



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

April 7, 2005

Cameron R. Hume
Acting Inspector General
Office of Inspector General
Department of State
2201 C Street, NW. (SA3, Room 8100)
Washington, DC 20522-0308

Dear Mr. Hume:

The Office of Government Ethics has completed its review of the Department of State's (State) ethics program. The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objective was to determine the ethics program's compliance with applicable statutes and regulations. We also evaluated State's systems and procedures for ensuring that ethics violations do not occur.

The enclosed letter report to Mr. Thessin summarizes the results of our review and a copy of this report is being provided for your information. Please contact Doug Chapman at 202-482-9223 if you wish to discuss this report.

Sincerely,

A handwritten signature in cursive script that reads "Jack Covaleski".

Jack Covaleski
Deputy Director
Office of Agency Programs

Enclosure



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

April 7, 2005

James H. Thessin
Designated Agency Ethics Official
Department of State
Room 6419
2201 C Street, NW.
Washington, DC 20520-6310

Dear Mr. Thessin:

The Office of Government Ethics (OGE) has completed its review of the Department of State's (State) ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978 (Ethics Act), as amended. Our objective was to determine the ethics program's compliance with applicable statutes and regulations. We also evaluated the systems and procedures for ensuring that ethics violations do not occur. The review was conducted from October 2004 through January 2005. The following is a summary of our findings and conclusions.

HIGHLIGHTS

State's ethics program generally complies with applicable statutes and regulations, although problems related to enforcement, initial ethics orientation, annual ethics training, financial disclosure, and 18 U.S.C. § 208(b)(1) waivers were not addressed until recently, either before or during our review. We are especially pleased that increased headquarters ethics staffing has enabled State to review and certify financial disclosure reports timely, and, in the case of public reports filed by Presidentially-appointed, Senate confirmed (PAS) employees, forward reports timely to OGE. However, we continue to be concerned about the proper reporting to OGE of travel payments accepted under 31 U.S.C. § 1353 and have made a recommendation addressing this concern. Finally, we are pleased that you have been reviewing the status of all members of your advisory committees to determine whether they have been properly designated as special Government employees (SGE) or representatives.

PROGRAM STRUCTURE

As State's Principal Deputy Legal Adviser, you also serve as the Designated Agency Ethics Official (DAEO). The Assistant Legal Adviser for Employment Law oversees the Ethics Division and the Financial Disclosure Division, managing the day-to-day functions of the ethics program. The Senior Ethics Counsel in the Ethics Division is the Alternate DAEO and is assisted by several attorney-advisors.

Mr. James H. Thessin

Page 2

State has expanded the number of people who perform ethics-related duties to more effectively administer the ethics program. Specifically, you hired a new Program Manager to serve as the Chief of the Financial Disclosure Program. This has helped improve the timeliness of review and certification of public financial disclosure reports. In addition, three attorneys serving in rotational assignments help review both public and confidential financial disclosure reports, as well as perform other ethics-related functions (e.g., provide counseling and advice), as necessary.

You have determined that it is not necessary for State to designate anyone outside of headquarters as ethics officials. This has created a highly centralized ethics program with few ethics resources in the field. Employees have access to some ethics resources via State's Intranet and some "non-deputized" ethics officials provide limited advice on the widely attended gatherings gift exception and payments for travel accepted from non-Federal sources under the authority of 31 U.S.C. § 1353. Nonetheless, you are confident that State's ethics program is adequately staffed and appropriately organized. We could find no deficiency significant enough to dispute that conclusion.

ENFORCEMENT

Ethics officials have an active and effective working relationship with the Office of Inspector General (OIG), in accordance with 5 C.F.R. § 2638.203(b)(11) and (12). Ethics officials routinely consult on information and findings developed by OIG regarding cases of ethics violations. In turn, ethics officials often utilize the services of OIG, particularly in referring matters to that office for investigation. Such cooperation, as was evident through our discussions with ethics officials and OIG, is essential for the proper disposition of ethics violations.

State thoroughly investigates potential ethics violations and takes prompt and effective action against those who commit violations, as required by 5 C.F.R. § 2638.203(b)(9). During the course of our review, we examined a sample of 14 cases from 2003 and 2004 dealing with ethics violations. The cases covered various violations of the Standards of Ethical Conduct for Employees of the Executive Branch, including misuse of position, misuse of Government property, indebtedness, and failure to file financial disclosure forms. Disciplinary actions taken ranged from admonishment to removal.

State failed to concurrently notify OGE of conflict of interest referrals made to the Department of Justice (DOJ), in accordance with 5 C.F.R. § 2638.603. As a result of our discussions with OIG, a directive was drafted requiring OIG Special Agents to complete and forward to OGE the "Notification of Conflict of Interest Referral" form (OGE Form 202) upon referral of an alleged conflict of interest violation to DOJ. The directive also requires that the Special Agent notify OGE of the final disposition of the case and of any disciplinary action taken. Finally, State provided our Office with the outstanding Forms 202 for 2001 through 2004, denoting all the referrals made by State to DOJ during that period of time.

ADVICE AND COUNSELING SERVICES

Ethics advice and counseling services meet the requirements of 5 C.F.R. § 2638.203(b)(7) and (8). We examined a sample of ethics-related advice and counseling provided by ethics officials to PAS and regular employees. The advice was provided via e-mail, memorandums, and telephone, as memorialized in written logs. We concluded that all of the written advice, which covered a variety of subjects, was consistent with applicable ethics statutes and regulations. It was provided in a timely manner and was comprehensive in addressing the relevant issues.

INITIAL ETHICS ORIENTATION

Initial ethics orientation is being provided to PAS employees, as required by 5 C.F.R. § 2638.703. Ambassadors are provided initial ethics orientation in-person by either you or the Alternate DAEO during Ambassadorial Seminars. They are also provided with written materials to take with them. Ambassadors who are unable to attend these seminars receive initial ethics orientation individually from you or the Alternate DAEO. PAS employees other than ambassadors also receive in-person training in groups, but do not receive written materials. Initial ethics orientation for all PAS employees is tracked to ensure attendance. Ethics officials confirmed that all current PAS employees appointed during the current and preceding three calendar years received initial ethics orientation. The training meets relevant content requirements and the duration, which is generally one and a half hours, exceeds the mandatory one hour of required training. We acknowledge and applaud the additional effort State makes to ensure these senior employees are provided with the training needed to protect them and State from ethics violations.

As for non-PAS employees, all new Foreign Service Officers (FSO) are provided in-person initial ethics orientation during the training course they undergo in preparation for assuming their positions. The orientation for FSOs met both content and duration requirements. Initial ethics orientation for other non-PAS employees, however, has not been tracked, making it impossible for State to verify that all such employees received the orientation. Moreover, it was unclear whether new employees hired under the General Schedule received a packet of ethics materials during in-processing and whether the materials were current.

As a result of our review, we were told that State will institute an automated, online system that will track initial ethics orientation for all employees, including Foreign Service Nationals (FSN). The online training, which has already been developed, will require new employees to certify that they have received initial ethics orientation within 90 days of entering on duty. Additionally, FSNs, who are assigned to posts and are provided the orientation by human resources offices at the posts, will have to certify that they have read the handbook provided to them when they were hired, including a segment on ethics.

ANNUAL ETHICS TRAINING

In-person annual ethics training was provided by a qualified instructor for covered employees at headquarters in September 2004 and was recorded. Approximately 500 copies of the recording

were made and distributed to bureaus and overseas posts and embassies. PAS employees at headquarters who did not attend the in-person training either watched the recording or attended one of the Ambassadorial Seminars held throughout the year. Ambassadors and other covered employees stationed outside the Washington, DC area were trained by showing them the recording of the in-person training conducted for headquarters employees, but without the availability of a qualified instructor.¹ Bureau heads and training coordinators provided ethics officials with the names of covered employees, including FSNs, who watched the recorded training and the dates they were trained. This information was entered into the financial disclosure database. Ethics officials followed up when certification of training was not received for any given employee.

At the time of our last meeting, ethics officials were still awaiting reports from some posts and bureaus confirming that training had been completed by all covered employees. Once reporting is complete, any covered employees who were not trained were to be identified and the training was to be provided to them as soon as possible.

PUBLIC FINANCIAL DISCLOSURE

Problems with the public financial disclosure system have been addressed by State such that the system generally meets relevant requirements. State has approximately 1,400 public financial disclosure filers, approximately 270 of which are PAS employees. At any given time, the number of filers may change as ambassadors and other senior officials resign or are appointed and some employees who are not normally public filers are required to file when they serve in an acting capacity for more than 60 days in a covered position.

We examined a sample of 48 annual and termination reports required to be filed by PAS employees in 2004. The reports were generally filed, reviewed, and forwarded to OGE timely. We discussed at length the method used to conduct conflict of interest analyses of these reports and concluded that it was sound and appropriate, in accordance with 5 C.F.R. § 2634.605.

We did note that there was a significant delay in reviewing and forwarding to OGE the PAS reports filed in 2003. You attributed this to insufficient staffing, which has since been corrected. Accordingly, increased staffing has enabled State to process reports timely and ethics officials were confident that there would be no such delays in the future.

We also examined a sample of 59 of the public financial disclosure reports filed by non-PAS employees in 2003. The 46 annual and 3 combined annual/termination reports in our sample were generally filed and reviewed timely. Moreover, they appeared to be thoroughly reviewed. There were no substantive deficiencies. However, as with the PAS reports filed in 2003, many reports were certified only after a protracted period, again, due to a shortage of staff, which is no longer a factor.

¹ As the DAEO, you determined that it was impractical to provide verbal ethics training with a qualified instructor to public filers stationed outside of the Washington, DC area. Therefore, under the authority of 5 C.F.R. § 2638.704(e), you exempted these employees from the requirement.

Of the seven new entrant reports in our sample, three did not indicate the dates of the filers' appointments, making it impossible to determine if the reports were filed timely. One of the remaining four new entrant reports was filed more than 30 days late.

Of the three termination reports in our sample, two were not filed timely. Review of new entrant and termination reports was generally timely, but, as with the annual reports, they were certified after a protracted period of time, which should not be the case in the future.

ETHICS AGREEMENTS

State appears to effectively create and manage ethics agreements. We examined a number of ethics agreements and found them to be consistent with relevant statutes, regulations, and policies. We also determined that PAS employees complied with their ethics agreements in a timely manner and that State provided OGE with requisite proof of their compliance. Documentation indicates that, in particular, waivers under 18 U.S.C. § 208(b)(1) are well prepared in a timely manner after consultation with our Office. However, we also found that State has not always provided our Office with copies of the final versions of these waivers, as required. This was due to administrative oversight. Copies of all outstanding waivers were provided to the review team during the course of the review. We believe that our review has highlighted the requirement to forward final waivers to our Office and that this will not be an issue in the future.

CONFIDENTIAL FINANCIAL DISCLOSURE

Problems with the confidential financial disclosure system have been addressed by State such that the system generally meets relevant requirements. We examined a sample of 60 of the approximately 2,500 confidential reports required to be filed in 2003. This sample included 15 new entrant reports and 45 annual reports. We found that the reports were thoroughly reviewed, as evidenced by the reviewing officials' notations. Notwithstanding the thoroughness of the review, 24 of the 60 reports we examined were not initially reviewed until more than 90 days after being filed. You have assured us that this backlog of reports has been cleared and is unlikely to occur in the future because of increased staffing.

We were also unable to determine the appointment date and therefore the filing timeliness for 11 of the 15 new entrant reports we reviewed. You should emphasize to your new entrants the importance of completing this section of the OGE Form 450. In addition, you have acknowledged that many filers moving into covered positions overseas are not identified as new entrant filers until they are caught as part of the annual filing cycle. We discussed various potential remedies with you and encourage you to take some of the actions you have already considered. These include writing the filing requirement into position descriptions and sending a cable to posts to remind them of the new entrant confidential financial disclosure filing requirement.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

State accepts payments for invitational travel and related expenses from non-Federal sources under the authority of 31 U.S.C. § 1353. In September 2004, the Financial Disclosure Division assumed responsibility for collecting reports of such payments from approximately 215 reporting units and compiling and forwarding to OGE semiannual reports of payments of more than \$250. We examined State's semiannual reports submitted to OGE in 2004 and spoke with officials from three reporting units.² We found that while these officials were aware of a directive issued by the Financial Disclosure Division concerning the submission of their reports, they were still unclear as to what is reportable under 31 U.S.C. §1353.

Through discussions with these officials, it was clear that they may be including payments for travel accepted under authorities other than 31 U.S.C. § 1353 in their reports. In addition, we found that the semiannual reports submitted to OGE in 2004 only contained reported information from half of the reporting units. Therefore, we recommend that you provide appropriate guidance to all reporting units to ensure they understand what is reportable under the statute and ensure all reporting units provide input to State's semiannual reports.

SPECIAL GOVERNMENT EMPLOYEES

State is in the process of reviewing the status of all members of its 22 advisory committees to determine whether they have been properly designated as SGEs or representatives. At the time of our last meeting, ethics officials had determined that approximately 60 members of 19 committees, who, heretofore, had been determined to be representatives, were SGEs. Analysis of the status of the three remaining committees had not yet been completed. Of the 19 committees, we examined a sample of 5 committees whose members were all determined to be representatives. We concur with your determination of the status of the committee members in these five committees. You should review the remaining three committees and determine the status of their members as soon as possible.

RECOMMENDATION

We recommend that you:

Provide appropriate guidance to all reporting units that contribute input to State's semiannual reports of travel payments accepted under 31 U.S.C. §1353 to ensure they understand what is reportable and ensure all reporting units provide input to State's semiannual reports.

²These included: Bureau of Educational and Cultural Affairs, Executive Secretariat, and Office of the Legal Advisor.

Mr. James H. Thessin

Page 7

In closing, I would like to thank everyone involved in this review for their cooperation on behalf of the ethics program. Please advise me within 60 days of the specific actions planned or taken concerning the recommendation in our report. A follow-up review will be scheduled approximately six months from the date of this report. In view of the corrective action authority vested with 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 you take actions to correct the deficiency in a timely manner. We are sending a copy of this report via transmittal letter to State's Inspector General. Please contact Doug Chapman at 202-482-9223 if we may be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs

Report Number 05-007