FEMA in this endeavor.

Recommendations

- Make a formal determination as to the status of the Reservists based on the provisions of 18 U.S.C. §202(a).
- Document FEMA's review and analysis of the confidential filing criteria to identify any reservist positions that may meet the criteria and share findings with appropriate officials to help ensure accurate and timely identification of filers.

Suggestion

- Consider seeking OGE approval for use of an agency-specific form for the Reservists based on 5 C.F.R. § 2634.905(a).

1353 Travel Acceptance

Federal agencies may allow 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 C.F.R. 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.

FEMA allows its employees to accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel. The authority to approve the acceptance of these types of payments rests with heads of FEMA Directorates, Offices and Regional Administrators. Employees who seek approval under this authority are required to complete the FEMA-Form 122-1-1 International Travel/Project Analysis and Approval or FEMA 122-1-2, Widely Attended Gathering (WAG)/Gift of Third Party Travel/Official Participation Questionnaire, as applicable. The ethics specialist conducts a technical review of the forms. The DC or an adjunct counselor then reviews each offer to ensure that it is free from conflict-of-interest concerns and in compliance with §1353.

To meet the semiannual reporting requirement, the ethics specialist compiles all forms and forwards them to the DHS's Office of the Chief Financial Officer who is responsible for compiling the information to be reported from all DHS components, drafting the semiannual report of payments of more than \$250 per event, and forwarding it to OGE. OGE examined DHS's (incorporating FEMA's) two most recent semiannual reports, covering April 1, 2012 through September 30, 2012 and October 1, 2011 through March 31, 2012, and identified 19 and 30 payments had been accepted, respectively. OGE determined that both reports had been submitted to OGE in a timely manner.

Agency Comments

We appreciate the U.S. Office of Government Ethics' (OGE) thorough and thoughtful review of our Federal Emergency Management Agency (FEMA) ethics program. We agree with all of the recommendations in the OGE Ethics Program Review Report, and will work diligently to make the recommended improvements to our program.

At FEMA, presence is a mission. To that end, over the past three years, FEMA's Office of Chief Counsel (OCC) completely overhauled its ethics program to build the capability to deliver ethics advice and counsel on-demand from coast to coast. Whereas FEMA once had a single ethics attorney, it now has 45 trained, certified ethics counselors. This includes ethics counselors in every FEMA Regional Office, on the Deployable Field Counsel teams that staff Joint Field

Offices, and on FEMA's Incident Management Assistance Teams (IMATs) responsible for responding in the immediate aftermaths of disasters. In addition, FEMA OCC has assigned ethics counselors to every major FEMA Directorate, co-locating many of the counselors with their clients. These counselors are not only certified to provide ethics advice but they are also subject matters experts in their clients' areas of practice. As a result, we have significantly improved the ethics program's ability to provide timely and accurate ethics advice to our employees and to engage clients proactively to issue spot and educate in a manner that prevents ethics violations from occurring.

This increase in resources devoted to ethics advice and counsel was made possible by a robust ethics counselor training and certification program, recognized as a "model practice" by OGE. We continue to refine this program to ensure that ethics counselors receive rigorous and regular training. In 2013, OCC designated an ethics attorney to focus solely on ethics training matters for ethics counselors, covered employees, and agency employees at large. As part of this effort, we will continue to develop innovative, accessible, and widely available training, such as the pocket-sized FEMA ethics guide and ethics podcasts. We are proud of these efforts and the results they have produced, and we are grateful to OGE for acknowledging them in the Program Review Report.

We also appreciate OGE's recommendations regarding our financial disclosure program, the development of reliable tracking and reporting systems, and the establishment of clear agency ethics protocols. The following briefly outlines actions, some of which are already underway, to comply with the recommendations and improve the administration of the ethics program at FEMA.

Improving and Formalizing Financial Disclosure Program Policies and Procedures

In terms of financial disclosure, our next priority is to draft and implement procedures to achieve compliance for our 2013 public and confidential reports, including special government employees (SGEs) and Intergovernmental Personnel Act employees (IPAs). We have met with representatives from the Department of Homeland Security's (DHS) Office of the General Counsel (OGC) Ethics Division to discuss ways to improve the administration of our financial disclosure program. Specifically, we have adopted DHS OGC's confidential filer database, which tracks filing and ethics training, as a template for developing our own database. We will also draft financial disclosure procedures that will follow DHS's approach to improve timely filing and provide a mechanism for enforcement, and explore the possibility of distributing confidential report review and certification responsibilities among our cadre of ethics counselors and other trained staff. We also intend to utilize guidance from OGE to reassess which FEMA positions should file confidential financial disclosure reports going forward. As time and resources permit, we will work diligently to certify uncertified public and confidential reports filed in 2011 and 2012.

As underscored in OGE's report, we agree that our Office of the Chief Component Human Capital Officer (OCCHCO) must play a significant role in the timely identification of new employees and new entrant filers to the ethics program. Per OGE's recommendation, we are reengaging with OCCHCO to initiate systematic changes to ensure that we receive this information. As a first step, the ethics program has requested that OCCHCO provide bi-weekly

lists of all new employees, which will include each employee's position. These lists will enable the ethics program to ensure that all new employees receive initial ethics training. The ethics program also will use these lists to identify and confirm new employees who enter positions requiring a financial disclosure report. Similarly, we will work with OCCHCO to develop a process by which the ethics program is informed when SGEs and IPAs enter and depart the agency.

Improving Tracking and Accountability for Required Annual Ethics Training

We have developed and implemented an action plan to verify that all covered employees receive annual ethics training by the end of 2013. This plan leverages the capabilities of our existing on-line training platform, the FEMA Employee Knowledge Center (FEKC), to both deliver and effectively track required training for all confidential and public filers. In addition, it facilitates our implementation of the Administrator's requirement that all FEMA employees receive yearly ethics training.

For 2013, FEKC houses three separate video training portals for: 1) confidential filers; 2) public filers; and 3) all other employees. By assigning and directing FEMA employees to the appropriate portal, the FEMA ethics program can utilize FEKC to track and create reports of employees who have completed ethics training in each of the three categories. Further, this functionality will allow us to track and segregate training for covered employees required by 5 C.F.R. § 2638.704 from agency-mandated training.

Classification of FEMA Employees for Ethics Program Purposes

FEMA is an expeditionary agency dedicated to assisting disaster survivors when they are most in need. To this end, in 2012 FEMA stood up its Reservist Program, with the operational goal of building and sustaining a robust, well-trained, deployable, and available corps of Reservists who can focus on the needs of disaster survivors and their communities. Reservists receive non-competitive, temporary appointments under the authority of Section 306 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. This unique employment authority allows FEMA to surge its workforce when the demands of a disaster require additional personnel, and to ratchet down active Reservist levels as the need subsides.

As the Reservist Program continues to refine its program processes, FEMA OCC will ensure that 1) the agency makes a formal determination as to the status of Reservists based on the provisions of 18 U.S.C. § 202(a) and 2) the appropriate ethics training and financial disclosure requirements and procedures are included in the new program guidance.

We look forward to working with OGE to address the report's recommendations and improve FEMA's ethics program. We will provide OGE with regular updates on our plans and progress in closing out the recommendations.