



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

August 8, 2003

Robert H. Berry  
Deputy General Counsel and  
Designated Agency Ethics Official  
Defense Intelligence Agency  
Room 2E238  
The Pentagon  
Washington, DC 20301-7400

Dear Mr. Berry:

The Office of Government Ethics (OGE) has completed its review of the Defense Intelligence Agency's (DIA) 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 ethics program's effectiveness, measured by its compliance with applicable statutes and regulations. The review was conducted intermittently from October 2002 through April 2003.

#### HIGHLIGHTS

Substantial effort will need to be expended to bring the DIA ethics program into full compliance with ethics requirements. Deficiencies were revealed in ethics education and training, financial disclosure, and the administration of the ethics program for special Government employees (SGE) serving on DIA advisory committees.

Not all covered employees, including SGEs, were receiving annual ethics training and not all new employees were receiving initial ethics orientation (IEO). Moreover, not all required ethics materials and information were being provided.

Accurate master lists of financial disclosure filers, including SGEs, were not being maintained, current editions of the public and confidential reporting forms were not being used, and reports were not being reviewed and certified in accordance with the Department of Defense (DOD) Joint Ethics Regulation (JER). New entrant confidential financial disclosure reports were not being filed timely, some confidential reports had not been certified, and SGEs were filing annual rather than new entrant confidential reports.

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#### ADMINISTRATION OF THE ETHICS PROGRAM

You currently serve as the DIA Designated Agency Ethics Official (DAEO) and the Assistant General Counsel is the Deputy DAEO (DDAEO). At the time of our program review the DDAEO was the primary ethics person for DIA and responsible for the day-to-day management of the entire DIA ethics program. The DDAEO advised us that she spends 50% of her time on the DIA ethics program

#### EDUCATION AND TRAINING

Most employees required by subpart G of 5 C.F.R. part 2638 to receive annual ethics training in 2001 did not receive training. Moreover, not all employees required by subpart G to receive IEO were receiving it, nor were all required ethics materials being provided to employees who did receive IEO. In view of the importance of ethics education and training in preventing employees from committing ethics violations, this lack of compliance--particularly as to annual ethics training--concerns us.

Public financial disclosure filers were required to receive verbal annual ethics training at 1 of 12 scheduled live training sessions, while confidential filers were required to receive computer-based training. Only 81 of approximately 517 employees received training, including only 40 of 86 public filers. We discussed this lack of compliance with the DDAEO, who indicated that it was very difficult to gain cooperation from DIA managers and that employees generally just ignored the requirement. However, she intended to solicit the backing of the Deputy Director for future annual training efforts to preclude a repeat of 2001

As for IEO, subsection 11-300.a. of the JER requires all new DOD employees, who have not previously received IEO, to receive IEO within 90 days of entering on duty. According to the DDAEO, who conducts IEO during a one-week orientation course provided to new DIA employees, 330 new DIA employees, both new Government employees and transferees from other agencies, received IEO from January 2001 through October 2002. However, she was unable to determine whether all of DIA's new DOD employees were receiving IEO as required. Additionally, she was not providing all of the ethics materials required by 5 C.F.R. § 2638.703(a) to the employees receiving IEO.

#### PUBLIC FINANCIAL DISCLOSURE SYSTEM

The public financial disclosure reports filed in 2002 were generally filed and reviewed in accordance with 5 C.F.R. part 2634. However, DIA was not maintaining a current master list of filers,

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outdated versions of the SF 278 were used in filing reports, and none of the reports were reviewed in accordance with the JER.

We examined all 104 of the public reports the DDAEO believed were required to be filed in 2002 (problems with the master list are discussed in the paragraph immediately below). The reports were generally filed and reviewed timely and did not reveal any substantive or technical deficiencies.

The DDAEO advised us that the master list of public reports is established with the assistance of DIA's Personnel Office Policy Group. Documents purporting to constitute the master list of filers for 2002 revealed a total of 96 filers, although we were provided, for our review, 104 reports that she believed represented all of the reports required to be filed in 2002.

Outdated versions of the SF 278 were being used. We remind you that OGE DAEogram DO-00-042 concerning the March 2000 edition of the SF 278 stated that, subsequent to February 2001, all categories of public filers had to use the March 2000 edition. It is important to use the latest edition of the SF 278 as it reflects changes related to matters such as the revised gift-reporting threshold.

Finally, subsections 7-205 and 7-206 of the JER require all public reports, except those filed by civilian Presidential appointees, to be reviewed initially by a filer's supervisor and the Ethics Counselor prior to the final review and certification by the DAEO or designee (in some cases, the Ethics Counselor and DAEO or designee may be the same person). None of the 104 reports was initially reviewed by the filers' supervisor prior to being forwarded to the DDAEO for final review and certification (the DDAEO, as your designee, serves as the Ethics Counselor). Although such a review by the supervisor is not required by 5 C.F.R. part 2634, this JER-mandated practice would appear to be invaluable in affording a review of a filer's public report by the person who, presumably, is most familiar with the filer's work assignments.

#### CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

The confidential financial disclosure reports filed in 2001 by regular employees were filed and reviewed in accordance with subpart I of 5 C F.R. part 2634, except for some reports not being certified and most new entrant reports not being filed timely. Moreover, DIA was not maintaining a current master list of filers, all of the reports (other than OGE Optional Form 450-As) were filed using an outdated version of the OGE Form 450, and none of the reports were reviewed and certified in accordance with the JER.

We examined a sample of 67 of the 250 confidential reports the DDAEO believed were required to be filed in 2001 (problems with the master list are discussed in the paragraph immediately below). Ten of the 67 reports had not been certified. Seven of the 9 new entrant reports (all of which were filed during the 2001 annual filing cycle) were filed more than 30 days after an employee assumed a covered position, with over half of the 7 appearing to have been filed 1 to 2 years late. All of the new entrant reports were reviewed timely and did not reveal any substantive or technical deficiencies. We discussed the lack of new entrant filing timeliness with the DDAEO, who acknowledged the problems she has collecting new entrant reports, especially those from employees who have transferred into covered positions. She said there is essentially no tracking system for new entrants, beginning with them not being notified of the filing requirement. The lack of timely filing by new entrants precludes an agency from providing timely advice and counseling to filers concerning potential conflicts of interest.

According to the DDAEO, an e-mail message along with the previous year's master list was sent to heads of Directorates advising them of the upcoming 2001 annual filing cycle and to update their respective master lists. However, we found confidential reports for only 250 of the 433 names on the list. The DDAEO indicated that she had difficulty obtaining updates from the Directorates, believed the discrepancy was a result of inaccurate information provided by the Directorates, and believed that the 250 reports represented all of the reports required to be filed in 2001.

All 63 reports (from filers who did not use the OGE Optional Form 450-A) of the 67 reports examined were filed using an outdated OGE Form 450. In 2001, the April 1999 edition of the OGE Form 450 should have been used (DAEOgram DO-99-029). Additionally, we remind you that OGE DAEOgram DO-02-024 concerning the new September 2002 edition of the OGE Form 450 stated that the new edition should be used in place of the April 1999 edition after the fiscal year 2002 annual reporting period. Similar to the importance of using the latest edition of the SF 278, the latest edition of the confidential reporting form reflects changes related to matters such as the revised gift-reporting threshold.

Finally, subsection 7-306 of the JER requires all confidential reports to be reviewed initially by a filer's supervisor and then reviewed in final and certified by the Ethics Counselor. Subsection 1-214 provides that, except for a DAEO, Alternate DAEO, or DDAEO, any DOD employee appointed to serve as an Ethics Counselor shall be an attorney. However, in 2001 a DIA paralegal reviewed in final and certified all of the reports, essentially functioning as an Ethics Counselor. Although 5 C.F.R. part 2634

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does not specify the position or background that a reviewing official needs to have, this JER-mandated practice would appear be a means by which to ensure the quality of the final review.

#### ADVISORY COMMITTEES

There is room for improvement in the ethics program for SGEs serving on DIA's two advisory committees. Not all SGEs required by subpart G of 5 C.F.R. part 2638 to receive annual ethics training were receiving the training, nor were all required ethics materials being provided to SGEs who did receive the training. Moreover, DIA was not maintaining a current master list of SGEs required to file confidential financial disclosure reports, all reports were filed using an outdated version of the OGE Form 450, most filers indicated their filing status as "Annual" rather than "New Entrant," and none of the reports were reviewed in accordance with the JER.

#### DIA's Two Advisory Committees

DIA has two advisory committees, the Joint Military Intelligence College (JMIC) Board of Visitors (Visitors) and the Defense Intelligence Agency Advisory Board (Board). The Visitors currently consists of 12 members. The Board is to consist of approximately 25-30 members, although there are currently only 21. The Board's charter also provides for the establishment of a consultant group, which currently has 17 members. All members are SGEs.

#### Annual Ethics Training

Members of the consultant group were not receiving annual ethics training. Members of the Board (other than consultant group members) and the Visitors receive training. However, the JMIC Provost, who provides training to members of the Visitors, was uncertain whether copies of the DOD Supplement to the Standards of Conduct and information regarding the names, titles, office addresses, and telephone numbers of DIA ethics officials was included, as required by 5 C.F.R. § 2638.705(b).

#### Confidential Financial Disclosure

We examined all 29 of the confidential reports the DDAEO believed were required to be filed in 2002, despite the fact that there are currently a total of 50 members on the two advisory committees (problems with the master list are discussed in the paragraph immediately below). All of the reports were filed and reviewed timely and revealed no substantive but some technical deficiencies

The DDAEO provided us with a master list of 45 confidential financial disclosure filers that she had received from Personnel, purportedly listing all of the SGEs on the two advisory committees. However, she was only able to provide us with reports from 29 filers, 9 of whom were not identified on the list. The DDAEO did not have an explanation for whether reports should have been filed by the remaining 25 individuals identified on the list.

All 29 confidential reports examined were filed using the outdated SF 450 rather than OGE Form 450. Since 1996, the OGE Form 450 should have been used, initially the February 1996 and April 1999 editions and, after the fiscal year 2002 annual reporting period, the September 2002 edition. As discussed above in the "Confidential Financial Disclosure System" section, it is important to use the latest edition of the reporting form, reflecting the latest reporting requirements.

Most filers indicated their reporting status on the first page of the report as "Annual" rather than "New Entrant." In accordance with 5 C.F.R. § 2634.903(a) and (b), SGEs, including those on advisory committees, file new entrant reports rather than annual reports. This is important, as a new entrant filer, unlike an annual filer, does not have to report gifts and travel reimbursements.

Finally, subsection 7-306 of the JER requires all confidential reports to be initially reviewed by a filer's supervisor prior to final review and certification by the Ethics Counselor. However, there was no evidence that any of the reports had been initially reviewed prior to being reviewed and certified by the Ethics Counselor (i.e., the DDAEO). As discussed above in the "Public Financial Disclosure System" section, despite such a review not being required by 5 C.F.R. part 2634, this JER-mandated practice for both public and confidential reports would appear invaluable in conducting reviews.

#### COUNSELING AND ADVICE

We determined that DIA has a counseling and advice program for agency employees, wherein records are kept, when appropriate, that appears to meet the requirements at 5 C.F.R. § 2638.203(b)(7) and (8). We examined a sample of the written counseling and advice and found the most common topics were the widely attended gatherings exception to the gift prohibition at 5 C.F.R. § 2635.204(g), the post-employment restrictions, fundraising activities, and former employees volunteering to assist DIA after separation or retirement. The DDAEO provides post-employment counseling and advice in response to requests from employees. All of the advice complied with applicable ethics statutes and regulations.

#### INSPECTOR GENERAL

DIA appears to be complying with 5 C F.R. § 2638.203(b)(12), wherein the services of the Office of the Inspector General (IG), if any, are utilized when appropriate, including the referral of matters to and acceptance of matters from the IG. However, DIA has not been complying with § 2638.603, wherein agencies are to notify OGE of any referrals for prosecution to the Department of Justice (DOJ) of alleged violations of the criminal conflict of interest statutes and of certain matters related to the referrals.

The Assistant IG for Investigations indicated that matters are coordinated on a case-by-case basis. She also advised us that she would ensure that the necessary notification is made to OGE on current matters referred to the DOJ as well as any others that have been missed in the recent past. In regard to any matters that have been missed, OGE subsequently received notification from DIA of two referrals that had been made to DOJ.

The Assistant IG for Inspections advised us that during inspections her staff conducts interviews with employees which include questions concerning standards of conduct and fraud, waste, and abuse. If information is developed concerning ethics-related matters, that information is brought to the attention of the DIA ethics officials. However, there has been no information developed in the recent past that would have required such coordination.

#### ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

The approval process for accepting payments under the General Services Administration's Interim Rule 4 at 41 C.F.R. part 304-1, implementing 31 U.S.C. § 1353, is specified in Chapter 4 of the JER. Our examination of the semiannual reports submitted to OGE for payments in excess of \$250 for the period of April 1, 2001 to March 31, 2002 revealed that DIA accepted two payments during this period. Supporting documentation for one acceptance revealed that the acceptance was appropriately approved. Supporting documentation for the other acceptance was not readily available.

#### RECOMMENDATIONS

The following recommendations are considered necessary to bring the DIA Ethics Program into minimum compliance with current OGE regulations and the JER. You should ensure the following:

1. All covered employees, including SGEs, receive annual ethics training.

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2. All of DIA's new DOD employees receive IEO, first by identifying the employees and second by maintaining a record of their attendance.
- 3 Employees, including SGEs, receive all the ethics materials and information required for IEO (5 C.F.R. § 2638.703(a)) and annual ethics training (§ 2638.705(b)).
4. Accurate master lists of public and confidential financial disclosure filers, including SGEs, are created and maintained.
5. Current editions of the SF 278 and OGE Form 450 are used.
6. Financial disclosure reports are reviewed and certified in accordance with the provisions in the JER
- 7 All confidential financial disclosure reports are filed, reviewed, and certified timely, including timely identification of new entrant filers and notification sent to them of the filing requirement.
8. SGEs file new entrant, rather than annual, confidential financial disclosure reports.

It is evident that the DIA ethics program is not working as it should. Much effort is needed to bring the program into compliance. Please advise me within 60 days of the actions you have taken or plan to take on each of the recommendations of our report. A brief follow-up review will be scheduled six months from the date of this report. In view of the corrective action authority vested in the Director of OGE 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 DIA implement actions to correct these deficiencies in a timely manner. I suggest you consider using the services of your OGE Desk Officer, Ms. Patricia Anderson, to resolve these recommendations.

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A copy of this report is being sent by transmittal letter to the Director of DIA, the DIA IG, and the Director of the DOD Standards of Conduct Office. Please contact Charles R. Kraus at 202-482-9256, if we can be of further assistance.

Sincerely,



Jack Covaleski  
Deputy Director  
Office of Agency Programs

Report number 03-019