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

November 23, 2005

The Honorable Daniel R. Levinson
Inspector General
Department of Health and Human Services
330 Independence Avenue, SW.
Washington, DC 20201

Dear Mr. Levinson:

The Office of Government Ethics has completed a review of the ethics program at the Centers for Disease Control and Prevention (CDC). 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 evaluated CDC's systems and procedures for ensuring that ethics violations do not occur. The review was conducted in June 2005.

Based on the results of our review, we are concerned that CDC has not made significant improvement to its ethics program since our last review in 1999. Many of the same deficiencies identified during that review, most of which involved the administration of the financial disclosure systems, remain today. Moreover, without increased staffing to administer the program on a day-to-day basis, CDC runs the risk of failing to comply with the most basic ethics requirements.

I have enclosed a copy of the report for your information. Please call me at 202-482-9220 if I may be of assistance.

Sincerely,

Joseph Gangloff
Deputy Director
Office of Agency Programs

Enclosure

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

November 23, 2005

Edgar M. Swindell
Designated Agency Ethics Official
Department of Health and Human Services
700-E Humphrey Building
200 Independence Avenue, SW.
Washington, DC 20201

Dear Mr. Swindell:

The Office of Government Ethics (OGE) has completed a review of the ethics program at the Centers for Disease Control and Prevention (CDC). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (Ethics Act). Our objectives were to determine the ethics program's effectiveness and compliance with applicable laws and regulations. We also evaluated CDC's systems and procedures for ensuring that ethics violations do not occur. The review was conducted in June 2005. The following is a summary of our findings and recommendations.

HIGHLIGHTS

Based on the results of our review, we are concerned that CDC has not made significant improvement to its ethics program since our last review in 1999. Many of the same deficiencies identified during that review, most of which involved the administration of the financial disclosure systems, remain today. Moreover, without increased staffing to administer the program on a day-to-day basis, CDC runs the risk of failing to comply with the most basic ethics requirements.

EMPLOYEE ETHICS SURVEY

In May 2005, just prior to the beginning of our fieldwork, OGE completed a survey of CDC employees to assess the effectiveness of CDC's ethics program and agency ethical climate from the employees' perspective. Overall, employees who responded to our survey were favorable in their assessment of CDC's ethics program and ethical climate. Most respondents indicated that they were familiar with the rules of ethical conduct for executive branch employees and aware that there are officials in their agency with responsibility for addressing ethics concerns. These results indicate a relatively high level of program awareness among survey respondents. Most respondents also indicated that the ethics advice and training they had received were useful in making them more aware of ethics issues and guiding their decisions and conduct in connection with their work.

PROGRAM ADMINISTRATION

The bulk of CDC's ethics program is centrally managed by the Ethics Program Activity within the Office of the Chief Operating Officer. The Deputy Chief Operating Officer serves as CDC's Deputy Ethics Counselor (DEC) and is primarily responsible for the program. However, the day-to-day administration of the program is overseen by the Ethics Program Activity's Ethics Program Manager. She is currently aided by two Ethics Program Specialists. In addition, the Ethics Program Activity receives routine support from your office (the Department of Health and Human Services (HHS) Office of the General Counsel/ Ethics Division (OGC/ ED); in particular, an HHS OGC/ED attorney is dedicated to assist the Ethics Program Activity with ethics issues.

The ethics program for members of CDC's Federal advisory committees is administered by the Committee Management Office of the Management Analysis and Services Office. Our findings with respect to this portion of the program will be detailed later in this report under the FEDERAL ADVISORY COMMITTEES heading.

Ethics Program Activity
Staffing Concerns

During our previous review of CDC's ethics program in 1999, we concluded that in order to successfully maintain and improve the program, CDC should consider expanding the ethics staff. We were concerned that if additional staff was not added, the program would not likely be able to comply with applicable laws and regulations.

A lack of staffing to effectively administer the ethics program appears to still be an issue at CDC. Although an additional Ethics Program Specialist was added to the program following our previous review, the Ethics Program Activity recently lost another Ethics Program Specialist to retirement and, although efforts are underway to replace her, the position has not yet been filled.

According to a memorandum from the DEC provided to us by the Ethics Program Manager, in light of anticipated additional duties for the Ethics Program Activity, the current staffing level will soon limit its ability to meet the ethics needs of the CDC community. For example, HHS' newly amended supplemental standards of conduct regulation is likely to increase the Ethics Program Activity's workload significantly. Moreover, the DEC anticipates that the number of employees required to file public financial disclosure reports will likely double by 2006 as a result of CDC's forthcoming equal classification request to OGE to require certain CDC employees occupying Senior Executive Service-equivalent positions to file public reports. The added responsibility to review these additional public reports, coupled with the responsibility to review CDC's over 2,300 confidential reports, will further stretch the Ethics Program Activity's already limited resources.

The findings of our current review support the DEC's concerns. The staffing level at the Ethics Program Activity still does not appear to be sufficient to maintain CDC's ethics program. In

fact, many of the deficiencies we identified during our previous review remain. While all of these deficiencies may not be the direct result of a lack of staffing in the Ethics Program Activity, it appears to be a contributing factor. A detailed explanation of our findings and their relationship to the Ethics Program Activity's staffing concerns follows.

PUBLIC FINANCIAL DISCLOSURE

CDC's public financial disclosure system requires improvement. In particular, stronger coordination between the Atlanta Human Resources Center (AHRC) and the Ethics Program Activity is required to ensure that public filers leaving (or entering) covered positions are identified by AHRC so that the Ethics Program Activity can notify them of the termination (or new entrant) public filing requirement in a timely manner.

To evaluate the public system, we examined 30 of the 32[1] public reports required to be filed with the Ethics Program Activity in 2004 and 5 of the 7 new entrant and termination reports required to be filed thus far in 2005.

All 35 of the reports we examined were filed by the appropriate deadlines, including any filing extensions, and all but 2[2] appeared to be reviewed and certified timely. However, we noted that several reports appeared to have been initially reviewed by an Ethics Program Specialist and certified by the DEC on the same day. We found this to be questionable considering that the Ethics Program Activity and the DEC are not physically located in the same building. Ethics Program Activity officials admitted that, based on a practice instituted by the former DEC, an Ethics Program Specialist would review and sign reports as the intermediate reviewer and then certify the reports using the DEC's signature stamp. The Ethics Program Manager added, however, that she will now personally provide the DEC with the public reports for his certification.

One of the two 2005 reports that we did not examine (a termination report) had not yet been filed at the time of our review because when the employee left CDC, AHRC did not notify the Ethics Program Activity and thus the employee was not notified of the termination filing requirement. Efforts are underway by the Ethics Program Activity to locate the employee and collect his termination report.

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[1]We did not examine the two reports required to be filed in 2004 by the CDC Director and DEC, as they are filed with your office for review and certification.

[2]One of these reports had been signed but was not dated by the DEC; therefore we could not assess the timeliness of the certification. The other report did not contain any review or certification signatures or dates at the time of our review. According to an Ethics Program Specialist, this report was originally filed timely but without being signed by the filer. Therefore, she had to return the report to the filer for her signature, thus delaying final certification of the report. She subsequently informed us that the report was certified on July 1, 2005 (after the completion of our fieldwork).

Ethics Program Activity officials informed us that coordination between their office and AHRC requires improvement. They explained that in addition to the case just noted, AHRC did not notify them of the recent departure of six other public financial disclosure filers. Fortunately, the Ethics Program Activity became aware of these departures through other means.

In an effort to ensure that new entrant and termination filers are captured in a timely manner, the Ethics Program Activity had previously met with AHRC officials to impress upon them their need to be provided timely information regarding any personnel actions involving Senior Executive Service employees. However, based on the just mentioned lapses in notification, it would appear that this process still requires improvement.

The other 2005 report we did not examine (a new entrant report) had just been filed prior to our review but had not yet been certified. This report was due on February 7, 2005. After several efforts by the Ethics Program Activity and the DEC to collect the report, it was finally filed on May 19, 2005. The employee has since been referred to your office, which is in the process of collecting the $200 late filing fee from the filer.

Our examination of the public reports revealed no technical or substantive deficiencies.

Equal Classification Request

As previously noted, CDC is in the process of developing a request for OGE to determine that certain CDC positions are of equal classification to positions described at 5 C.F.R. § 2634.202(c) and require the filing of a public financial disclosure report. This request, which is anticipated to cover employees appointed under the authority of 42 U.S.C. § 209(f), certain members of the Senior Biomedical Research Service, and other similarly situated employees, will likely double the number of employees required to file public financial disclosure reports. This increase in the number of filers will further stretch the Ethics Program Activity's already limited resources.

CONFIDENTIAL FINANCIAL DISCLOSURE

CDC's confidential system also requires improvement. In particular, improvement is required in the timely collection and certification of confidential reports. However, we are concerned that without additional staff to assist in administering the system, full compliance with the confidential disclosure requirements will be difficult.

Prior to our examination of CDC's confidential system, we were informed that approximately 8 percent of the 2,300 annual confidential reports required to be filed in 2004 had not been filed as of the first week of May 2005. In an effort to collect the outstanding reports, the DEC directed the managers of delinquent filers to counsel the employees on their failure to file. Managers were provided a certification memorandum to document the counseling sessions. While these counseling sessions were not considered formal reprimands, the DEC subsequently authorized managers to issue

formal letters of reprimand to any employees who failed to file their reports by May 27, 2005. Moreover, any employee who had not filed by May 27 was notified that their computer system access privileges would be suspended, effective May 31. According to the DEC, as of June 6, only six employees, all of whom are assigned overseas, had not yet filed. He added, however, that these efforts to collect the missing confidential reports have impeded the Ethics Program Activity's ability to review those reports that were already filed and provide prompt ethics advice to CDC employees.

Despite these efforts and the assertion that only six reports had not yet been filed, we could not locate many of the 2004 reports we selected to review. We initially selected a sample of 239 reports from the master list of approximately 2,300 employees required to file in 2004. We could not locate files for 25 of these employees. Of the remaining 214 employees for whom we did locate files, 70 did not have a 2004 report in their files. (In these instances we examined the most recent report in the file, usually a 2003 report). Thus, of the 239 2004 reports we selected to examine, 95 could not be accounted for at the time of our review. Since the completion of our fieldwork, an Ethics Program Specialist has been able to locate all but 22 of the original 95 missing reports. Apparently, many of the reports we could not locate during our fieldwork had in fact been filed but were either still being reviewed or had already been reviewed and certified but had not yet been placed in the appropriate files.

Consistent with the information provided to us in a memorandum from the DEC at the start of our fieldwork, we found that 74 of the 214 reports we examined were filed late. Moreover, according to information provided to us by the Ethics Program Specialist, 25 of the 73 reports located after our fieldwork were filed late.

We also identified seven filers who had filed an OGE Optional Form 450-A but had no OGE Form 450 on file, or the most recent OGE Form 450 was filed more than three years prior. We informed the Ethics Program Activity officials that an OGE Form 450 must be on file for the position the employee currently holds in order for him/her to be eligible to file an OGE Optional Form 450–A. Moreover, after three years of filing an OGE Optional Form 450–A, a filer must file an OGE Form 450.

While all of the reports we examined were initially reviewed in a timely manner by an Ethics Program Specialist, 2 were certified late, and more notably, 14 were not certified at all. We also noted that, as with the public reports, an Ethics Program Specialist had been certifying the reports using the DEC's signature stamp. However, under a recently instituted change in procedure, the Ethics Program Specialists will now be certifying the confidential reports under their own signatures.

While it appears that the reports generally undergo a fairly thorough review, we did identify several technical errors during our examination. These included missing dates of appointment or the use of dates when the employee started work at CDC instead of the date when he/she entered a covered position (on new entrant reports), failure to check the "None" box when a filer had no information to report on a certain part, failure to list the source of a spouse's income, overreporting

of CDC salary and Federal Thrift Savings Plan account information, and failure to indicate whether filers were new entrants or incumbents.

The only substantive issue we identified was that one report was missing the entire second page (Parts II through V) but the report was still certified. According to an Ethics Program Specialist, this report was handled by the Ethics Program Specialist who recently retired. She added that she has been unable to locate any paperwork verifying that the filer had submitted the second page of the report. She is currently in the process of following-up with the filer.

We noted that some filers reported interests in pharmaceutical and health care-related companies such as Pfizer and Merck and asked Ethics Program Activity officials if these types of interests pose the potential for conflict. An Ethics Program Specialist explained that reports containing these types of interests are evaluated for potential conflicts on a case-by-case basis. When no conflict is present, filers listing these types of interests are routinely issued a cautionary memorandum reminding them to avoid participating in matters that could affect the interest(s). The memorandum also describes the corrective actions (recusal, divestiture, etc.) that must be performed if the interest should pose a conflict in the future.

Considering the large number of CDC employees who are required to file confidential financial disclosure reports, we questioned whether supervisors were being overly broad in their designations as to who should be required to file. The Ethics Program Manager stated that she suspects there is some over-coverage by supervisors. The Ethics Program Activity is now asking supervisors to provide written justification when designating filers under the GS-13 pay level. This may result in some decrease in the number of confidential filers and thus ease the burden of collecting and reviewing confidential reports on the Ethics Program Specialists.

OUTSIDE ACTIVITIES

On July 30, 1996, HHS, with OGE concurrence, issued a supplemental standards of conduct regulation at 5 C.F.R. part 5501. Under this regulation, HHS employees, including those at CDC, were required to receive prior approval to engage in certain outside activities. These activities were (1) providing consultative or professional services, including service as an expert witness, (2) engaging in outside teaching, speaking, writing, or editing that relates to the employee's official duties within the meaning of 5 C.F.R. § 2635.807(a)(2)(i)(B) through (E) or would be undertaken as a result of an invitation to engage in the activity that was extended to the employee by a person who is a prohibited source within the meaning of 5 C.F.R. § 2635.203(d), as modified by section 5501.102, and (3) providing advice, counsel, or consultation to a non-Federal entity as an officer, director, or board member, or as a member of a group, such as a planning commission, advisory council, editorial board, or scientific or technical advisory board or panel.

On February 3, 2005, HHS issued a newly amended supplemental regulation as an interim final rule at 5 C.F.R. parts 5501 and 5502.[3] This regulation placed new restrictions and requirements primarily on employees of the National Institutes of Health. However, two new requirements were added for all HHS employees, including those at CDC. First, approvals of outside activities are effective for one year only. Employees must renew their requests for approval annually if they desire to continue with the outside activity. Second, employees for whom an outside activity has been approved or who has participated in any outside activity for which prior approval is required, must file an annual supplemental report (HHS Form 521) for all such activities undertaken in the previous calendar year.

CDC Compliance With Requirements Of
Previous Supplemental Regulation

To evaluate CDC's compliance with the requirements of the HHS supplemental regulation in effect prior to February 3, 2005, we identified all positions reported as being held outside the U.S. Government on Part I of the SF 278s and Part III of the OGE Form 450s we examined. We then identified whether approval had been granted in accordance with the HHS supplemental regulation, if required.

Our examination of all available public reports required to be filed in 2004 and 2005 and a sample of confidential reports required to be filed in 2003 and 2004 revealed 62 reported activities. Of these, 21 were actually activities undertaken as part of employees' official duties and should not have been included on the employees' financial disclosure reports. We reminded Ethics Program Activity officials that only positions held outside the U.S. Government should be listed on filers' financial disclosure reports.

Additionally, five reported activities did not require prior approval (e.g., they did not involve the provision of consultative or professional services, etc.).

The remaining 36 reported activities were outside activities for which approval was required under the previous HHS supplemental regulation. We could not locate approvals for 15 of these activities. Of the remaining 21 activities, only 3 appeared to have been approved in a timely manner (prior to the activity's intended start date, as reported by the employee on the request form [HHS Form 520]). Seventeen appeared to have been approved late (after the reported intended start date).[4]

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[3]Since the completion of our fieldwork, HHS has issued an amended version of this regulation. However, this version does not contain any amendments that would specifically affect CDC.

[4]We could not determine the approval timeliness of the one remaining activity because, although we examined a copy of a letter to the employee approving the request, the related HHS Form 520 was not on file.

Included in the number of activities we considered to have been approved late were those for which approval had been previously granted but the approval period had lapsed prior to the activity being re-approved. Therefore, the activities had been undertaken without up-to-date approvals on file.

CDC Compliance With Requirements Of Newly Amended Supplemental Regulation

To evaluate CDC's progress in complying with the requirements of the newly amended HHS supplemental regulation, we examined all of the activities for which approval was requested thus far using the newly revised HHS Form 520 and all of the available annual supplemental reports of activities undertaken in the previous calendar year using the newly developed HHS Form 521.[5]

Since the issuance of the newly revised HHS Form 520 in April 2005, CDC employees have submitted 10 requests to engage in outside activities using this form. Our examination of these requests and their approvals revealed that 3 of the 10 requests were not approved until after the reported start date for each activity. In fact, in all three cases, the requests themselves were not submitted until after the reported start date.

We suggested that the Ethics Program Activity direct employees to submit their requests sufficiently before the proposed activity start date to ensure that prior approval can be granted. Ethics Program Activity officials estimated that the approval process should typically take approximately four weeks and stated that they have already apprised employees accordingly. However, they added that the review and concurrence of requests by the appropriate Associate Director for Management and Operations (ADMO) has been somewhat protracted in certain cases. They explained that concurrence by the ADMOs is one of many of their duties and thus may not always be given a high priority.

We also identified several instances where the ADMOs simply signed and dated HHS Form 520s without checking the forms' "Concur" or "Nonconcur" boxes, as appropriate. In addition, we identified one instance where a supervisor signed and dated the form but did not check the "Recommend Approval" or "Recommend Disapproval" box, as appropriate. Ethics Program Activity officials stated that in these cases, they assumed that the signature alone was sufficient to show concurrence or recommendation. While this may be a reasonable assumption, Ethics Program Activity officials should ensure that all required sections of the form are completed by the reviewing officials, to avoid any misunderstanding.

One particular request that we questioned from a substantive standpoint dealt with an employee who requested to serve as a member of American Nurses Credentialing Center's (ANCC)

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[5]According to the Ethics Program Manager, you authorized each HHS component to set its own due date for the 2004 annual supplemental reports. CDC set this date at June 28, 2005.

National Streamlining Task Force as an outside activity. According to the HHS Form 520 she submitted, most of her activities would involve participating in conference calls from CDC. Moreover, according to the form, she routinely interacts with ANCC on a routine basis in the course of her assigned duties. When we questioned Ethics Program Activity officials as to whether this type of request should be more appropriately approved as an official duty activity, we were informed that this activity was approved in accordance with an Office of Personnel Management regulation at 5 C.F.R. § 251.202(a) which states:

> "An agency may provide support services to an organization when the agency determines that such action would benefit the agency's programs or would be warranted as a service to employees who are members of the organization and complies with applicable statutes and regulations."

According to an Ethics Program Specialist, approval letters to employees requesting approval for these types of activities typically include language that describes the allowable actions under this authority, as well as the relevant restrictions. However, the approval letter we examined for this request did not contain any such language. Based on follow-up conversations with the Ethics Program Specialist, we determined that the approval letter we examined was only a draft and had not yet been sent to the requesting employee. Following our original meeting, during which we brought this particular request to the attention of Ethics Program Activity officials, the approval letter was revised to include the appropriate language. We were provided a copy of the revised letter via facsimile after our fieldwork was completed.

We also examined all 22 of the HHS Form 521s submitted to date for 2004. We found that six of the original approval dates listed on the forms fell after the dates listed for when the activities had begun. In addition, while the HHS Form 521s we examined were otherwise generally complete, we noted three forms on which employees did not provide a date for which the activities listed on the form were originally approved.

According to the DEC, the revision of the HHS Form 520 to a much more detailed 16 page version, the new requirement that approvals be renewed on an annual basis, and the implementation of the HHS Form 521 process has significantly increased the workload of the Ethics Program Activity.

ETHICS EDUCATION PROGRAM

The Ethics Program Activity, in coordination with AHRC, provides initial ethics orientation and annual ethics training that comply with the requirements of OGE's ethics training regulation at subpart G of 5 C.F.R. part 2638. However, although the Ethics Program Activity utilizes a certification form to track employees receipt of training, efforts to collect these forms have been inconsistent.

Initial Ethics Orientation

AHRC conducts initial ethics orientation for new CDC employees on a biweekly basis. During this orientation, employees are provided a package of materials prepared by the Ethics Program Activity. The package contains copies of the January 20, 2001 memorandum from President Bush regarding standards of official conduct, the executive branchwide standards of conduct, HHS' recently revised supplemental standards of conduct and a compilation of these standards combining the unchanged and revised sections into a single document, the OGE booklet "A Brief Wrap on Ethics," and the address for the Ethics Program Activity Web site. According to the DEC, he would prefer that an Ethics Program Activity official conduct the orientation, but the current shortage of staff does not allow for the practice.

Annual Ethics Training

To meet the annual ethics training requirement for 2004, the Ethics Program Activity directed public and confidential financial disclosure filers to complete two computer-based training modules covering misuse of position and political activities. Upon completion of these modules, filers were directed to forward a training certification form to the Ethics Program Activity to verify that they had taken the training and for placement in their financial disclosure files.

During our review of the public and confidential financial disclosure reports, we noted that many files did not contain 2004 training certifications. Ethics Program Activity officials asserted that simply because certifications were not on file does not necessarily mean that filers did not complete the training. However, they admitted that, as with the collection of delinquent confidential reports, scarce resources have not enabled them to be as diligent in tracking down missing certifications as they might be. The Ethics Program Manager added that CDC is technically meeting OGE's annual training requirement by *providing* annual training.

While OGE's training regulation does not require that annual training attendance/completion be tracked, as a good management practice, we suggest that the Ethics Program Activity make a more concerted effort to ensure that covered employees complete annual ethics training. Failure to track training completion makes it impossible for ethics officials to certify that training has been completed.

Additional Training

The Ethics Program Activity routinely provides ethics training and guidance in addition to the initial ethics orientation and annual ethics training. For example, the Ethics Program Activity periodically submits ethics-related articles for publication in CDC's daily online news source, *CDC Connects.* In 2004, such articles included coverage of the outside activity rules and the Hatch Act.

In addition to providing ethics training for employees, the Ethics Program Activity conducts biannual training for its ethics points of contact at the various CDC centers. These points of contact

are not part of the Ethics Program Activity staff and primarily assist with the completion and collection of certain ethics-related forms, such as requests to engage in outside activities.

ETHICS COUNSELING

According to the Ethics Program Manager, approximately 65 percent of the Ethics Program Activity officials' time is spent providing ethics-related counseling to CDC employees. She added that since the Ethics Program Activity is physically located away from CDC headquarters, thus limiting routine face-to-face contact with most CDC employees, most of the counseling is provided in writing, typically via e-mail.

To evaluate the counseling, we examined a sample of the ethics-related written guidance provided by the Ethics Program Activity from 2004 to the time of our review. The guidance dealing with gifts, letters of recommendation, and endorsements appeared to be in compliance with applicable laws and regulations. However, other guidance, particularly that involving seeking and post-employment, contained insufficient facts from the employee and often there was simply no analysis to review. Consequently, we were unable to conclude that the advice given was adequate, nor could we conclude that the documentation of advice rendered was effective.

In the areas of seeking and post-employment, Ethics Program Activity officials created and/or borrowed from other sources boiler plate language that merely summarized the restrictions without providing any specific fact-based analysis. In the area of seeking employment, it was evident from the e-mail traffic that employees are aware of their basic obligations to recuse themselves from involvement in matters that involve or affect someone with whom they are pursuing employment. In several samples, in fact, the employee spoke of the need to recuse in the initial request for advice. However, we were troubled to note that the sample language/summary of the rules contained no definition/explanation of "seeking." The emphasis was exclusively on "negotiating," a term having a narrower meaning. In the absence of a working definition of "seeking" that informs the employee just how early in the job seeking process the recusal requirement actually applies, employees may inadvertently violate the standards of conduct, if not the criminal statute.

Similarly, in the area of post-employment, virtually all the guidance we reviewed provided little or no analysis of any specific facts, but merely summarized the potentially applicable restrictions. In a few examples, the ethics office did advise the employee to return for further analysis once they had specific facts, and in at least one example, the office had spoken with the employee over the phone (presumably about specific facts) and the e-mail was sent as a follow-up. However, in at least two examples, the employee provided specific facts and the e-mail merely contained a summary of the employee's facts and a summary of the post-employment restrictions that might apply. There was essentially no analysis.

In addition to the counseling about which we could not make assessments regarding their adequacy or effectiveness, there were several particular pieces which caused us specific concern.

While the advice provided in these pieces of guidance was not necessarily incorrect, we noted that it did not cover all of the statutory or regulatory issues and restrictions relevant to the questions that were posed.

We discussed our concerns with the Ethics Program Manager during the OGE Annual Ethics Conference in September 2005. The Ethics Program Manager stated that she has had similar concerns with the ethics advice provided, particularly that provided by the Ethics Program Specialists. She explained that because they are not attorneys, they are often hesitant to conduct in-depth analyses when providing advice, and thus typically provide only a summary or recitation of the applicable ethics rules. During the meeting, HHS' OGE Desk Officer offered to provide the Ethics Program Specialists training on some of the more common issues (e.g., seeking employment, post-employment, etc.) that appear to arise at CDC.

FEDERAL ADVISORY COMMITTEES

The ethics program for CDC's 22 Federal advisory committees appears to be generally effective. The day-to-day administration of this program is carried out by the Committee Management Office of the Management Analysis and Services Office. To evaluate this program, we examined the designations of committee members as either special Government employees (SGE) or representatives, the confidential financial disclosure system and ethics training program for SGE committee members, and the procedures for granting waivers under 18 U.S.C. § 208(b)(3), as well as the substance of the waivers themselves.

SGE vs. Representative Designations

CDC has designated 303 of its 383 advisory committee members as SGEs, thus subjecting them to certain ethics rules and the confidential financial disclosure filing requirements. The remaining 80 members are considered to be "liaisons." According to the Financial Conflict of Interest Specialist with whom we met, the liaisons are non-voting members who serve in a representative capacity. Our examination of the charters of committees whose membership includes liaisons confirmed this characterization of the liaisons' representative status. Each charter contains language specifying that the liaisons are to represent certain organizations, often specifically identifying the organization by name (e.g., American Academy of Family Physicians, Infectious Disease Society of America, etc.).

Confidential System For SGE Advisory Committee Members

To evaluate CDC's confidential system for SGE members of its advisory committees, we examined 134 of the 144 OGE Form 450s required to be filed in 2004 by SGE members of 11 of the 22 committees. We could not examine the remaining 10 reports because 5 had not been filed as required in 2004 and 5 were being utilized by reviewing officials in connection with their review of recently filed 2005 reports.

According to the Financial Conflict of Interest Specialist, the Committee Management Office used to collect term-appointed SGE committee members' new entrant confidential reports upon their initial appointment and follow-on new entrant reports annually thereafter on the anniversary of this appointment. However, the Committee Management Office is now moving toward collecting the follow-on new entrant reports simultaneously once each year on a specified date, as allowed by OGE DAEOgram DO-95-019. While either collection method is allowable, the Committee Management Office must ensure that reports are collected annually for each year of SGE committee members' terms.

Of the 134 OGE Form 450s we examined, 118 appeared to be reviewed and certified in a timely manner, based on the dates the reports were signed by the Executive Secretaries and the Director of the Management Analysis and Services Office as intermediate reviewers and certifying official respectively. Moreover, the Financial Conflict of Interest Specialist informed us that she and the Committee Management Specialist in her office conduct an initial review of the reports; however, they do not sign or date the forms indicating their review.

Our examination of the confidential reports revealed no substantive deficiencies. However, the reports contained some technical deficiencies, including filers: unnecessarily reporting auto loans and mortgages on their private residences on Part II, Liabilities, of the OGE Form 450; failing to provide the dates on which they signed their reports; not reporting full mutual fund names; not checking the "None" boxes when appropriate; and not reporting outside positions on Part III, Outside Positions, that presumably were the sources for income reported on Part I, Assets and Income, during the reporting period.

Ethics Training For SGE Committee Members

The Committee Management Office provides newly appointed SGE members of advisory committees a copy of the executive branchwide standards of conduct and a document entitled "Ethics Rules for Advisory Committee Members and Other Individuals Appointed as Special Government Employees," which summarizes the ethics rules applicable to them. SGE members are then requested to sign a certification form acknowledging their receipt and review of these materials. Annually thereafter, incumbent members are provided a copy of the summary document and required to sign a certification form.

Consistent with our findings with regard to regular employees who file financial disclosure reports with the Ethics Program Activity, we identified a number of SGE committee members who did not have 2004 annual training certifications in their financial disclosure files. The Financial Conflict of Interest Specialist reiterated the stance taken by the Ethics Program Manager that she is meeting the requirements of OGE's training regulation by providing the training materials to each committee member and that there is no requirement to track their review of the materials.

18 U.S.C. § 208(b)(3) Waivers

In February 2002, an OGE attorney visited CDC to review the 18 U.S.C. § 208(b)(3) waivers granted to SGE members of CDC advisory committees and to assist CDC in addressing certain concerns OGE had with respect to these types of waivers. In a letter sent to you in April 2002 discussing the results of this visit, we concluded that CDC had taken steps to improve its advisory committee waiver process and further action was continuing. Our letter also suggested that you provide an attorney from your office to assist in the CDC waiver process.

Since our 2002 visit and letter, it appears that CDC has improved its waiver process, although we did make one suggestion to further improve the individual waiver language. Moreover, it appears that since our letter, you have in fact dedicated an attorney from your office to assist CDC, as we noted that the HHS OGC/ED attorney signed each waiver we examined as a concurring official. However, the forwarding of copies of waivers to OGE, as required by 5 C.F.R. § 2640.303, requires improvement.

To evaluate CDC's process for issuing 18 U.S.C. § 208(b)(3) waivers, as well as the waivers themselves, we examined all 22 of the waivers granted in 2004 to SGE members of its Federal advisory committees. These waivers were granted to members of 8 of CDC's 22 committees.

Each of the waivers was granted by the Director of the Management Analysis and Services Office, who, as the members' appointing official, has been delegated the authority to do so. The waivers are prepared by the officials in the Committee Management Office, in consultation with the relevant committee's Executive Secretary or Designated Federal Official, and provided to the Director of the Management Analysis and Services Office for his approval and signature. As previously noted, the attorney from your office concurs on each waiver granted. In addition, the member to whom the waiver is granted signs the waiver document, acknowledging and agreeing to its terms.

All of the waivers generally met the content requirements described at 5 C.F.R. § 2640.302, including a determination that the need for the SGE's services outweighs the potential for a conflict of interest created by the financial interest involved. However, we felt that in some cases these determinations were rather weak in their descriptions of the real need for the services. Since the need for the SGE's services is the overriding justification for granting a (b)(3) waiver, we suggest that the determinations in future waivers be further expanded and detailed.

According to the Financial Conflict of Interest Specialist, copies of the waivers are routinely sent to your office for forwarding to OGE as required by 5 C.F.R. § 2640.303. However, no copies of the (b)(3) waivers granted at CDC in 2004 appeared to have been forwarded to OGE.

ENFORCEMENT

According to an Ethics Program Specialist, the HHS Office of Inspector General (OIG) would be responsible for investigating allegations of violations of the criminal conflict of interest laws. OIG would also be responsible for referring such allegations to the Department of Justice for prosecution, as appropriate, and concurrently notifying OGE of these referrals and their disposition. However, there have been no such allegations from 2004 to date.

Although there have not been any criminal conflict of interest violations at CDC since 2004, there have been two actions taken against CDC employees for standards of conduct violations during this time period. The Ethics Program Activity provided analysis and input into management's evaluation of both violations.

The first violation involved an employee with oversight of a contract who, according to the documentation we were provided, caused, encouraged, or allowed her adult son and daughter to be hired by the contractor and perform duties under the contract. The employee was found to have violated, among other things, the impartiality prohibitions of 5 C.F.R. § 2635.502. She was issued a letter of reprimand and relieved of all managerial responsibilities.

The second violation involved an employee's misuse of Government property and time, as well as the use of his Government position, to imply governmental sanction, all in violation of subpart G of 5 C.F.R. part 2635. This employee was also issued a letter of reprimand.

RECOMMENDATIONS

To bring CDC's ethics program into full compliance with applicable ethics laws and regulations, we recommend you ensure that:

1. Sufficient staffing exists to adequately maintain the viability of CDC's ethics program and to assure it can meet all ethics-related requirements.

2. The Ethics Program Activity continues efforts to collect the one delinquent public termination report identified during our review.

3. AHRC provides the Ethics Program Activity with accurate and timely lists of employees entering into or departing from public financial disclosure filing positions.

4. The Ethics Program Activity collects confidential reports from regular covered employees in a timely manner.

5. The Ethics Program Activity continues efforts to collect, or otherwise account for, any outstanding 2004 confidential reports.

6. The Ethics Program Specialists certify confidential reports in a timely manner.

7. OGE Form 450-As are filed only by eligible employees who have a previous OGE Form 450 on file for the position they currently hold, in accordance with 5 C.F.R. § 2634.905(d)(2).

8. Term-appointed SGE advisory committee members file confidential reports annually for each year of their terms.

9. Employees obtain written approval prior to engaging in certain outside employment or activities in accordance with the HHS supplemental standards of conduct, specifically 5 C.F.R. § 5501.106(d). Also, ensure that requests are obtained, if appropriate, for the remaining 15 activities we identified for which approvals could not be located.

10. Copies of waivers granted under 18 U.S.C. § 208(b)(3) are forwarded to OGE as required by 5 C.F.R § 2640.303.

In closing, I would like to thank all the CDC officials involved in this review for their efforts on behalf of the ethics program. Please advise me within 60 days of the specific actions you have taken or plan to take on our recommendations. 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 CDC take timely actions to implement our recommendations. A copy of this report is being forwarded to the HHS Inspector General via transmittal letter. Please contact Dale Christopher at 202-482-9224, if we may be of further assistance.

Sincerely,

Joseph Gangloff
Deputy Director
Office of Agency Programs

Report Number 05- 022