



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

September 26, 2001

Michael D. Brown
General Counsel and
Designated Agency Ethics Official
Federal Emergency Management Agency
Room 840
500 C Street, SW.
Washington, DC 20472-0001

Dear Mr. Brown:

The Office of Government Ethics (OGE) recently completed a 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. To meet our objectives, we examined the following program elements: the public and confidential financial disclosure systems, the ethics training program, the ethics counseling services, the coordination between ethics officials and officials from the Office of Inspector General (OIG), and the procedures for accepting travel payments from non-Federal sources under 31 U.S.C. § 1353. The review was conducted during March, April, and May of 2001. The following is a summary of our findings and conclusions.

ADMINISTRATION

As FEMA's General Counsel, you also serve as the Designated Agency Ethics Official (DAEO). The primary contact in the administration and management of FEMA's ethics program, however, is the Alternate DAEO (an attorney in the General Law Division). There are three additional attorneys who have been appointed Deputy Ethics Officials who assist the Alternate DAEO as needed.

PUBLIC FINANCIAL DISCLOSURE SYSTEM

To evaluate the public financial disclosure system, we examined 29 reports, 7 of which were filed by incumbent employees who were appointed by the President and confirmed by the Senate (PAS). For the most part, the reports were filed, reviewed, and certified in a timely manner. The review of the reports by the Alternate DAEO, and in certain cases the former General Counsel, appeared to be conducted in a thorough manner as our examination revealed no substantive deficiencies.

There were two new entrant reports filed by non-PAS employees that were filed late and required either a \$200 late filing fee or

a waiver of the fee from OGE. Before our fieldwork concluded, the Alternate DAE0 had already forwarded requests for waivers of the late filing fees to OGE. Additionally, the Alternate DAE0 has assured us that future new entrant filers will file in a timely manner, as the agency has instituted the practice of notifying the entire agency, via E-mail from the Director, when a new employee is hired or promoted into the Senior Executive Service.

Although there were procedures in place preceding the start of our fieldwork, they had not yet been documented. Prior to the completion of our fieldwork, however, the Alternate DAE0 provided written documentation of the procedures for the administration of the public financial disclosure system.

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

To evaluate the confidential financial disclosure system, we examined 110 of the confidential financial disclosure reports required to be filed by regular Government employees in 2000. We also examined 12 of the new entrant reports filed by special Government employees (SGE) in 2000.

Our examination of the reports filed by regular Government employees revealed that there were problems concerning the administration of the confidential financial disclosure system. These problems appeared to be directly related to the dramatic increase in the number of filers in 2000, which was triple the number of filers in 1999. The Alternate DAE0 explained that this was due to her attempt to allow senior managers more input in determining which positions should be covered. She prepared a memorandum that was signed by the former General Counsel and sent to all senior managers requesting that, based upon information provided in the memorandum about who is considered a covered employee, they determine which of the employees in their respective divisions should file. Unfortunately, this resulted in overly cautious managers designating substantially more employees than were covered in the past.

The considerable rise in the amount of filers was quite burdensome for the Alternate DAE0, who alone reviews, certifies, and maintains all of the reports. The significant problems identified during our review were the late filing of reports (both incumbent and new entrant) and difficulty distinguishing new entrant reports from incumbent reports. Despite the difficulty identifying which reports were which, there was evidence that employees new to the agency and those filing during the annual filing cycle were not filing timely.

To the credit of the Alternate DAE0, she was already aware of these issues and had brainstormed methods of resolving them by the time our review commenced. Furthermore, prior to completion of our

fieldwork, she was able to provide detailed plans that will address filing timeliness of both incumbent and new entrant reports and will reduce the number of filers to a more reasonable number, without endangering the integrity of the agency. Specifically, those plans include selecting points of contact in each division to serve as a liaison to the Office of General Counsel. Also, the Alternate DAEO will provide more specific information to senior managers about which positions should be covered in order to reduce the numbers of those designated.

The 12 new entrant SGE reports we examined revealed that this system was being satisfactorily administered. All 12 reports were filed and reviewed timely and revealed no substantive deficiencies. However, our examination did reveal a few technical problems, most significant of which was the use of the old SF 450 rather than the OGE Form 450. Prior to our exit conference, however, the Alternate DAEO had already taken the necessary action to address all of the technical deficiencies.

As with the public financial disclosure system, there were procedures for the administration of the confidential financial disclosure system, but none in writing. Again, prior to the completion of our fieldwork, the Alternate DAEO provided documented procedures.

ETHICS TRAINING

To meet the initial ethics orientation requirement, personnel officials provide new employees with written materials which include a summary of the executive branchwide standards of conduct and a memorandum from the Alternate DAEO. The memorandum includes information about how she may be contacted with ethics-related questions, along with directions to OGE's Web site where the entire text of the standards of conduct are available.

In order to meet the annual ethics training requirement for confidential filers in 2000, the Alternate DAEO distributed written materials which met OGE's content requirements. The materials, which included OGE's pamphlet "A Brief Wrap on Ethics," were sent to all employees via E-mail (thereby exceeding the minimum requirement). Additionally, in an effort to remind employees about specific ethics matters when they may be particularly relevant, the Alternate DAEO sent, during the holiday season, a memorandum to all employees detailing rules concerning giving and receiving gifts.

To meet the annual ethics training requirement for public filers, the Alternate DAEO conducted live training in 2000, as required. Our examination of the information presented revealed that the training met content requirements and the Alternate DAEO confirmed that all public filers received the training.

In addition to the required elements of FEMA's ethics training program, FEMA has incorporated ethics information into its Intranet site. This allows easy access by all of FEMA's employees to the ethics-related executive orders, regulations, statutes, and the ethics officials themselves since their phone numbers and E-mail addresses are also posted on the site.

COUNSELING

The Alternate DAEO stated that the ethics-related counseling she provides is done so in writing, both in formal letters and in E-mails. She also occasionally provides ethics advice verbally, of which she keeps a detailed written log. She estimated that she receives requests for ethics advice an average of 10 times a week.

We examined 23 instances of advice that were given during calendar years 2000 and 2001. The subjects of the advice included, among others: post employment, gifts of travel, gift acceptance, fundraising, and outside employment or other activities. Advice given appeared to be accurate, comprehensive, and responsive to employees' needs.

Another noteworthy aspect of FEMA's counseling program is the formalized method in which exiting employees are given post-employment advice. All departing employees are required to "sign out" with the Alternate DAEO. This allows her to discuss post-employment issues in person and to provide the employees with a "Post Employment Checklist" that she developed. Additionally, in 2000, she held live training sessions that were specifically focused on post-employment issues for political appointees who were departing the agency. These efforts reveal that FEMA has taken a proactive approach to ensuring that departing employees are aware of post-employment restrictions which may apply.

RELATIONSHIP WITH THE OIG

The Alternate DAEO explained that the Office of General Counsel has a relationship with the OIG that is conducive to both offices' missions, which is important to facilitate future cooperation between your offices. There have been no referrals of criminal conflicts of interest to the Department of Justice, although both the Alternate DAEO and the OIG are aware of the requirement to concurrently notify OGE and have procedures to do just that, should the need arise.

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

FEMA does accept travel payments from non-Federal sources. Appropriate procedures are in place to approve the acceptance of travel payments and related expenses from non-Federal sources under

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31 U.S.C. § 1353 and the implementing General Services Administration regulation at 41 C.F.R. part 304-1.

During the course of our fieldwork, the Alternate DAEO provided copies of the semiannual reports to OGE of travel for October 1, 1999 through March 31, 2000 and April 1, 2000 through September 30, 2000. Payments were accepted for employee attendance at a variety of events, including conferences, seminars, and speaking engagements. Our examination of the supporting documentation revealed that all payment offers were appropriately reviewed and accepted.

CONCLUSIONS

FEMA's ethics program is essentially well managed. We were pleased to find that there is an emphasis placed on effectively training all employees and making yourselves accessible to those who have ethics inquiries. While we were initially concerned about FEMA's confidential financial disclosure system, there has been much evidence that you and the Alternate DAEO are aware of the problems and willing to take the steps necessary to resolve them.

In closing, we wish to thank you for your efforts on behalf of your agency's ethics program. A copy of this letter is being sent via transmittal letter to the FEMA Inspector General. A brief follow-up review is customarily scheduled within six months of an ethics program review; however, because no improvements to your program were formally recommended, there is no need for us to conduct a follow-up. Please contact Katharine Sharpe at 202-208-8000, extension 1213, if we may be of further assistance.

Sincerely,

A handwritten signature in black ink, reading "Jack Covaleski". The signature is fluid and cursive, with the first name "Jack" being more prominent and the last name "Covaleski" written in a continuous script.

Jack Covaleski
Deputy Director
Office of Agency Programs

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