



July 22, 2004

Dev Jagadesan  
Designated Agency Ethics Official  
Overseas Private Investment Corporation  
1100 New York Avenue, NW.  
12<sup>th</sup> Floor  
Washington, DC 20527

Dear Mr Jagadesan

The Office of Government Ethics (OGE) has completed its review of the Overseas Private Investment Corporation's (OPIC) ethics program. The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Ethics Act). Our objective was to determine the program's compliance with applicable laws and regulations. We also evaluated OPIC's systems and procedures for ensuring that ethics violations do not occur. This review was conducted in May and June 2004.

#### HIGHLIGHTS

We are primarily concerned that ethics officials are not properly reviewing public and confidential reports for conflicts of interest in accordance with 5 C.F.R. § 2634.605. Instead, you have been relying on filers to identify conflicts under a method that does not satisfy OGE's requirements. Moreover, we question ethics officials' ability to certify reports given that they do not conduct conflict of interest reviews. Consequently, confidential reports must be reviewed for conflicts, beginning with those due from incumbents by October 31, 2004. Concerning public reports, you advised us that most of the improperly reviewed reports filed by incumbents in May 2004 have now been re-reviewed for conflicts and none were detected. A few reports remained to be recertified as you were awaiting additional information from filers.

We are satisfied that other parts of your ethics program are meeting our regulatory requirements. However, we discussed with you (and this report contains) several suggestions for improving some of your program's administrative procedures. As the newly appointed Designated Agency Ethics Official (DAEO), we encourage you to adopt our suggestions. In addition, we suggest that you take advantage of future OGE training and conferences to enhance your understanding of the executive branch ethics program.

## PROGRAM STRUCTURE

The current staffing level for the ethics program appears appropriate given the agency's size, organizational structure, and mission. The Deputy General Counsel held the DAEO position at the start of our review. However, on June 1, you were appointed DAEO and, in your capacity as an Associate General Counsel, you now manage the ethics program for the approximately 200 OPIC employees located in Washington, DC. A Senior Counsel for Administrative Law serves as Alternate DAEO (ADAEO) and has held this position for less than two years. He administers the program on a day-to-day basis. Another attorney has recently been appointed to serve as a Deputy Ethics Official. In addition, two administrative support staff members provide program support.

## BOARD OF DIRECTORS

OPIC's Board of Directors (Board) consists of 15 members, 8 from the private sector and 7 from the Federal Government, all of whom are appointed by the President and confirmed by the Senate (PAS employees).<sup>1</sup> All private sector members are special Government employees (SGE) who file SF 278 reports upon nomination and subsequently file confidential financial disclosure reports.<sup>2</sup>

The Board meets four times per year, provides policy guidance to OPIC, and approves all major insurance, finance, and investment projects. We found that ethics officials are thoroughly reviewing private sector Board members' financial disclosure reports for conflicts prior to each meeting. Based on the ADAEO's description of this effort, in addition to the documented procedures we examined, we are satisfied ethics officials' reviews help to ensure that conflicts are detected and prevented. However, we are still concerned about the process used for detecting and preventing conflicts on the part of Board members who are PAS employees from other Federal agencies. As our 1998 report suggested, we believe that ethics officials should be reviewing copies of members' financial disclosure reports prior to their attendance at meetings. When we last met, you told us that you intend to review reports, but are deliberating on the process to use to accomplish this.

## FINANCIAL DISCLOSURE SYSTEMS

Our most serious concern is that the financial disclosure reports, other than those filed by PAS employees, were not being reviewed in accordance with 5 C.F.R. §§ 2634.605 and 2634.909(a). While reports were being reviewed for technical completeness and accuracy, they were not being reviewed for conflicts of interest. The longstanding practice at OPIC has been

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<sup>1</sup>One of the Federal Government Board members, OPIC's President and Chief Executive Officer, is a full-time PAS employee of OPIC. OPIC's other full-time PAS employee, the Executive Vice-President, is not a Board member.

<sup>2</sup>During the timeframe of our review, one private sector Board position was vacant.

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for filers to determine whether a financial interest would pose a conflict of interest, after which ethics officials certify the reports relying entirely on the filers' determinations. In making these determinations, filers identify any financial interests that conflict with projects on which they are working, submit (along with their financial disclosure report) a signed "recusal memorandum," and, presumably, act accordingly.

This practice is very troublesome to us. As the purpose of OPIC is to promote economic growth in developing countries and emerging markets by encouraging U.S. private investment, OPIC filers interact extensively with U.S. businesses in offering private financing (i.e., direct loans and guarantees) and political risk insurance to businesses. Most importantly, except for ethics officials' reviews of financial disclosure reports for completeness and accuracy, OPIC is not complying with the provisions in § 2634.605. Under § 2634.605, ethics officials are to be very engaged in the review of filers' financial disclosure reports, including

- determining, to the reviewing officials' satisfaction, that each required item is completed and that no reported financial interest violates any ethics law, Executive order, or regulation (§ 2634.605(b)(1)),
- certifying reports based on a determination that they meet the requirements of subparagraph (b)(1) (§ 2634.605(b)(2)),
- determining whether additional information is needed before certifying reports and requesting and reviewing any additional information (§ 2634.605(b)(3)),
- notifying filers and affording them opportunities to respond, if information disclosed in reports reveals violations (§ 2634.605(b)(4)),
- determining whether remedial action (e.g., divestiture, resignation, qualified blind or diversified trust, waiver, recusal, etc.) is required by filers before certification (§ 2634.605(b)(4)),
- requesting in writing that filers take remedial action (usually within three months of being notified) (§ 2634.605(b)(4) and (5)), and
- certifying reports only after filers have taken requested remedial actions (§ 2634.605(b)(6)(i)).

When we last met, we advised you to stop certifying financial disclosure reports unless our review requirements are met. For public reports, you told us that you had begun to comply with this requirement and that most of the improperly reviewed reports filed by incumbents in May 2004 had already been re-reviewed for conflicts and that you found none. For a few reports you were awaiting follow-up information from filers before recertifying them. Moreover, a few filers were given filing extensions and you had not yet received their reports.

Concerning OGE Form 450 reports, we advised you that beginning with the next incumbent filing timeframe in October 2004, you must ensure that conflict reviews are conducted, unless our Office grants approval for some type of alternative system in lieu of using the OGE Form 450<sup>3</sup> We had several discussions with you concerning the most effective way to detect and prevent financial conflicts at OPIC when using the OGE Form 450 and the option of creating an alternative system in lieu of using the OGE Form 450

In 1998, when we last reviewed OPIC's ethics program, ethics officials indicated that they were conducting conflict reviews Our report stated that ethics officials "use a current list of OPIC clients to identify possible conflicts of interest during the review of financial disclosure reports" However, at that time, ethics officials advised us that they felt their review was insufficient To address this, they instituted an earlier version of what is now the recusal memorandum signed by filers Since it was clear to us that our requirement to review financial disclosure reports was being satisfied, we raised no concerns about the adequacy of the conflict review process at that time

Though we are concerned about ethics officials' lack of conflict reviews, our examination of financial disclosure reports did not detect any actual or apparent conflicts We did question some of the holdings reflected on a sample of both public and confidential reports, but, based on the additional follow-up work conducted by the ADAEO, we are satisfied that none of these holdings presented a conflict In addition, we determined that the administrative aspects of the public and confidential systems appear to work well

### Public System

Approximately 30 public reports were required to be filed in 2003 Our examination of all reports, including reports filed by the previous DAEO and OPIC's two full-time PAS employees (the President and Chief Executive Officer and the Executive Vice President), found that almost all were filed and reviewed timely In addition, it was clear that the review of reports for completeness and accuracy was thorough based on the many corrections and additions made to the reports by the ADAEO

In 2003, for public reports filed by the agency's two full-time PAS employees and the former DAEO, which are required to be transmitted to OGE pursuant to 5 C F R § 2634.602, we found that two of the three were timely transmitted We advised you of the requirement to transmit reports to our Office as soon as they are certified<sup>4</sup>

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<sup>3</sup>For clarification, you are not permitted to suspend the OGE Form 450 filing requirement pending approval of an alternative system

<sup>4</sup>In addition, see DAEOgram DO-04-014, dated June 15, 2004

### Confidential System

We examined a sample of 27 of the approximately 140 confidential reports required to be filed in 2003 and found that almost all were filed and reviewed timely. Similar to our observation about the review of public reports, the ADAEO's review of confidential reports for completeness and accuracy was thorough. We noted many corrections and additions he made to the reports. However, these reports need to be reviewed for conflicts of interest.

### ETHICS AGREEMENTS

We identified four ethics agreements made since 2001, all by PAS employees. We determined that all of the actions required to be taken pursuant to the ethics agreements were completed timely, in accordance with 5 C F R § 2634.802(b). In all but one instance, requisite evidence of action taken was submitted timely to OGE, in accordance with 5 C F R § 2634.804(a).

### ETHICS EDUCATION AND TRAINING

We found that OPIC meets or exceeds many of OGE's ethics education and training requirements. However, we made some suggestions to enhance the education program and clarified some of our regulatory provisions. Though OPIC regularly documents its ethics training plan, we discussed with you the fact that the plan should include a brief description of the agency's annual training, in accordance with 5 C F R § 2638.706(c)(1). We commend OPIC for exceeding our initial ethics orientation requirements based on the fact that in-person briefings are provided to new employees. Concerning annual training, though it appears that all those employees requiring ethics training in 2003 had been trained, we suggest that ethics officials routinely maintain records to reflect that fact. Also, while we found that our training requirements were generally satisfied, we called your attention to our regulation's content requirements at 5 C F R § 2638.704(b).

### Initial Ethics Orientation

We are pleased to find that OPIC exceeds OGE's initial ethics orientation requirements. In addition to new employees receiving required written materials when they in-process through the Human Resources Department, they are also given additional useful ethics-related information. Moreover, all new employees are personally briefed by either you or the ADAEO shortly after they begin work at OPIC. Materials given to new employees include a copy of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), your agency's supplement to the Standards of Conduct, OGE's publication entitled "Do It Right," two ethics-related memorandums, and other OPIC policy documents. While most new employees, including most student interns, are given a personal ethics briefing by the ADAEO, the previous DAEO had assured to us that he personally provided ethics orientation briefings to all new senior officials, including all new PAS employees. You told us that you intend to continue this beneficial practice.

### Annual Ethics Training For Public Filers

The former DAEO stated that he provided in-person verbal ethics training to all of the approximately 30 public filers, including PAS employees, in 2003. He also told us that the training provided to OPIC's two full-time PAS employees was one-on-one, which is a practice we advocate. For other public filers, he explained that in 2003 he provided training while accompanying them on official Government travel by discussing various ethics-related topics that arose at that time. While we expressed our concern about whether the training content requirement, at 5 C F R § 2638 704(b), was met during these "training sessions," the previous DAEO assured us that it was. In addition, we expressed concern that he did not keep records to show that he provided training to all public filers.

The former DAEO also stated that verbal annual ethics training for public filers had already been given in 2004. He met with all filers for two hours in a classroom setting and covered a variety of topics, including the Hatch Act and post-employment issues.

As a new DAEO, we encourage you to ensure that annual ethics training meets our regulation's content requirements. In our discussions with you, we clarified that providing only written material to public filers is not a suitable method to meet the annual training requirements given the fact that the exception at 5 C F R § 2638 704(e)(1) cannot be justified. We also suggested that, as a good management practice, records be maintained to show that public filers were trained. For recording annual training dates for public filers, you may want to annotate the spreadsheet used to track the submission of SF 278s. Similarly, for new public filers, you may also want to record when you provide initial ethics orientation briefings.

### Annual Ethics Training For Nonpublic Filers

The ADAEO confirmed that all nonpublic filers required to receive training in 2003 had done so. Annual training in 2003 for OPIC's approximately 140 confidential filers was primarily accomplished by them completing one of two interactive computer-based training (CBT) modules. Filers were required to provide the ADAEO with electronic certification statements confirming they had completed a training module. Those few who were unable to complete the CBT modules were provided appropriate written materials.

In 2004, the ADAEO stated that he plans to provide in-person training to nonpublic filers covering various ethics-related topics. We attended one training session held in May covering travel-related issues. While the training did incorporate most of our training regulation's content requirements, it did not include a review of OPIC's supplemental regulation or the Federal conflict of interest statutes (5 C F R § 2638 704(b)(3) and (4)). We were told, however, that these requirements were included in a subsequent training session and would be incorporated into future sessions.

## ETHICS COUNSELING AND ADVICE

Ethics counseling and advice services meet the requirements of 5 C F R § 2638 203(b)(7) and (8) While ethics advice is sometimes provided orally, it is often dispensed in written form, usually by e-mail Covering 2003 up to the present, we examined the one and only written determination provided to a PAS employee and also examined a sample of approximately 45 other written determinations provided to other individual employees In addition, we examined a few informational memorandums provided to all employees Overall, we found that the advice and information was accurate and consistent with applicable laws and regulations

We commend the fact that you have instituted several good management practices which enhance your counseling and advice program Those practices include (1) occasional distribution of ethics informational memorandums to all employees, (2) maintaining a useful and informative Intranet ethics Web site (The Compass), and (3) a standardized method to ensure that all departing OPIC employees are given a post-employment briefing and written materials We encourage you to continue these practices

## OUTSIDE EMPLOYMENT

OPIC's supplement to the standards of conduct regulation at 5 C F R part 4301 requires all employees to obtain approval from you before engaging in any outside employment Based on the few examples of the employment authorizations we examined, it appears that employees are, in fact, obtaining prior approval But, we discussed and suggested several administrative-related practices to enhance ethics officials' oversight of those employees who pursue outside employment activities For example (1) consider having supervisors initially review employees' requests for approvals of outside employment prior to your approval,<sup>5</sup> (2) establish some type of cross-checking method to ensure that those outside positions held by employees required to file financial disclosure reports have been appropriately approved and reported, and (3) on a regular basis obtain updated information on employees' outside employment activities

## SPECIAL GOVERNMENT EMPLOYEES

Until recently, OPIC had two types of SGEs its private sector Board members and members of the agency's Africa Investment Advisory Council (Council) However, during the timeframe of our review, we were told that the Council had disbanded Though we found some minor financial disclosure reporting anomalies concerning these SGEs, we believe those issues are now inconsequential

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<sup>5</sup>A supervisor's knowledge of employees' duties and responsibilities could be beneficial in determining whether approval should be granted

For Board members who are SGEs, we found that annual ethics training and financial disclosure requirements are being satisfied. According to the previous DAEO, all private sector Board members received required ethics training in 2003 and 2004. In addition, we found that all four OGE Form 450 reports required to be filed in 2003 were filed and reviewed timely.<sup>6</sup>

## ENFORCEMENT

We could not assess whether you are ensuring that OPIC promptly and effectively deals with those employees who engage in unethical conduct (5 C F R § 2638 203(b)(9)) based on the fact that there have not been any recent alleged violations of the criminal conflict-of-interest laws or the Standards of Conduct. In addition, we could not assess whether information developed by an office of inspector general (OIG) is reviewed by ethics officials or whether OIG services are used as appropriate (5 C F R § 2638 203(b)(11) and (12)), since there have not been any recent instances of use.

The Agency for International Development's (AID) OIG has statutory authority to provide investigative services to OPIC. We were told that if a misconduct issue were to arise, ethics officials would perform their own preliminary investigation before calling upon AID's OIG. Though no conflict of interest matters have been referred to the Department of Justice (DOJ), ethics officials advised us that, if warranted, they would consult with both AID's OIG and OGE prior to making a referral and would concurrently notify OGE of any referral made to DOJ (5 C F R § 2638 603).

## TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

On an occasional basis, OPIC accepts payments for travel, subsistence, and related expenses from non-Federal sources under 31 U S C § 1353. Though we found that the agency has routinely complied with the requirement to timely forward semiannual reports to our Office accounting for those acceptances, we found some reporting inaccuracies. The last three semiannual reports forwarded to our Office (covering the timeframe from October 1, 2002 through March 31, 2004) indicated that OPIC accepted a total of eight payments. However, discussions with the ADAEO revealed that five of the eight acceptances were reported in error. He advised us that he discussed these reporting errors with appropriate OPIC administrative staff and that this should not recur.

Concerning the three remaining payments accepted by OPIC from non-Federal sources for travel, we found that those appeared to have been accepted in accordance with 31 U S C § 1353. We discussed with the ADAEO some of our suggestions to improve and streamline the approval process and other ways to ensure that OGE is properly notified of acceptances under this authority. For example, maintain a "tackler" recordkeeping system to compare approved

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<sup>6</sup>Of the seven active SGE Board members, only four were required to file OGE Forms 450 in 2003.



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acceptances versus actual expense information provided by travelers, and modify the template used by employees requesting agency acceptance of travel expenses to include both the dates of travel and dates of attendance at the related event

## RECOMMENDATIONS

We recommend that you

- 1 Ensure, as necessary, that all public reports filed by incumbents in May 2004 are recertified after completing conflict of interest reviews in accordance with 5 C F R § 2634 605
- 2 Ensure that confidential reports filed by non-PAS employees, starting with those filed by incumbents in October 2004, are reviewed for conflicts of interest in accordance with 5 C F R §§ 2634 605 and 2634 909(a), or gain approval from our Office to use an alternative system in lieu of using the OGE Form 450

In closing, I wish to thank you for all of your efforts on behalf of the ethics program. Please advise me within 60 days of the specific actions planned or taken concerning the recommendations in our report. A follow-up review will be scheduled within six months from the date of this report. In view of the corrective action authority vested with the Director of the Office of Government Ethics under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C F R part 2638, it is important that ethics officials take actions to implement recommendations in a timely manner. Please contact Ilene Cramsky at 202-482-9227 if we can be of further assistance.

Sincerely,

  
Jack Covalesski  
Deputy Director  
Office of Agency Programs

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