



February 18, 2004

Anna L. Wolgast
Designated Agency Ethics Official
Environmental Protection Agency
Mail Stop 2310A
Ariel Rios Building North
Room 4000 A
Washington, DC 20460

Dear Ms. Wolgast:

The Office of Government Ethics (OGE) recently completed a review of the Environmental Protection Agency's (EPA) ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objective was to determine the program's compliance with applicable laws and regulations. We also evaluated EPA's systems and procedures for ensuring that ethics violations do not occur. The review was conducted from September 2003 through January 2004. The following is a summary of our findings.

SCOPE OF REVIEW

Based on the results of our pre-review, including several discussions with EPA ethics officials, this review focused primarily on the public financial disclosure system and the overall administration of the ethics program for EPA's Federal advisory committees. However, the latter part of the report details our findings with regard to selected other elements of the ethics program, particularly those that are especially noteworthy and exceed minimum requirements.

HIGHLIGHTS

Our review of EPA's public financial disclosure system and the program for its Federal advisory committees revealed that vast improvements have been made to both program elements since the Alternate Designated Agency Ethics Official (ADAEEO) assumed his position in 2001. All previously uncertified public reports have now been reviewed and certified and several new procedures have been implemented to ensure that all public filers are identified and notified of the filing requirements. Additionally, the development of an alternative confidential financial disclosure system and an improved ethics training program for special Government employee (SGE) members of EPA's Federal advisory committees appear to have corrected previously identified deficiencies in this program element. Finally, various additional best

practices have been implemented which exceed mere compliance with the ethics laws and regulations.

PROGRAM STRUCTURE

In addition to your position as EPA's Principal Deputy General Counsel, you also serve as its Designated Agency Ethics Official (DAEO). The Senior Counsel for Ethics serves as the ADAEO, a position he has held since June 2001. Another attorney, who serves as the Deputy Ethics Official (DEO) for the Office of the General Counsel (OGC), is also involved in the overall administration of the ethics program EPA-wide.¹

In addition to the ethics office, there are more than 150 DEOs, who are responsible for the day-to-day administration of the program at EPA's various program and regional offices. These DEOs often receive support from assistants in carrying out their ethics responsibilities. At the regional level, there are two DEOs for each region, one of whom is typically the Regional Counsel.

PUBLIC FINANCIAL DISCLOSURE SYSTEM

During our pre-review discussions in August 2003, the ADAEO conceded that upon entering his position in June 2001, he was confronted with stacks of uncertified SF 278s.² Moreover, he stated that EPA had not previously compiled an accurate master list of employees required to file public reports. Therefore, at that time he was unable to determine if all appropriate employees were filing.

According to the ADAEO, a major shortcoming in the public system was inadequate support from EPA's personnel office, which had been remiss in identifying employees required to file public reports, notifying them of the filing requirement, and compiling and maintaining an accurate master list of these employees. At the time of our pre-review discussions, the ADAEO stated that the OGC DEO was focusing solely on identifying public filers and developing an accurate and up-to-date master list. In addition, the ADAEO was working with personnel to develop a system to consistently identify public filers and notify them of the filing requirement. He was also developing a checklist for departing employees which would require them, among other things, to meet with him prior to their departure so that he could ensure they were aware of the termination public filing requirement. Any departing employees who do not complete all the tasks required by the checklist would not receive their final paycheck.

Finally, the ADAEO stated that prior to beginning his tenure at EPA, employees occupying "administratively determined" positions, i.e., positions exempt from competitive

¹For simplicity, you, the ADAEO, and the OGC DEO will be collectively referred to as the "ethics office" throughout this report.

²The ADAEO and OGC DEO have since reviewed and certified all of the reports.

service, had not been filing public reports. He added that employees were often detailed to or hired into covered public filing positions in an acting capacity for extended periods of time. Because of their "acting" status, EPA had not been requiring them to file reports.³

Results Of Our Review

Since our initial discussions with the ADAEO during the pre-review, several improvements have been made to the public financial disclosure system.

First, revised procedures have been established by the ethics office to improve the overall management of the public system. The ethics office worked closely with the personnel office to establish a system to ensure that all employees required to file public financial disclosure reports are aware of the new entrant, annual, and termination filing requirements.

Under the revised procedures, employees entering a covered position are informed of the new entrant filing requirements during an in-person entry briefing. Additionally, individuals detailed into a public filing position are informed that if they are being detailed for more than 60 days, they are required to file a public report within 30 days of entering into the position.

As previously mentioned, the ethics office is also working with personnel to revise the EPA check-out procedures so individuals who are leaving a public filing position are required to check a box on the departing employee checklist indicating that they have been informed that they are required to file a termination report within 30 days.

Additionally, the ethics office has compiled an accurate master list of public filers. With monthly input from the personnel office, the White House, and both headquarters and regional DEOs, the ethics office is now able to update this list on a continual basis. The list of filers is on a computer database enabling the ethics office to easily identify which filers are part of which organization within EPA.

To evaluate the public system, we examined all 10 of the incumbent reports required to be filed in 2002 by Presidentially-appointed, Senate-confirmed (PAS) employees. All of these reports were filed timely, including any filing extensions, and were forwarded shortly after being reviewed and certified at EPA. However, four reports appeared to have been reviewed and certified more than 60 days after being filed.

³In accordance with 5 C.F.R. § 2634.201(a), an employee who performs the duties of a covered position for a period in excess of 60 days in any given calendar year must file a public report.

We also examined 115 of the approximately 475 non-PAS public reports required to be filed from 2002 to the time of our review. Almost all of the reports we examined (108) were filed timely, including any filing extensions. However, 43 of the 115 reports appeared to have been reviewed and certified more than 60 days after being filed.

The ADAEO asserted that the vast majority of the public reports we examined had received an initial review within the allotted 60 days, but the initial review date simply was not indicated on the reports. We suggested that in the future efforts should be made to annotate the reports with the date on which the initial review is conducted.

FEDERAL ADVISORY COMMITTEES

In 2001, the General Accounting Office (GAO) issued a report expressing concerns about the ethics training provided to SGE members of EPA's Federal advisory committees as well as concerns regarding the financial disclosures of these members. In response to that report, the ethics office has taken several steps to improve the SGE ethics training program and financial disclosure system.

Ethics Training

To address GAO's concerns regarding the ethics training provided to SGE advisory committee members, the ethics office, with the invaluable assistance of an ethics advisor from EPA's Science Advisory Board (SAB), developed specialized ethics training for these SGEs. This training is available on a CD ROM and is also available on EPA's intranet ethics Web site.

The training is divided into six major topics: conflict of interest; misuse of information; Hatch Act; gifts and outside teaching, speaking, and writing; post-employment restrictions; and financial disclosure. Summaries of each topic include a brief explanation, definitions of important terms, and real-world examples pertinent to EPA SGEs. Certain topic summaries also provide links to more detailed relevant information like EPA ethics advisories, GAO reports, and information on Hatch Act restrictions. The summaries are followed by short quizzes that test the user's understanding of the information presented. The training also includes the OGE video "The Ethical Choice." Upon completion of the training course, each user receives a certificate that confirms they have completed the training.

In addition to the computerized training, an in-person ethics briefing is routinely presented by the ADAEO prior to the start of a committee meeting. The ethics office also provides live training from time to time to SGE committee members at the request of the individual committees.

Financial Disclosure

In response to the GAO report, the ethics office worked with the SAB and other EPA advisory committees, as well as OGE, to develop an alternative confidential financial disclosure

form to be filed by SGE advisory committee members in lieu of the OGE Form 450. This form, the EPA Form 3110-48, is much more detailed than the OGE Form 450 and requires the disclosure of all information necessary for EPA ethics officials to make determinations regarding possible conflicts of interest. According to the ADAEO, this has proven extremely helpful in ensuring that conflict issues are identified early in the process and resolved before the committee meets.

To evaluate this new system, we examined its administration at two EPA advisory committees, the SAB and the Scientific Advisory Panel (SAP). This review included discussions with officials from both committees and an examination of a sample of the alternative confidential reports filed by committee members.

SAB Results

According to SAB officials, the use of the EPA Form 3110-48 has resulted in the collection of more detailed, timely, and relevant information from current and potential members. This information has enabled the SAB Staff Office to make more informed decisions when considering individuals to engage in a new advisory activity.⁴

While the SAB Staff Office appears to be generally satisfied with its experience with the Form 3110-48, the form has presented some new challenges. The use of the form has increased the paperwork burden on the SAB and the Staff Office. Additionally, the form has increased the amount of review work required of the SAB Staff Office because of the need to collect and review multiple submissions and updates of the form from the same person. To alleviate some of this burden, the SAB Staff Office is considering, among other things, the development of an electronically filable version of the Form 3110-48 and a "short form" containing only Sections 1 and 9 that could be used by filers if there are not reportable changes from their previously filed Form 3110-48.

We examined Forms 3110-48 and updates filed in 2002 and 2003 by 56 of the approximately 100 SAB members. Based on our examination of the forms and associated updates, we conclude that they were filed, reviewed, and certified in compliance with the procedures developed by SAB and approved by OGE.

⁴ A new advisory activity is defined as a new panel or change in a panel's charge or review such that there exists a high probability of issues concerning conflicts of interest (as defined under 18 U.S.C. § 208) or an appearance of lack of impartiality (as defined under 5 C.F.R. § 2635.502) that were not considered under the initial ethics review of potential panelists. An update to a previously filed Form 3110-48 is required every time an SGE is to engage in a new advisory activity.

SAP Results

The SAP also requires the filing of the EPA Form 3110-48, from both full-time and ad hoc (consultant) SGE members. As with the SAB, SAP administrative officials found the Form 3110-48 to elicit more relevant and useful information than the OGE Form 450. The SAP officials added that the form has been extremely helpful not only in identifying actual conflicts for potential members, but also in identifying potential appearances of conflict, about which the panel is extremely sensitive.

We examined all of the Forms 3110-48 and associated updates filed in 2003 by the 7 full-time SAP members and a sample of 20 forms and updates filed in 2002 and 2003 by ad hoc members. As with the SAB, we found the forms and updates to be filed, reviewed, and certified in compliance with the procedures developed by SAB and approved by OGE.

BEST PRACTICES

During our review we were impressed with the ethics office's efforts to not only meet the applicable requirements, but to exceed mere compliance with the ethics laws and regulations. Notably, the ethics office has computerized many portions of its ethics program. This use of technology facilitates a more efficient use of ethics officials' time and resources. It also ensures uniform procedures for certain portions of the program EPA-wide, which is a critical element in effectively administering a geographically dispersed and decentralized program. To ensure the consistent management of the ethics program throughout EPA, the ethics office also conducts routine meetings with headquarters and regional DEOs to keep them continuously informed of ethics issues and requirements. Finally, EPA has formalized many of its ethics-related processes in the form of written directives and policy handbooks, further ensuring that the program is administered uniformly throughout the agency. We commend EPA for initiating and implementing the following practices for the overall good of the program.

Ethics "Knowledge Base"

The practice of the ethics office, and its expectations for DEOs, is that advice is rendered in writing whenever possible, primarily through the use of e-mail. The e-mail advice is recorded and saved in EPA's computerized ethics "knowledge base" which is accessible to all members of the ethics office. The knowledge base is divided into sections by subject matter, and the advice is organized by date. This collection of advice serves as an invaluable resource for ethics officials when responding to ethics-related questions and helps to ensure that consistent advice is provided.

Ethics Web Site

EPA uses its intranet ethics Web site to keep its ethics program visible and to communicate with employees EPA-wide. The ethics office, in collaboration with the OGC law librarian, recently launched a new version of the site, which was originally developed in the late

1990s. This site serves as a one-stop resource for ethics guidance memoranda, answers to frequently asked questions, and access to financial disclosure forms and computer-based training courses. The site also includes a monthly ethics newsletter.

Training Tracking System

EPA has developed a computerized ethics training database to track employee completion of its on-line training modules. The database contains the names of all employees who have completed one of the training modules, as well as the time and date on which they completed it. When employees submit the on-line training certification upon completing one of the training modules, the database is automatically updated. This tracking system enables the ethics office and DEOs EPA-wide to monitor the completion of the training requirement in real time.

Computerized System For Accepting Gifts Of Travel From Non-Federal Sources Under 31 U.S.C. § 1353

Given the large number of scientists in its employ, EPA receives frequent requests from non-Federal sources offering to pay for travel and related expenses for scientists' attendance at meetings and similar functions under 31 U.S.C. § 1353. To streamline the approval process for these types of offers, the ethics office uses a computerized system for approving the acceptance of payments from non-Federal sources for travel by EPA employees.

A computerized form, EPA Form 2610-3, is accessible to all employees through the EPA intranet, and, upon completion, it is automatically forwarded to the ethics office for approval. In all cases, the travel is approved either by the ADAEO or the OGC DEO, usually within 24 hours. The results of these approvals are then placed in a database which permits easy compilation of the semiannual reports required to be sent to OGE.

The ethics office is hopeful that within the next several months, all of the forms will be initially reviewed by the appropriate DEO, who is most familiar with the traveling employee's duties and thus best able to identify potential conflicts with the source, before the form is submitted to the ethics office for final approval.

On-line Process For Widely Attended Gatherings

The ethics office is working with EPA information technology personnel to create an on-line process to consider requests by EPA employees to attend events using the widely attended gatherings (WAG) exception to the gift acceptance prohibitions at subpart B of 5 C.F.R. part 2635. A form is being developed, similar to the EPA online travel request form, on which employees will answer questions such as whether there is a gift of free attendance, whether other gifts are offered, such as travel expenses, lodging, or entertainment collateral to the event or

meals, and whether it is a widely attended gathering of mutual interest to a number of parties. Once the form is completed by the employee and submitted, it will automatically go to the appropriate DEO for review and determination of agency interest. Once a decision is made by the DEO, the employee will be informed electronically.

Efforts To Ensure Consistent Program Management

To foster consistent lines of communication and consistent management of EPA's ethics program, a small headquarters ethics group was formed in September 2002, consisting of experienced ethics officials from each of EPA's 14 program offices, including the Office of Inspector General. This group meets monthly to discuss ethics issues that have arisen in the various offices and to receive updates from the ethics office.

In addition, monthly conference calls with the regional DEOs have also been initiated. These calls, which typically last about one hour, provide an opportunity for the ethics office to explain and discuss new developments and issues of importance to the regions. The agendas used for the regional conference calls are similar to those used for the headquarters ethics group meetings.

Finally, the ethics office organizes and manages an EPA-wide ethics conference for ethics officials which is held every two years. More than 150 ethics officials from both headquarters and the regions attend these conferences.

Office of Cooperative Environmental Research

During our review, we met with representatives from EPA's Office of Cooperative Environmental Research (OCEM). This office, in addition to managing four of EPA's advisory committees, provides policy, coordination, oversight, advice, and technical assistance for the EPA-wide committee management program.

At the time of our review, OCEM had just completed a usable draft version of the Federal Advisory Committee Handbook and the Membership Package Submission Instruction Guide. The purpose of these materials is to provide general guidance and to serve as a source of reference for Designated Federal Officers (DFO) EPA-wide.

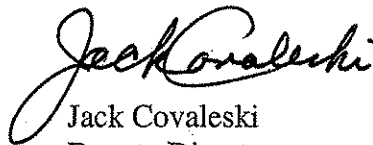
The responsibilities of a DFO include, among other things, approving committee meetings in advance, approving meeting agendas, recommending which meetings should be closed to the public, and ensuring that detailed minutes are kept for each committee meeting. The Federal Advisory Committee Handbook provides detailed explanations and examples to assist the DFOs with these responsibilities.

Additionally, DFOs are responsible for preparing the official submission folder (membership package) necessary to appoint members to EPA's advisory committees. OCEM officials stated that several DFOs had voiced a need for a standardized submission process. The Membership Package Submission Instruction Guide was developed specifically for this purpose. The guide was designed not only for current DFOs, but also with new DFOs in mind, thus being purposely very detailed. In addition to standardizing the submission process, the guide contains template letters and memoranda, as well as samples of various forms used by DFOs.

We commend the OCEM officials for their proactive approach to providing DFOs standardized guidance for carrying out their committee management responsibilities and helping to ensure the management of the committees is consistently administered.

In closing, I would like to thank you for your efforts on behalf of EPA'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 EPA's Inspector General via transmittal letter. Please contact Dale Christopher at 202-482-9224 if we may be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs



February 18, 2004

Nikki L. Tinsley
Inspector General
Environmental Protection Agency
1200 Pennsylvania Avenue, NW.
Washington DC, 20460-0001

Dear Ms. Tinsley:

The Office of Government Ethics recently completed a review of the Environmental Protection Agency's (EPA) ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objective was to determine the program's compliance with applicable laws and regulations. We also evaluated EPA's systems and procedures for ensuring that ethics violations do not occur.

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I have enclosed a copy of the report for your information. Please call me at 202-482-9220 if I may be of assistance.

Sincerely,

A handwritten signature in black ink that reads 'Jack Covaleski'.

Jack Covaleski
Deputy Director
Office of Agency Programs

Enclosure