



United States
Office of Government Ethics
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August 2, 2005

Michael Wholley
Designated Agency Ethics Official
National Aeronautics and Space Administration
Mail Code: G
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Washington, DC 20546

Dear Mr. Wholley:

The Office of Government Ethics (OGE) has completed its review of the National Aeronautics and Space Administration's (NASA) ethics program within NASA headquarters (Headquarters) and Kennedy Space Center (KSC). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (Ethics Act). Our objective was to determine the ethics program's compliance with applicable statutes and regulations. We also evaluated the systems and procedures for ensuring that ethics violations do not occur. The review was conducted from March 2005 through June 2005. The following is a summary of our findings and conclusions.

HIGHLIGHTS

During the course of the review, we discussed with ethics officials a number of concerns regarding a variety of ethics program elements, as reflected in this report. We are recommending that NASA forward public financial disclosure reports filed by Presidentially-appointed, Senate confirmed (PAS) employees, as well as your report, to OGE in a timely manner. We also note in this report several issues which were addressed and resolved during the review. These include: the issuance of written determinations regarding the widely-attended gatherings (WAG) exception to the gift prohibitions in the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), the completion of 2004 annual ethics training, and the content of materials provided to new employees at Headquarters during initial ethics orientation. Additionally, we noted our concerns regarding the waivers NASA has granted under the authority of 18 U.S.C. § 208(b)(3). We do note where NASA has exceeded our requirements in certain areas of education and training and providing counseling and advice.

PROGRAM STRUCTURE

We determined that the structure of NASA's ethics program is appropriate to meet the agency's needs and is adequately staffed within Headquarters and KSC. The ethics program at Headquarters is led by you as the General Counsel and Designated Agency Ethics Official (DAEO) and by the Acting Associate General Counsel for General Law who is the Alternate DAEO. The

Alternate DAEO is responsible for the day-to-day operation of the program and is assisted by several full-time staff attorneys and an ethics paralegal. Each of NASA's ten field Centers has a designated Deputy DAEO, typically the Chief Counsel, and several part-time ethics employees. The Deputy DAEOs report to the Alternate DAEO concerning ethics-related matters. The ethics program at KSC is led by the Chief Counsel and the day-to-day operations are headed by an Assistant Chief Counsel. There are six additional part-time ethics employees.

Since September of 2003, NASA's ethics program has become highly centralized with formal procedures governing all relevant areas. Headquarters ethics officials are tasked with issuing guidance to the Centers on ethics issues, issuing waivers, and making WAG determinations. A Standing Ethics Committee comprised of representatives from Headquarters and the Centers meets monthly to discuss ethics program issues.

ENFORCEMENT

Headquarters ethics officials have an active working relationship with the Office of the Inspector General (OIG), in compliance with 5 C.F.R. § 2638.203(b)(11) and (12). Ethics officials consult on information and findings developed by the OIG regarding cases of ethics violations, as necessary. In turn, ethics officials utilize the services of the OIG, particularly in referring matters to that office for investigation. While the two offices have not agreed on every case or issue, they have been able to work together within the scope of their respective professional responsibilities.

NASA's OIG is responsible for referring alleged violations of the criminal conflict of interest statutes to the Department of Justice (DOJ). It is also responsible for providing concurrent notification of those referrals, as well as the final disposition of such cases, to OGE. The OIG referred three alleged conflict of interest violations to DOJ in 2004. OGE received notification within two weeks of one referral and within six weeks of another. Both notifications stated that DOJ declined to prosecute and that the matters would be referred to NASA officials for appropriate administrative action. Our Office was not notified of the third referral, made in February, 2004, until January, 2005. We have not yet received final disposition information regarding any of the three referrals. Our discussions with OIG officials verified that they are now clearly aware of the notification requirements at 5 C.F.R. § 2638.603 and they will comply.

Ethics officials documented numerous cases of supervisors taking actions against employees throughout NASA for misconduct, primarily misuse of Government resources. Disciplinary actions ranged from reprimand to suspension.

Ethics officials at KSC also have an active working relationship with their local OIG. The two offices frequently discuss relevant issues so that potential ethics violations can be investigated and, if necessary, appropriate action taken. KSC had no referrals or other reported ethics violations during the period covered by our review.

ADVICE AND COUNSELING SERVICES

The ethics advice and counseling program at Headquarters generally meets the requirements of 5 C.F.R. § 2638.203(b)(7) and (8). Due to the centralized nature of the NASA ethics program, Headquarters concurrence is required on post-employment opinions and certain other determinations. We examined 45 pieces of advice rendered to PAS and non-PAS employees via e-mail, letters, and memoranda. Additionally, we looked at general pieces posted on the NASA Web site.

During the course of our review, we discussed several issues with you based on our review of the advice and counseling, including the timeliness and documentation of advice provided to the former Administrator, the issuance of blanket written determinations for invitees to WAGs, and the misuse of the WAG exception. Specifically, there were instances in which you used the WAG exception to accept free attendance at events when you should have used the authority found at 31 U.S.C. § 1353. You agreed to take our suggestions into consideration and will cease in the misuse of the WAG exception.

Finally, we commend you for making post-employment counseling mandatory to all high-level departing employees. OGE considers this a best practice.

EDUCATION AND TRAINING

NASA's education and training program will be fully compliant with the provisions of 5 C.F.R. part 2638 once all covered employees at Headquarters receive their 2004 annual ethics training. We note that during the course of our review you agreed to take action to correct the deficiency. Overall, the education and training programs at Headquarters and KSC are sound, and some aspects exceed the regulatory requirements.

Initial Ethics Orientation Program

The initial ethics orientation (IEO) program at Headquarters is compliant with the provisions of 5 C.F.R. § 2638.703. While IEO is not tracked, ethics officials assured us that all new employees had received the training. Furthermore, all PAS employees appointed during the current and preceding three calendar years received IEO via a one-on-one discussion with the Alternate DAEO, which OGE considers to be a best practice.

We found that a copy of the Standards was the only IEO material new employees received during in-processing. As a result of our review, ethics and personnel officials coordinated to ensure that all new employees also received a copy of NASA's supplemental standards (5 C.F.R. part 6901) and contact information concerning you and other ethics officials.

The IEO program at KSC complies with the provisions of 5 C.F.R. § 2638.703 and exceeds the regulatory requirements in several areas. Ethics officials assured us that all new employees received IEO at new employee in-processing sessions. In 2004, new employees were given a Web link to the ethics office and the Standards; they were also required to certify they were familiar with the Standards. In 2005, new employees are also being given copies of the Standards and supplemental standards, as well as a group orientation from an ethics official.

Annual Ethics Training Program

The annual ethics training (AET) program at Headquarters will be fully compliant with the provisions of 5 C.F.R. part 2638 once all covered employees receive their 2004 AET. According to ethics officials, only 84 percent of covered employees have completed their training. It is important that the remaining covered employees receive their AET as NASA is risking its employees running afoul of ethics requirements. The Alternate DAEO stated that he would have the employees complete their 2004 training as soon as possible. Based on this intention, we do not believe a formal recommendation is necessary, though we remind you that these employees will still be required to complete AET for 2005.

While Headquarters did not have a written plan of annual training in place for 2004, in accordance with 5 C.F.R. § 2638.706, one is established for 2005, and ethics officials will continue to have an annual training plan in the future. Ethics officials stated that all PAS employees appointed in the current and preceding three years received AET either one-on-one with the Alternate DAEO or in a group. The Inspector General receives AET from the Counsel to the Inspector General, who is considered a qualified instructor.

Verbal AET for all non-PAS covered employees is presented by ethics officials in numerous, one-hour sessions throughout the fall. The content, which meets the requirements of 5 C.F.R. §§ 2638.704(b) and 705(b), is typically prepared by ethics officials at one of the field centers and distributed by the Standing Ethics Committee for training purposes. Employees who are unable to attend the sessions complete make-up verbal training on line. Completion of AET is tracked and employees are required to certify they received the training.

The AET program at KSC complies with the provisions of 5 C.F.R. part 2638, as covered employees received AET in 2004. Verbal AET is presented in one-hour sessions by an ethics official. The materials are either developed by the ethics officials or provided via the Standing Ethics Committee. Attendance is tracked and employees are required to certify they received the training. Employees who are unable to attend the live sessions complete make-up verbal training on line. We commend KSC for providing additional training to various groups of employees, especially those with procurement duties who receive ethics training twice each year.

PUBLIC FINANCIAL DISCLOSURE

We found problems with NASA's centralized public financial disclosure system concerning the handling of public reports filed by PAS employees, you, and the former DAEO. By contrast, the

only problem concerning the other public reports that we examined was our difficulty in determining the timeliness of the reviews.

Our examination of the three annual public reports required to be filed by NASA's PAS employees in 2004 revealed that all were filed by or shortly after May 15 and two were reviewed timely; however, none were forwarded to OGE in a timely manner. In addition, neither the new entrant nor the combined annual/termination public reports required to be filed by you and the former DAEO, respectively, were forwarded to OGE in a timely manner. (We could not assess the timeliness of review for one of the PAS annual reports, your report, or the former DAEO's report, since no date of initial review was indicated on any of these reports.) Further, the former DAEO had filed his report more than 30 days after terminating, for which he paid the \$200 late filing fee. Three reports, filed by two PAS employees and you and certified by NASA on September 7, 2004, were not received by OGE until October 20, 2004. The report filed by the other PAS employee and certified by NASA on May 19, 2004 was not received by OGE until January 13, 2005. The report filed by the former DAEO on September 14, 2004 and certified by NASA on January 28, 2005 was not received by OGE until March 11, 2005. The table below summarizes these findings.

	Filer	Report	Filed at NASA	Certified at NASA	Received at OGE
1	Inspector General (PAS)	Annual	5/10/04	9/7/04	10/20/04
2	Deputy Administrator (PAS)	Annual	5/19/04	5/19/04	1/13/05
3	Former Administrator (PAS)	Annual	5/26/04	9/7/04	10/20/04
4	Former DAEO	Annual/ Term. 6/29/04	9/14/04	1/28/05	3/11/05
5	Current DAEO	New Entrant 5/25/04	5/24/04	9/7/04	10/20/04

OGE guidance at that time, transmitted in DAEOgram DO-04-014, required that annual PAS reports be forwarded to OGE as soon as they were approved or by no later than September 15. Although not specified in this guidance, the need to forward reports to OGE as soon as they are approved would apply to DAEOs' reports as well. We remind you that OGE's current guidance, transmitted in DAEOgram DO-05-009, has even more stringent requirements, stating that:

This year, all annual SF 278s for PAS officials and DAEOs filed by May 15, 2005 should be certified and submitted to OGE as soon as approved by your agency or department, but no later than August 1, 2005. If for some reason you cannot certify the report within this time frame, you must submit an uncertified report to OGE. The certified report must be submitted to OGE as soon as possible thereafter. If you submit an uncertified report, please make your OGE desk officer aware of the reason for the delay in certifying the report and the progress you are making towards certification.

Accordingly, we recommend that you forward PAS annual and termination public reports to OGE as soon as they are certified, in accordance with DAEOgram DO-04-014.

We also examined a sample of 37 of the approximately 200 non-PAS public reports required to be filed in 2004. These included: 1 termination, 1 combined annual/termination, 6 new entrant, and 29 annual reports. The reports were generally filed, reviewed, and certified timely. Our determination of the timeliness of review is based on an ethics official's confirmation that reports received a timely initial review, even though the date of that review was not indicated on the reports or otherwise documented. The reports appeared to be thoroughly reviewed, as evidenced by the notations made by reviewers. We identified no substantive deficiencies.

CONFIDENTIAL FINANCIAL DISCLOSURE

The confidential financial disclosure system within Headquarters and KSC is in compliance with relevant requirements. We examined 30 of the 407 confidential financial disclosure reports filed at Headquarters. These included 5 new entrant and 25 annual reports. All reports were thoroughly reviewed, as indicated by the extensive notations made by reviewing officials. The annual reports were also filed, reviewed, and certified timely. However, three of the five new entrant reports were filed more than 30 days beyond the applicable deadlines.

We also examined 40 of the 463 confidential reports filed at KSC. These included 6 new entrant and 34 annual reports. As at Headquarters, the reports were thoroughly reviewed and the annual reports were filed, reviewed, and certified in a timely manner. However, all six of the new entrant reports filed at KSC were filed more than 30 days late. This was due to the inability to identify new entrant filers and advise them of filing requirements until the annual filing cycle when supervisors and ethics officials review positions for filing status determinations. After we raised the issue with KSC's ethics officials, they drafted and implemented new procedures which appear to ensure new entrant filers are identified early enough to allow them to file by the applicable deadline.

OUTSIDE EMPLOYMENT AND ACTIVITIES

NASA's supplemental standards prohibit non-special Government employees (SGE) from engaging in certain types of outside employment and require prior approval before engaging in other specified outside employment or activities. We examined five examples of requests from Headquarters' employees to engage in outside employment or activities and two examples from KSC from 2003 and 2004. In all cases, the approvals were granted in accordance with the provisions of the supplemental.

SPECIAL GOVERNMENT EMPLOYEES

NASA currently has 27 Federal advisory committees. The 27 committees include 10 that report directly to the NASA Advisory Council, a separate Federal advisory committee, whose membership includes the chairs of its subordinate standing committees. Also included are 13 committees that are Strategic Roadmap advisory committees created in December of 2004 as a result

of the President's Commission on Implementation of the United States Space Exploration Policy (Aldridge Commission) report. The creation of these new advisory committees has presented ethics officials with unique challenges in attempting to both evaluate the status designations of committee members and provide appropriate ethics training to all committee members designated as SGEs.

While ethics officials have not yet completed their analysis of the status designation for members of advisory committees, several mechanisms ensure the eventual completion of this task. First, in order to mitigate potential conflicts of interest, it has been NASA's practice to designate all committee members as SGEs by default. (Ethics officials, however, have identified a few committees where the members are truly serving in a representative capacity and have made the appropriate designation changes.) Second, during the current transition period, as new members are appointed to Strategic Roadmap advisory committees, members are screened by ethics officials who determine whether the SGE designation is appropriate. Finally, as the membership for previous advisory committees is renewed, ethics officials evaluate the status designations for all committee members.

Ethics officials were unable to provide ethics training to all SGEs serving on advisory committees in 2004; however, at the end of our field work, ethics officials had provided ethics training at the initial meeting of all advisory committees who had meetings thus far in 2005. The ethics training provided met all relevant requirements.

We also examined a sample of confidential financial disclosure reports filed by SGEs. They were filed, reviewed, and certified timely. They also appeared to have been thoroughly reviewed. Cautionary memorandums were provided to most of the SGEs whose reports were examined. Memorandums were provided to filers based on the ethics officials' case-by-case determinations concerning the interests disclosed on the report. We consider this to be an appropriate measure to help prevent conflicts of interest.

ETHICS AGREEMENTS

We examined all 16 waivers granted by NASA under the authority of 18 U.S.C. § 208 during the period 2003 through 2005. All of the waivers were granted under 18 U.S.C. § 208(b)(3). We found them to be valid in that they met the relevant legal standards provided in 18 U.S.C. § 208 and the regulatory requirements of 5 C.F.R. part 2640, subpart C. However, we noted that during the consultative process, OGE made certain suggestions, primarily that NASA narrow the scope of the proposed waivers by placing some limitations on the SGEs' participation in matters before the committee. These suggestions were not heeded. Although NASA's declination to narrow the scope of the waivers does not make those waivers invalid, we maintain that, in the future, NASA should limit their breadth.

We also examined the nine recusals carried out during 2004 through 2005 by NASA's former Administrator as well as non-PAS employees assigned to Headquarters and KSC. Most of the recusals appropriately identified the specific matters from which the employees were recusing themselves. However, some of the recusals filed by Headquarters employees did not include an

Mr. Michael Wholley
Page 8

adequate screening arrangement. Some simply stated that the recused employee would ensure "someone" would be assigned to handle the matters which prompted their recusals. Again, as a reminder, in the future, recusals should specify, by duty title(s) or name(s), the person or persons who would be assigned to handle matters which are the subject of the recusal, as explained in our DAEOgram DO-04-012.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

NASA has an effective system for appropriately accepting payments for invitational travel and related expenses from non-Federal sources under the authority of 31 U.S.C. § 1353. We examined two semiannual reports to OGE of almost 400 payments of more than \$250, covering the period October 1, 2003 through September 30, 2004. Through discussions with ethics officials and an examination of the available supporting documentation for a sample of three payments accepted within Headquarters and two payments accepted at KSC, we determined that NASA's procedures for processing requests from employees for acceptance of payments comply with the implementing regulation at 41 C.F.R. Chapter 304. Further, our examination of the supporting documentation indicates that the reported payments were properly accepted under §1353 and Chapter 304.

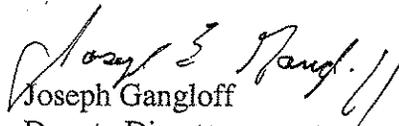
RECOMMENDATION

We recommend that you:

Forward PAS annual and termination public reports to OGE as soon as they are certified, in accordance with DAEOgram DO-04-014.

In closing, I would like to thank everyone involved in this review for their cooperation on behalf of the ethics program. Please advise me within 60 days of the specific actions planned or taken concerning the recommendation in our report. 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 you take actions to correct the deficiency in a timely manner. We are sending a copy of this report via transmittal letter to NASA's Inspector General. Please contact Doug Chapman at 202-482-9223 if we may be of further assistance.

Sincerely,


Joseph Gangloff
Deputy Director
Office of Agency Programs