



United States
Office of Government Ethics

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Ray Sheehan
Acting Designated Agency Ethics Official
Office of Ethics
U.S. Department of Agriculture
1400 Independence Avenue, SW.
Room 209, J.L. Whitten Building
Washington, DC 20250

Dear Mr. Sheehan:

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

HIGHLIGHTS

We commend the Research, Education, and Economics (REE) Mission Area ethics officials for having made significant programmatic strides since the last ethics program review. That review was conducted from November 1995 through January 1996. During the current review we noted visible and marked improvement in several areas of the program. However, there is still room for further improvement, particularly in the administration of the confidential financial disclosure system and the prior approval of outside employment process. We are making a recommendation to address these areas.

As you are well aware, recent events have brought about an intense scrutiny of agencies with a large number of employees with scientific and research-related duties; the missions and work of such agencies are very similar to those within the REE Mission Area.¹ As a result, while

¹ In addition to ERS, the REE Mission Area includes the following U.S. Department of Agriculture component agencies: Agricultural Research Service; Cooperative State Research, Education and Extension Service; and National Agricultural Statistics Service.

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this review focused solely on ERS, many of our observations concerning the ethics program may also be applicable to the entire REE Mission Area since the majority of the processes and procedures are identical.

During the course of our review, we made several observations and discussed with REE Mission Area ethics officials and representatives from the U.S. Department of Agriculture's (USDA) Office of Ethics various means of enhancing the program and bringing weaker areas into full compliance. We also discussed with ethics officials the current placement of the ethics program within the Employee Relations Branch (ERB) of the Agricultural Research Service (ARS), and, while the scope of this review was not designed to assess a linkage between the location of the ethics office and the quality of ethics services provided, you may wish to give further consideration to this potential linkage.

PROGRAM STRUCTURE

ERS has approximately 400 employees, most of whom are located within the Washington, DC area. ERS mainly employs economists and social scientists who research and analyze a wide range of agricultural and related topics. Their findings are designed for use by Government and private sector decision makers.

Ethics officials working out of ARS are responsible for managing the ethics programs of agencies within USDA's REE Mission Area, which includes ERS. Organizationally, the REE ethics program is located in the ERB of the Human Resources Division of ARS.

A Supervisory Human Resources Specialist, serving as the REE Mission Area Ethics Advisor, leads the ethics program. She is supported by a staff of one part-time employee and three full-time employees. At times, since the employees are part of the ERB, they are called upon to perform non-ethics related functions. REE Mission Area ethics officials also maintain close liaison with USDA's Office of Ethics which is responsible for administering the public financial disclosure system and training for those filers.

In addition, an ethics liaison position was created for a non-ethics employee from each REE Mission Area agency who is familiar with trends in both the scientific and ethics communities. The ethics liaison serves as a link between REE Mission Area ethics officials and ERS employees. We applaud the creation of this position and strongly encourage ethics officials to continue pursuing means to dialogue with the scientific community. This is an excellent start in conveying ethics rules that are often different from scientific codes of conduct.

FINANCIAL DISCLOSURE SYSTEMS

There is room for improvement in the administration of the financial disclosure systems, particularly the confidential system, to bring ERS into full compliance with 5 C.F.R. part 2634.

Responsibility for the financial disclosure systems is bifurcated with USDA's Office of Ethics responsible for administering the public system, and REE Mission Area ethics officials responsible for administering the confidential system. The two offices work well together, each keeping the other apprised of new developments.

Public System

We examined the eight public reports required to be filed by ERS employees in 2005.² Six of the reports were annual reports, one was a new entrant report, and one was a termination report. Our examination revealed that the new entrant report was not filed in a timely manner due to an administrative error, and the filer received a waiver of the \$200 late filing fee. Two of the six annual reports were not filed in a timely manner;³ however, all reports were reviewed and certified in a timely manner. Overall, the review of the reports appeared to be thoroughly conducted, as our examination found no substantive deficiencies and noted extensive follow-up notes sent to the filers during the review. Furthermore, a well-developed tracking system and written policies and procedures contribute to a timely review and certification of the reports.

Confidential System

We examined the 72 confidential reports required to be filed by ERS employees in 2004. Overall, the review of the reports appeared to be thoroughly conducted, as our examination found no substantive deficiencies and noted appropriate follow-up notes sent to the filers during the review. We did, however, find problems with the timely identification of new entrant filers and a recommendation is being made to address this issue.

Annual Reports

Sixty-seven of the reports we examined were annual reports and all were filed, reviewed, and certified in a timely manner. During our examination of these reports, we also observed that a significant number of employees had filed their reports late in 2003. We commend ethics officials for having made significant progress to increase compliance with the filing deadline, resulting in all employees meeting the filing deadline in 2004.

New Entrant Reports

Five of the reports we examined were new entrant reports. Due to an administrative error, REE Mission Area ethics officials were unaware of the promotion and subsequent covered status of four of the five new entrant filers until the annual filing cycle in October 2004. Human Resources Staffing Specialists are responsible for notifying REE Mission Area ethics officials

² ERS has no Presidentially-appointed, Senate-confirmed employees.

³ One was filed on June 22, 2005 and the other on June 30, 2005.

when an employee enters a covered position and for updating the appropriate codes in USDA's National Finance Center database from which ethics officials receive official notification of an employee's status. For all four of the late new entrant reports, the appropriate coding was not entered into the database in a timely manner.⁴

The timely identification of new entrant confidential filers not only ensures that employees become aware of their filing obligations, but enables ethics officials to identify and mitigate potential conflicts of interest. Accordingly, we recommend that REE Mission Area ethics officials develop a written proposal for remedying the late filing of new entrant confidential reports. Such a proposal should take into consideration our suggestion to REE Mission Area ethics officials that Human Resources Staffing Specialists be rated on this portion of their collateral ethics duties, thereby creating incentives for the successful completion of the task.

OUTSIDE EMPLOYMENT

USDA's supplemental standards of conduct regulation, located at 5 C.F.R. part 8301, was enacted on October 2, 2000. The regulation requires prior written approval for outside employment by financial disclosure report filers. Requests are submitted through a filer's supervisor for approval by the agency designee. We examined approvals granted for eight filers whose activities covered the time period from 2000 through the end of our review. We found several deficiencies during our examination that warrant further attention, especially given that the processes and procedures implementing the supplemental regulation at ERS are applicable to the other agencies within the REE Mission Area. A recommendation is being made to address this issue.

First, we found that in four cases the filers did not complete the Application for Approval to Engage in Non-Federal Employment or Activity (the REE 101) correctly. We found vague descriptions of beginning and ending dates of the employment listed on their forms, as well as insufficient descriptions of the employment. As a result, we were unable to determine whether the filers submitted the REE 101 prior to the commencement of employment. Full disclosure and appropriate follow-up requests to the filers allow for a more rigorous conflict of interest analysis and provide a safeguard for the agency should an issue arise. During the course of our review, you contacted filers and sought additional information that had not been fully disclosed on the forms.

⁴ We note that the problem of identifying new entrant confidential financial disclosure report filers in a timely manner had been identified in the previous review of ERS from November 1995 through January 1996. In the subsequent report, a formal recommendation had been made to require ERS to develop a process for identifying these filers. This recommendation was not closed until the completion of a fifth follow-up review by OGE in 2001, at which time the current process was instituted.

Second, we found that one filer apparently commenced his outside employment before requesting approval.

Third, we found that in three cases the filers completed the REE 101, but did not need prior approval for their outside employment as it did not meet the regulation's definition of employment.

Accordingly, we recommend that REE Mission Area ethics officials develop a written proposal for remedying the deficiencies found in the prior approval of outside employment process. Such a proposal should take into consideration the following good management practices which were discussed with REE Mission Area ethics officials: (1) providing additional guidance to filers on the filing requirements (e.g., via an ethics newsletter to employees); (2) formalizing internal procedures governing the collection and review of the REE 101; (3) considering a requirement for the approvals to be evaluated more frequently; and (4) maintaining a list of all REE 101s to use as a cross-check in reviewing the financial disclosure reports and in tracking outside employment trends.

We are aware that supervisors currently maintain copies of the REE 101s in their files. We consider this a good management practice as it keeps supervisors involved in the process and aware of the projects in which their employees are engaged.

Finally, we are aware that USDA's Office of Ethics is revising an ethics issuance on adjunct positions to include the topic of scientific involvement in outside organizations. Again, in light of recent events and given our findings at ERS, this is a highly apropos time to be revising and reissuing such guidance.

ETHICS EDUCATION AND TRAINING

ERS' education and training program meets OGE's requirements, but there is room for improvement. Similar to the administration of the financial disclosure systems, ERS' ethics education and training program is bifurcated. USDA's Office of Ethics provides training to public filers and REE Mission Area ethics officials provide training to confidential filers. Moreover, both offices work together to ensure that all ERS employees receive appropriate ethics education and training.

Initial Ethics Orientation

REE Mission Area ethics officials assured us that all new employees received initial ethics orientation in 2004. All new employees are notified of the requirement for initial ethics orientation in their entrance on duty letter. Training is provided with written materials which meet the content requirements of 5 C.F.R. § 2638.703, including the provision of a current copy of USDA's supplemental standards of conduct regulation. Occasionally, employees receive

initial ethics orientation in a classroom during a new employee orientation program conducted twice a year. Employees certify their completion of the training.

Annual Ethics Training

An annual training plan was in place for 2004 and 2005, in accordance with 5 C.F.R. § 2638.706. All covered employees received annual ethics training in 2004.⁵ Training is computer-based and prepared by a qualified instructor. During the course of our review, USDA's Office of Ethics revised its guidance to alert public filers that a qualified instructor would be standing by to answer any questions that might arise during the training. Employees certify their completion of the training.

While the education and training program meets the basic requirements, we made several suggestions to enhance the program. For example, providing all employees with an ethics newsletter, similar to the ERB newsletter sent to supervisors and to which ethics officials already contribute, is an excellent means to increase employee awareness of the ethics program and its many facets, including the prior approval of outside employment process. We also encouraged REE Mission Area ethics officials to use the REE television station to broadcast ethics information. Lastly, we note that REE Mission Area ethics officials had considered a REE ethics program open house; we believe this is an excellent means to bring exposure to the ethics program and rules in general.

ADVICE AND COUNSELING

ERS provided a very small sample of substantive ethics advice and counseling for our review. The advice was dispensed primarily via e-mail. In three of the five pieces, the analysis and guidance provided were thorough and in compliance with applicable laws and regulations. In the remaining two, both regarding outside activities, while the questions posed and the general information provided were appropriate, there were not enough specific facts from the employee to assess the adequacy of the advice. Given the size of the sample, we are unable to draw any conclusions about the substantive quality of advice and counseling being provided at ERS.

We did, however, make several suggestions regarding ERS' advice and counseling program. First, we suggested that the common practice of keeping records, when appropriate, on advice rendered, in accordance with 5 C.F.R. § 2638.203(b)(8), be memorialized with a written policy. OGE considers this a "best practice." Second, REE Mission Area ethics officials' sharing of the records of advice dispensed promotes consistency in opinions rendered and also prevents abuse of the system. Third, we noted REE Mission Area ethics officials' planned use of a database and tracking system that links advice rendered to a particular covered filer, with his or

⁵ One public filer did not receive annual ethics training in 2004 as he left ERS before it could be completed.

her financial disclosure and ethics training records. This is an excellent opportunity for REE Mission Area ethics officials to tailor their ethics training program specifically to the needs of their employees, and in particular, covered filers.

ENFORCEMENT

REE Mission Area ethics officials appear to have an effective working relationship with the Office of the Inspector General (OIG) representative to ERS, in accordance with 5 C.F.R. § 2638.203(b)(11) and (12). While there have been no violations of the Standards of Ethical Conduct for Employees of the Executive Branch or the criminal conflict of interest statutes since 2004, it appears likely that, should a violation occur, ERS' system of enforcement would result in consequences for an employee who engages in unethical conduct. Furthermore, although no referrals to the Department of Justice of alleged violations of the criminal conflict of interest statutes have been made, REE Mission Area ethics officials, USDA's Office of Ethics, and OIG are aware of the requirement to concurrently notify OGE of a referral, as required by 5 C.F.R. § 2638.603.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

ERS accepts payments for travel, subsistence, and related expenses from non-Federal sources under 31 U.S.C. § 1353. We examined the two semiannual reports sent to OGE covering the period from April 1, 2004 through March 31, 2005. Both reports were negative reports; both were submitted in a timely manner to OGE. ERS' procedures require a conflict of interest analysis to be conducted by an Ethics Advisor or a Deputy Ethics Official before payments can be accepted. Additionally, REE Mission Area ethics officials review the semiannual report before it is submitted to OGE.

RECOMMENDATION

To improve ERS' ethics program, we recommend that REE Mission Area ethics officials develop a written proposal advising us within 60 days of specific actions they have taken or plan to take to remedy the areas we identified as needing improvement, specifically the new entrant confidential financial disclosure system and the prior approval for outside employment process.

In preparing the proposal, REE Mission Area ethics officials may wish to explore the potential linkage between the location of the ethics program within ARS and the quality of services it provides. As our recommendation might be wholly or partly applicable to the other REE Mission Area agencies, it will be considered as we plan and schedule future reviews. Finally, OGE is committed to assisting REE Mission Area ethics officials in developing this

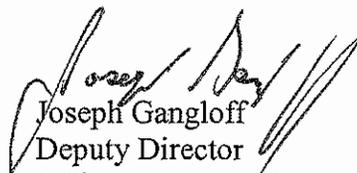
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proposal and in resolving these matters. We invite REE Mission Area ethics officials to contact OGE's Desk Officer for USDA, Cheryl Kane-Piasecki, at 202-482-9252.

A follow-up review will be scheduled approximately six months from the date of this report. In view of the corrective action authority vested with the Director of OGE under subsection 402(b)(9) of the Ethics Act as implemented in subpart D of 5 C.F.R. part 2638, it is important that ERS take action in a timely manner. A copy of this report is being forwarded to USDA's Inspector General.

In closing, I would like to thank REE Mission Area ethics officials and USDA's Office of Ethics for their efforts on behalf of the ethics program. We look forward to working with ERS. Please contact Ed Pratt at 202-482-9270, if we may be of further assistance.

Sincerely,


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Report Number 06- 002

cc: Patricia C. Zemple
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