



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

March 17, 1995

John P. Carey
General Counsel
Federal Emergency Management Agency
500 C Street, SW.
Washington, DC 20472

Dear Mr. Carey:

The Office of Government Ethics (OGE) has completed its fifth review of the Federal Emergency Management Agency's (FEMA) ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objectives were to determine the ethics program's effectiveness and compliance with applicable laws and regulations. We also sought to determine whether improvements were made since OGE's last review in 1990. To achieve our objectives, we examined the following program elements: the administration of the ethics program, the public and confidential financial disclosure systems, the ethics education and training program, the counseling and advice services, the acceptance of travel expenses from non-Federal sources under 31 U.S.C. § 1353, and the relationship with the Office of the Inspector General (OIG). This review was conducted intermittently from November 1994 through January 1995.

Though our review disclosed that FEMA has made some improvements to its ethics program since our last review, we found that other elements of FEMA's ethics program require improvement. Strong points of the program include the: (1) effective administration of the public financial disclosure system and (2) counseling and advice services which are consistent with applicable ethics laws and regulations. We believe that some improvements to the confidential financial disclosure system and the education and training program will enhance the ethics program's overall effectiveness.

BACKGROUND

FEMA is the central agency within the Federal Government for emergency planning, preparedness, mitigation, response, and recovery. Working with state and local governments, FEMA funds emergency programs, offers technical guidance and training, and deploys Federal resources in times of catastrophic disaster. FEMA has approximately 1,700 full-time employees and, depending on emergency needs, an additional 6,000 or more employees who work on a temporary basis.

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In response to a number of external reports that criticized its stovepipe organization structure, inefficiencies, and duplication of effort, FEMA instituted a new organizational structure which became effective on November 28, 1993. Since that date, some refinements to the organization have taken place. Essentially, the agency is now aligned along functional lines and consists of nine headquarters' offices and six primary directorates or administrations. In addition, FEMA has 10 regional offices whose organizations are consistent with headquarters' structuring.

ADMINISTRATION OF THE ETHICS PROGRAM

FEMA's General Counsel serves as the Designated Agency Ethics Official (DAEO) and the Deputy General Counsel is the Alternate DAEO. An attorney-advisor, who serves as the Ethics Counselor, is responsible for most of the day-to-day operations of the ethics program. The Ethics Counselor's duties include (1) providing ethics counseling and advice services and ethics training, (2) reviewing the public and confidential financial disclosure reports, and (3) monitoring the financial disclosure systems and the ethics training program. Other attorneys within the Office of the General Counsel serve as Deputy DAEOs and assist the Ethics Counselor on an intermittent basis.

PRIOR OGE REPORTS

OGE issued its last report on FEMA in May 1990. Earlier reviews were conducted in 1987, 1985, and 1982. Over the years, our reports repeatedly identified weaknesses in (1) the public and confidential financial disclosure systems, (2) the ethics training program, and (3) the Inspector General's (IG) involvement in the ethics program. In addition, we were concerned about staff allocation to administer the ethics program.

Follow-up correspondence subsequent to our 1990 report indicated that ethics officials had taken action on most of our recommendations or were making progress in correcting the deficiencies. Our current review, however, disclosed that ethics officials need to be more proactive in their efforts to correct deficiencies in the confidential financial disclosure system and the ethics education and training program.

WRITTEN PROCEDURES FOR ADMINISTERING FINANCIAL DISCLOSURE SYSTEMS ARE BEING DEVELOPED

Ethics officials have drafted written procedures for administering both the public and confidential financial disclosure systems to meet the requirements at 5 C.F.R. § 2638.203(b)(2) and the Ethics in Government Act of 1978, as amended. The draft document we examined during our review appeared to generally adhere

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to OGE's September 3, 1992 DAEOgram which provided guidance on the development of written procedures covering the process for collecting, reviewing, evaluating, and, where appropriate, making publicly available, financial disclosure reports filed by the agency's officers and employees.

Recognizing that these procedures were in the draft stage, the review team suggested some improvements during discussions with ethics officials. Specifically, we believe that the procedures should more fully explain the process for distributing, collecting, and reviewing the confidential reports. In addition, ethics officials need to clarify that employees who enter covered positions are required to file confidential reports within 30 days. Ethics officials stated that they would incorporate our suggestions into their written procedures. According to the Ethics Counselor, when the procedures are finalized, FEMA plans to issue them as a FEMA instruction.

PUBLIC FINANCIAL DISCLOSURE SYSTEM IS EFFECTIVE

FEMA's public financial disclosure system is effectively administered. The reports we examined were filed, reviewed, and certified timely. In addition, we found few technical deficiencies and no substantive deficiencies.

In accordance with the draft procedures, the Office of Human Resources Management prepares an annual list of public filers and the Ethics Counselor notifies these employees of their public filing responsibilities. Reports are submitted to the Office of General Counsel for review. Conflict-of-interest analyses are primarily conducted by the Ethics Counselor before the reports are forwarded to the DAEO for certification.

During 1994, 59 employees were required to file public reports. We reviewed the reports filed by 51 employees, but did not examine the 8 reports that were sent to OGE in accordance with 5 C.F.R. § 2634.602(c).

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM NEEDS IMPROVEMENT

FEMA did not administer an agencywide confidential financial disclosure system in 1994. According to the Ethics Counselor this was partially due to the reorganization which affected some agency components for most of 1994. Notwithstanding the reorganization, we found some general deficiencies in the confidential financial disclosure system which need to be corrected before FEMA will be in the position to administer an effective system.

We initially discussed some of the confidential system deficiencies with ethics officials in late November 1994 to enable them to begin working on corrective actions. Specifically, the review team advised of the need to develop both an accurate list of employees required to file confidential reports and a tracking system to ensure that those employees required to file reports routinely do so.

We believe that additional improvements are needed to strengthen the overall administration of the confidential system. Ethics officials need to: (1) determine which temporary employee positions meet the confidential financial disclosure reporting criteria and require those employees to file confidential reports annually; (2) collect confidential reports from all special Government employees (SGE); (3) develop a process to ensure that employees entering covered positions file confidential reports within 30 days; and (4) consider streamlining the annual filing notification process.

Accurate List Of Confidential Filers And A Tracking System Needs To Be Developed

At the start of our review in November 1994, ethics officials could not provide an accurate list of covered employees who had filed confidential reports in 1994. Though ethics officials indicated that approximately 75 percent of the employees required to file confidential reports in 1994 had done so, they were not able to provide numbers on the universe of filers, reports collected and reviewed, or reports outstanding.

Based on two available lists of all FEMA employees and supervisors, dated September 1994 and October 1994, we determined that approximately 350 employees appeared to meet the criteria for filing confidential reports for 1994. We selected a judgmental sample of 108 employees (31 percent) to determine filing compliance. From the 108 names selected, 43 reports (40 percent) were generally submitted and reviewed timely. Our examination of these reports found a few technical deficiencies but no substantive deficiencies. The remaining 65 employees (60 percent) in our sample had not filed confidential reports at the time of our review. In November 1994, we provided ethics officials the names of the 65 employees who appeared to meet the confidential reporting criteria and who had not filed confidential reports in 1994. At that time, ethics officials stated that they would follow up and reconcile the filing status of these employees, collect reports as appropriate, and report back to us in early January 1995.

As an immediate response to our November meeting, ethics officials undertook several actions to begin correcting the identified deficiencies. First, they notified office heads that

the annual confidential reporting cycle for 1994 would be extended until January 5, 1995. Office heads were required to identify employees in their component who had not filed and ensure that those employees were provided confidential reports for completion and submission to the Ethics Counselor. Second, in a memorandum to the Director, Office of Human Resources Management, dated December 15, 1994, the DAEO documented the joint responsibility to develop an accurate list of confidential filers. The memorandum also specified that certain temporary employee positions would be covered under the confidential financial disclosure system. In addition, the DAEO stated that he hoped to end reliance on the supervisory chain for the identification of filers and distribution of confidential reports.

In early January 1995, the Ethics Counselor provided the results of the reconciliation effort. He determined that 7 of the 65 employees were no longer required to file confidential reports because they had either left the agency or were no longer in covered positions. Reports were submitted by 28 of the 65 employees (43 percent). These reports were immediately reviewed by the Ethics Counselor. The remaining 30 employees had not yet filed reports as of January 5, 1995. Based on his follow-up telephone calls to these employees, the Ethics Counselor stated that he granted extensions of an additional few days to 12 filers because of apparent postal delays. According to the Ethics Counselor, he plans to send warning letters to the other 18 non-filers as an administrative remedy, pursuant to 5 C.F.R. § 2634.701(d).

After ethics officials develop an accurate list of confidential filers, which should be updated periodically, they need to develop a tracking system to monitor the collection, review, and certification of the confidential reports. This tracking system will enable ethics officials to determine which employees have not filed reports or which reports require follow-up action. Ethics officials recognize the need for a tracking capability and plan to work with officials from the Office of Human Resources Management to develop a reliable system. Until a tracking system is developed, however, ethics officials need to devise a way to ensure that all required reports for 1994 have been collected, reviewed, and certified, pursuant to subpart I of 5 C.F.R. part 2634.

Need To Determine Which Temporary
Employees Should File
Confidential Reports

FEMA hires two types of temporary employees to assist in responding to emergencies--Disaster Assistant Employees (DAE) and Special Disaster-Specific Assistance Temporary Employees (SDATE). DAEs are hired to assist with program administration and to provide assistance at the Disaster Application Centers and at the Disaster

Field Offices. DAEs specifically assist with active disaster response and recovery operations. On the other hand, to assist with long-term work associated with extremely large and programmatically burdensome disasters, temporary employees in the newly developed (in the pilot testing phase) SDATE program assist in follow-up and close-out activities.

Our previous reports discussed including DAEs under the confidential financial disclosure system. Ethics officials advised us that the issue of covering certain temporary employee positions has been under discussion for some time. As an initial step, the DAE Program Instruction Number 8600.1, dated June 21, 1991, states that DAEs are subject to ethics laws and regulations. In addition, the Instruction requires DAEs to read and become familiar with 5 C.F.R. part 2635. Ethics officials informed the review team that beginning in 1994, DAEs were also provided annual ethics training. However, the final determination on including some DAE positions under the confidential system has not been made. The Ethics Counselor stated that a decision regarding the extent of covering certain DAE positions should be forthcoming in 1995.

The Ethics Counselor also stated that even though limited documentation exists on SDATEs, a decision was made to provide ethics training to these employees. A determination on the extent of including certain SDATE positions under the confidential system will probably be made at the same time as the DAE determination.

Confidential Reports Need To
Be Collected From All SGEs

FEMA has four advisory committees--the FEMA Advisory Board (FAB)¹, the Emergency Management Institute Board of Visitors, the Advisory Committee for the Urban Search and Rescue Response System, and the National Fire Academy Board of Visitors. All members of these committees are SGEs and are required to file confidential reports on their annual reappointment dates. Our sample of the previously mentioned 108 employees included 26 advisory committee members. Of the 65 apparent non-filers, 13 were SGEs. The Ethics Counselor followed up by telephone with each SGE, resulting in the following: (1) four stated that they had filed reports, but since these reports were apparently lost they were asked to refile; (2) one resigned prior to his reappointment date and, therefore, was not required to file a report; and (3) eight still had not filed. The eight SGEs were advised to file their confidential reports immediately. To avoid future problems connected with collecting SGE confidential reports, ethics officials plan to

¹The FAB charter is due for renewal. FEMA submitted a request for renewal to the General Services Administration on November 4, 1994.

delegate the collection responsibility to the Designated Federal Official assigned to each of the advisory committees.

Ensure That Employees Entering Covered
Positions File Confidential Reports
Within 30 Days

As ethics and Office of Human Resources Management officials work towards developing an accurate list of confidential filers, they will also need to institute a process to ensure that employees entering covered positions file confidential reports within 30 days, pursuant to 5 C.F.R. § 2634.903(b). Ethics officials agreed that they will need to collaborate with officials in the Office of Human Resources Management to develop a workable process.

Streamline The Annual Notification
Process

Since the confidential system is centralized within the Office of the General Counsel and supervisors are not responsible for reviewing employees' confidential reports, we believe that it would be more efficient and effective to eliminate the annual notification to office heads. Instead of office heads distributing confidential reports to designated employees within their office, ethics officials should consider directly notifying designated employees of their confidential reporting responsibilities by memorandum.

As stated previously, the DAEO indicated that he hoped to end reliance on the supervisory chain for the distribution of confidential reports. The Ethics Counselor believed that the reliance on the supervisory chain would be eliminated by the October 1995 filing time frame.

ETHICS EDUCATION AND TRAINING
PROGRAM NEEDS IMPROVEMENT

FEMA needs to improve its ethics education and training program to meet the requirements of OGE's training regulation at 5 C.F.R. part 2638. Section 2638.703 requires that initial agency ethics orientation be provided to new employees within 90 days of entrance on duty. Ethics officials have instituted a process to ensure that all new employees are provided a packet of ethics materials when they enter on duty and are provided one hour to review the materials. However, limited documentation exists to show that FEMA has met its 1994 annual training requirement. To ensure that FEMA fulfills its annual training requirement, ethics officials will need to develop a system to track the attendance of employees at annual training sessions.

Plan To Accomplish Annual Ethics
Training Was Developed

Ethics officials developed the framework for conducting annual ethics training in 1994. The one-hour training session generally consisted of viewing OGE's videotape entitled "Integrity in Public Service: Earning the Public's Trust," an overview and briefing on the conflict-of-interest statutes and 5 C.F.R. part 2635, a discussion of hypothetical ethics situations, and a question and answer session. Depending on the audience, training was provided by the DAEO, the Ethics Counselor, or Deputy DAEOs. In addition, for certain employees involved in procurement, combined ethics and procurement integrity briefings were conducted by the Department of Agriculture Graduate School.

Some Annual Ethics Training Was Conducted
In 1994 But There Was Limited
Feedback And Tracking

Though not required by OGE regulations, ethics officials determined that all 1,700 FEMA full-time employees and temporary employees² would receive annual ethics training. Notwithstanding that ethics officials believe that a large portion of the agency's employees have attended a 1994 training session, limited documentation was available to assure that training was actually conducted or completed. Ethics officials have not instituted a method to obtain feedback to ensure that all employees, including temporaries, attended a training session. However, in late 1994, the Ethics Counselor requested feedback from the various organizational components on training sessions. The limited documentation provided by only a few components consisted of memorandums stating that training was completed or showing the dates of the training sessions and the number of attendees from a specific office. In addition, the Ethics Counselor received a few ethics training attendance rosters. Our examination of the available documentation, in early January 1995, indicated that approximately 18 training sessions were conducted and that approximately 650 employees attended the sessions.³

A method to obtain feedback from FEMA's components regarding ethics training would enable ethics officials to ensure that the 1,700 full-time employees currently required by FEMA to receive annual ethics training do so. A separate feedback process may need

²FEMA's 1995 Ethics Training Plan, which was submitted to OGE in August 1994, showed a total of 2,100 temporary employees (DAEs and SDATs) who would be provided annual ethics training.

³The documentation available did not differentiate between full-time or temporary employees.

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to be developed to monitor temporary employees' ethics training. For 1995 ethics training, ethics officials plan to enlist the services of the Preparedness, Training, and Exercises Directorate, Training Division to aid in carrying out some of the administrative functions associated with the ethics education and training program. Before beginning the 1995 annual ethics training, however, we encourage ethics officials to reassess their decision to provide annual ethics training to all employees rather than only to those employees required to receive annual training, pursuant to 5 C.F.R. § 2638.704(b).

COUNSELING AND ADVICE SERVICES ARE
CONSISTENT WITH ETHICS LAWS
AND REGULATIONS

FEMA's ethics counseling program appears to be responsive to employees and provides advice on a variety of ethics issues. According to ethics officials, most of the advice provided to employees is oral, but the Ethics Counselor also provides written determinations in response to ethics-related inquiries.

Our review of 1994 advice files disclosed that written determinations were provided on a variety of ethics-related issues, such as gift acceptance, outside activities, and post employment. We examined approximately 25 written determinations and found that the advice was comprehensive and consistent with applicable ethics laws and regulations.

Ethics officials have also provided employees useful general ethics policy information on the honoraria prohibition, gift acceptance, and other matters, for which they should be commended.

WRITTEN APPROVAL REQUIREMENT TO PARTICIPATE
IN OUTSIDE ACTIVITIES WILL BE REPEALED

The FEMA policy in effect at the time of our review, which was implemented subsequent to the February 3, 1993 effective date of 5 C.F.R. part 2635, requires written approval prior to engaging in specific outside activities or employment for employees who are below a GS-15 level. Specifically, employees are required to submit a request to the DAEO, including a current employee position description, a written description of the outside activity which includes the position status (i.e., managerial or ownership), and the time frame the employee expects to be involved with the outside activity. Employees who are at or above the GS-15 level are not required to obtain written approval before participating in outside activities or employment. Ethics officials provide GS-15 and above employees personal counseling regarding their outside activities.

Notwithstanding oral advice provided to the Ethics Counselor by FEMA's OGE Desk Officer in November 1993, FEMA issued

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Instruction 1100.2, entitled "Procedures for Obtaining Conflict of Interest Review and Approval for Outside Employment" (dated October 27, 1993).⁴ Instruction 1100.2 also addresses the honoraria prohibition and criminal restrictions on outside employment. The OGE Desk Officer had advised the Ethics Counselor that if FEMA intended to have an outside activity approval process, ethics officials would need to submit a supplemental regulation to OGE for approval, pursuant to 5 C.F.R. § 2635.105.

Due to some confusion or misunderstanding over OGE's advice at the time and because ethics officials viewed the Instruction as a short-term measure, the OGE Desk Officer's advice was not followed. Basically, ethics officials were interested in gauging the extent and type of employees' outside activities and employment at the time the Instruction was issued. According to the Ethics Counselor, in the past there had been a high level of concern over the outside activities of some FEMA employees. However, according to the Ethics Counselor, as a result of the increase in providing more ethics training and counseling, and, generally, more emphasis on ethics, officials have recently determined that a written approval system to engage in outside activities or employment is no longer necessary. In fact, by the close of our review, ethics officials had drafted a notice to repeal the part of the Instruction pertaining to the outside activity approval process. According to the Ethics Counselor, in lieu of the Instruction, employees will be reminded to seek ethics advice, as necessary.

ACCEPTANCE OF TRAVEL REIMBURSEMENTS FROM NON-FEDERAL SOURCES

We reviewed four acceptances of payment for travel, subsistence, and related expenses in excess of \$250 from non-Federal sources for the period beginning January 1, 1994 and ending September 30, 1994. All were accepted in accordance with FEMA's policy on acceptance of travel and related expenses from non-Federal sources and the applicable General Services Administration interim rule.

COORDINATION WITH THE OIG IS EFFECTIVE

Ethics officials are meeting the requirements of 5 C.F.R. § 2638.203(b)(12) pertaining to coordination with FEMA's OIG on ethics-related matters. Ethics and OIG officials stated that they

⁴FEMA's former standards of conduct regulation, at 44 C.F.R. part 3, which were repealed prior to the issuance of Instruction 1100.2, included a provision on outside employment and other activities. The provision required employees to obtain written approval only before engaging in outside employment that was in the same professional field as the employee's official position.

have built an effective working relationship with one another and that they coordinate on ethics-related matters and employee misconduct cases as necessary.

The OIG made one referral to the Department of Justice (Justice) during 1993 which Justice declined to prosecute. FEMA subsequently took administrative action which included counseling the employee and issuing a letter of caution. Due to a misunderstanding in concurrent reporting responsibility at the time of this referral, the OIG lapsed in notifying OGE. The Assistant IG for Investigation informed us that for any future referrals, including administrative action, OGE would be concurrently notified as required. In addition, in a memorandum to the Director of OGE, dated October 24, 1994, the Assistant IG for Investigation acknowledged the requirement for concurrently notifying the Director of referrals to Justice and providing copies of the referral documents, pursuant to 5 C.F.R. § 2638.603(b).

Late in 1994, the OIG referred a post-employment matter to a U.S. Attorney, which was declined for prosecution. The OIG notified OGE of the referral shortly after the U.S. Attorney declined prosecutive interest.

CONCLUSIONS

FEMA's public financial disclosure system is sound and the counseling and advice services provided meet OGE requirements and appear to serve employees' needs. We believe, however, that the overall effectiveness of FEMA's ethics program can be enhanced by improving the confidential financial disclosure system and the ethics education and training program.

RECOMMENDATIONS

We recommend that you:

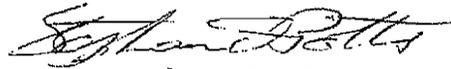
1. Ensure that an accurate list of confidential filers is developed and periodically updated.
2. Collect and review confidential reports from employees required to file in 1994 which were not collected at the time of our examination.
3. Develop a tracking system to monitor the filing of confidential financial disclosure reports.
4. Ensure that a process is developed to identify new entrant confidential filers when they enter covered positions and notify them of the filing requirement at 5 C.F.R. § 2634.903(b).

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5. Determine which temporary employee (DAE and SDATE) positions should be included under the confidential financial disclosure system and collect confidential reports, as appropriate.
6. Ensure that SGEs file confidential financial disclosure reports timely.
7. Develop a tracking system to ensure that all employees required to attend annual ethics training do so.
8. Repeal the part of FEMA Instruction 1100.2 pertaining to the outside activity approval process.

In closing, I would like to thank you for all of your efforts on behalf of the ethics program. Please advise me within 60 days of the specific actions your agency has taken or plans to take concerning each of the recommendations in our report. A brief 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 FEMA implement actions to correct these deficiencies in a timely manner. A copy of this report is being sent to the FEMA Director and the IG. Please contact Ilene Cranisky at 202-523-5757, extension 1218, if we may be of further assistance.

Sincerely,



Stephen D. Potts
Director

Report Number 95- 012
