



United States Office
Of Government Ethics

Report Number 08-002

Highlights

Model Practices

- VA exhibits leadership involvement and support for the ethics program.
- VA conducts internal ethics program reviews of VA regional offices.
- VA provides tailored training to targeted audiences, including training for employees who are not required to be trained.
- VA has developed comprehensive written procedures for managing the education and training program.
- VA issues memoranda through the agency's leadership reminding employees about training requirements.
- VA makes counseling available to components, and provides weekly reports with examples to ensure consistency and transparency.
- VA procedures require coordination with the DAEO when disciplinary actions, which often involve ethics issues, are taken against senior personnel.

OGE Suggests

- VA enlist the help of individual component leadership in ensuring the submission of semiannual reports of travel payments accepted from non-Federal sources to OGE.

If you have comments or would like to discuss the report, please contact Dale Christopher, Associate Director for Program Reviews, at 202-482-9224 or dachrist@oge.gov.

Ethics Program Review Department of Veterans Affairs

April 2008 Report

Executive Summary

The Office of Government Ethics (OGE) has completed its review of the ethics program at the Department of Veterans Affairs (VA). The purpose of a review is to identify and report on the strengths and weaknesses of a program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program. OGE determined that there is reasonable assurance that the performance and management of VA's ethics program is effective.

OGE's review also identified several model practices that VA has implemented. The model practices include:

- exhibiting leadership involvement in and support for the ethics program, as demonstrated by the VA Secretary's meeting with OGE's Director;
- conducting internal ethics program reviews of VA regional offices;
- providing tailored training to targeted audiences, including training for employees who are not required to be trained;
- developing comprehensive written procedures for managing the education and training program;
- issuing memoranda through the agency's leadership reminding employees about training requirements;
- making counseling available to components, and providing weekly reports with examples to ensure consistency and transparency; and
- requiring coordination with the DAEO when disciplinary actions, which often involve ethics issues, are taken against senior personnel.

This report has been forwarded to VA's Designated Agency Ethics Official and VA's Inspector General.



**United States Office
Of Government Ethics**

Report Number 08-002

Ethics Program Review

Department of Veterans Affairs

April 2008 Report

Introduction

OGE MISSION

The Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance initiatives.

PURPOSE OF A REVIEW

The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures in place for administering the program.

REVIEW AUTHORITY AND SCOPE

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. *See* Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the Department of Veterans Affairs (VA) focused on the below program elements.

- Leadership involvement in the ethics program
- Program structure
- Financial disclosure systems
- Ethics education and training
- Ethics counseling
- Outside employment
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

Ethics Program Review: VA

OGE's review focused primarily on the program at VA headquarters.

Program Elements

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

LEADERSHIP

Commitment and action by agency leadership is the keystone for ensuring the integrity of an agency's ethical culture and for fostering public confidence in the decision-making processes of Government. Leadership involvement in the ethics program at VA is substantial. The VA Secretary has underscored the importance of ethics at VA by providing an introduction to an ethics video. The VA Secretary suggested his own participation in the ethics video. Additionally, the VA Secretary met with OGE's Director to discuss the importance of agency leadership involvement in and support for the ethics program. The Assistant Secretary for Management, the Director of the Veterans Benefits Administration, and the Deputy Under Secretary for Health routinely emphasize the importance of the VA ethics program by issuing memoranda regarding ethics training, integrity, and conflicts of interest.

PROGRAM STRUCTURE

VA's ethics program is administered by the Office of the General Counsel (OGC). The Assistant General Counsel serves as the Designated Agency Ethics Official (DAEO) and is closely involved in the administration of the ethics program. The Deputy Assistant General Counsel serves as the Alternate DAEO. Nine Staff Attorneys and 22 Regional Counsels serve as Deputy DAEOs.

The roles and responsibilities of VA ethics officials are outlined in VA's General Counsel Handbook. The General Counsel Handbook outlines all requirements and procedures for administering, among other things, the ethics program at VA. To ensure compliance with the General Counsel Handbook and ethics laws and regulations, ethics officials from OGC conduct internal ethics program reviews of VA's regional offices. Conducting internal ethics program reviews is recognized by OGE as a model practice.

FINANCIAL DISCLOSURE SYSTEMS

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (SF 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest review (OGE Form 450).

Ethics Program Review: VA

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs and providing counseling to employees. See 5 CFR § 2634.104(b).

OGE's review found that the public and confidential financial disclosure systems at VA are managed effectively. VA ethics officials have developed comprehensive written procedures for managing the financial disclosure systems. The written procedures contain detailed instructions to aid in the review of public and confidential financial disclosure reports. The instructions ensure that all information provided is analyzed to identify real or potential conflicts of interest. Contact information, Web sites, and referenced documents are embedded in the written procedures as electronic links.

Additionally, VA ethics officials developed guidelines for both public and confidential financial disclosure report filers to complete their reports.

Public Financial Disclosure System (SF 278)

All public financial disclosure reports filed within VA are required to be submitted to OGC. The Alternate DAEO assigns submitted public financial disclosure reports to Deputy DAEOs to review and certify. The assignments are recorded in the GCLaws database.¹ Public financial disclosure reports submitted by Presidentially-appointed, Senate-confirmed (PAS) filers must be certified by the DAEO, or in the DAEO's absence, the Alternate DAEO. The VA Secretary must certify the public financial disclosure report submitted by the DAEO.

To evaluate the filing, review, and certification of public reports at VA, OGE examined 50 of the approximately 385 public reports required to be filed in 2005. These 50 reports consisted of:

Type of Report

- 45 incumbent reports
- 5 new entrant reports

50

Filing Timeliness

- All 50 reports were filed in a timely manner.

¹ The GCLaws database allows the Deputy DAEOs to record communications with the filer, document findings, and track progress.

Ethics Program Review: VA

Review Timeliness

- All 50 reports were reviewed in a timely manner.

Certification Timeliness

- All 50 reports were certified in a timely manner.

Quality of Review

Written comments on the reports and documentation in the files indicated that the reports underwent a thorough review by VA officials.

Confidential Financial Disclosure System (OGE Form 450/A)

Confidential financial disclosure reports filed by VA headquarters employees are submitted to OGC. The Alternate DAEO assigns submitted reports to Deputy DAEOs to review and certify. The assignments are recorded in the GCLaws database.

To evaluate the confidential financial disclosure system at VA, OGE examined 68 of the 452 confidential reports required to be filed by VA headquarters' employees in 2005. These 68 reports consisted of:

Type of Report

- 58 annual reports
- 10 new entrant reports

68

Filing Timeliness

- 59 reports were filed in a timely manner.
- 9 reports were filed more than 30 days late.

68

Review Timeliness

- All 68 reports were reviewed in a timely manner.

Certification Timeliness

- All 68 reports were certified in a timely manner.

Ethics Program Review: VA

Quality of Review

The files reflected that the confidential reports had been systematically reviewed. The review team noted that the majority of the reports included annotations by reviewing officials, and when appropriate, recusal memoranda were attached to the reports.

ETHICS EDUCATION AND TRAINING

An ethics education and training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include at least an initial ethics orientation for all employees and annual ethics training for covered employees.

VA's education and training program is tailored to provide relevant training to targeted audiences. Some of the training offered targets employees who enter into, administer, or terminate contracts. VA also targets internal departments like the Veterans Health Administration and the Veterans Benefits Administration for training customized to fit the needs of those components' respective employees. Additionally, VA ethics officials issue memoranda through the agency's leadership, most notably, the Assistant Secretary for Management, reminding employees about the training requirement. VA's ethics officials have also developed comprehensive written procedures for managing the education and training program. Focused ethics education and training, leadership involvement in ethics education and training, and comprehensive written procedures, are all model practices.

Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with initial ethics orientation. Initial ethics orientation must include:

- the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. *See 5 CFR § 2638.703.*

To meet the initial ethics orientation requirement, within 90 days from the time an employee begins work at VA, the employee is provided with:

- the Standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above.

Ethics Program Review: VA

At VA headquarters, new employees also must attend a presentation titled *Ethical Conduct for VA Employees*. New employees at the regional offices are shown an interactive ethics video called *Ethics' Most Wanted* in addition to receiving the written orientation materials. These presentations are designed to explain and raise awareness of ethics-related rules.

According to VA ethics officials, initial ethics orientation was provided to 22,835 out of 23,071 new employees who entered on duty throughout all of VA during the period covered by OGE's review. The employees who had not received initial orientation at the time of OGE's review were scheduled to receive it during subsequent training sessions.²

Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training each year. *See* 5 CFR § 2638.704(a). Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See* 5 CFR § 2638.704(c)(2). Other covered employees (e.g., confidential filers) are required to receive verbal annual ethics training at least once every three years and may receive written annual training in the intervening years. *See* 5 CFR § 2638.705(c). The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct;
- the Standards;
- any agency supplemental standards;
- the Federal conflict of interest statutes; and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See* 5 CFR § 2638.704(b).

OGE reviewed the following VA annual ethics training materials:

- *Ethics' Most Wanted*;
- slides of the instructor-led course titled *Ethical Conduct for VA Employees*; and
- slides of the instructor-led course titled *Selected Ethics Issues*.

OGE's review of these courses found them to meet the annual ethics training content requirements.

In 2005 all 10 of VA's PAS employees received annual ethics training and 338 of the required 346 non-PAS public financial disclosure filers were trained. VA ethics officials stated that 4,394 of 4,637 confidential financial disclosure filers were trained. VA ethics officials explained the discrepancies as due to employees being on extended sick leave, military

² Initial ethics orientation is provided on a monthly basis or as necessary at VA headquarters but only every 90 days at the regional offices.

Ethics Program Review: VA

deployment or maternity leave. Additionally, some covered employees left VA prior to scheduled annual training. VA also provided annual training to 3,423 non-covered employees.

ETHICS COUNSELING

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. *See* 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 CFR § 2638.204.

OGE's assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of advice to assess whether processes and written procedures are effective.

To meet the counseling program requirements at VA, ethics-related counseling is provided to employees primarily by the Deputy DAEOs. VA procedures require that some counseling be documented in formal memoranda, but the majority is stored in the GCLaws database. Counseling rendered to PAS employees is maintained in physical files. A searchable database containing counseling rendered is available on VA's intranet Web site for attorneys to review. Ethics officials at headquarters distribute weekly reports to the regional offices offering recent examples of guidance rendered. Making counseling available by ethics officials and providing weekly reports with examples are model practices which help ensure consistency and transparency.

To evaluate the counseling provided by VA ethics officials, OGE analyzed samples of memorialized ethics counseling. These samples were reviewed by OGE's VA Desk Officer. Generally, the counseling was in the areas of conflicts of interest, fundraising, gifts, misuse of Government property, outside activities, post-Government employment, travel payments from non-Federal sources, and widely attended gatherings. The counseling that OGE examined was timely and consistent with applicable ethics laws and regulations.

ENFORCEMENT

The DAEO is required to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).

Ethics Program Review: VA

Ethics officials at VA are meeting the requirements of 5 CFR § 2638.203(b)(11) and (12) by coordinating with the Office of the Inspector General (OIG) on ethics-related matters. VA ethics officials have an effective working relationship with OIG and coordinate as necessary with OIG on standards of conduct and conflict of interest matters.

VA referred 10 conflict of interest violations to the Department of Justice during 2005. During the same period, there were 84 substantiated violations of the Standards at VA.

When dealing with senior personnel disciplinary actions, VA requires DAEO participation and concurrence. The inclusion of an ethics representative when deliberating disciplinary actions is a model practice.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports of travel payments from non-Federal sources in excess of \$250 to OGE. *See* 31 U.S.C. § 1353.

OGE reviewed three semiannual reports sent to OGE covering the period from October 1, 2004 through March 31, 2006. All of the semiannual reports were submitted using the appropriate SF 326. Only one of the three semiannual reports was submitted to OGE in a timely manner. VA ethics officials explained that semiannual reports were sometimes submitted to OGE after the due date because VA components provide their input late. OGE suggests that VA ethics officials enlist the help of senior component management in order to resolve this issue.

Summary

OGE's review determined that there is reasonable assurance that the performance and management of VA's program is effective.

OGE's review also identified several model practices that VA has implemented. The model practices include:

- exhibiting leadership involvement in and support for the ethics program, as demonstrated by the VA Secretary's meeting with OGE's Director;
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Ethics Program Review: VA

- requiring coordination with the DAEO when disciplinary actions, which often involve ethics issues, are taken against senior personnel.

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