



United States Office
Of Government Ethics

Report Number 06-015

Highlights

Issues of Compliance

- USAID did not provide notification to OGE of three conflict of interest referrals to the Department of Justice in a timely manner. 5 C.F.R. § 2638.603.
- OGE did not receive copies of three waivers USAID issued under 18 U.S.C. § 208(b)(1) until OGE's review was underway. USAID could not recall whether it consulted with OGE prior to granting the waivers. 5 C.F.R. § 2640.303.
- Three recusal statements did not contain specific screening arrangements until after USAID revised them during OGE's review.
- USAID did not have effective procedures in place prior to OGE's review to ensure the timely filing of new entrant confidential financial disclosure reports required of SGEs.

Model Practices

- Ethics duties are included in the ethics staff's position descriptions and performance evaluations.
- A Standard Operating Procedures notebook contains guidance for administering the ethics program.
- New employees receive both a written and in-person initial ethics orientation.
- Confidential financial disclosure report filers receive verbal annual ethics training more than once every three years.
- USAID offers values-based ethical decision-making training.
- Certain contractor employees and representatives serving on a Federal advisory committee received ethics training.

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Ethics Program Review

U.S. Agency for International Development

October 2006 Report

Executive Summary

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

OGE has no formal recommendations for the ethics program at this time. OGE notes that the following actions were taken during the review to address issues in certain ethics program elements. USAID's ethics and enforcement officials entered into a Memorandum of Understanding to ensure that OGE is notified of conflict of interest referrals to the Department of Justice. 5 C.F.R. § 2638.603. USAID drafted procedures to address consultation and notification responsibilities with respect to waivers issued under 18 U.S.C. § 208(b)(1). 5 C.F.R. § 2640.303. USAID revised three recusal statements to incorporate specific screening arrangements. USAID corrected its administration of the confidential financial disclosure system as it relates to special Government employees (SGE) by drafting procedures to ensure that new entrant filers are captured as they enter on duty, rather than during the annual filing cycle. USAID drafted procedures to ensure that SGEs receive tailored ethics training materials. USAID revised two ethics training handouts and corrected or clarified information posted on the financial disclosure pages of its ethics Web site. Finally, USAID amended the standard language of its conflict of interest analysis statement concerning the acceptance of travel payments from non-Federal sources to include an explicit statement that ethics officials had conducted the conflict of interest analysis.

Furthermore, OGE found that aspects of the education and training program exceed the minimum regulatory requirements and that USAID has implemented various model practices in its ethics program.

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



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Ethics Program Review

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Introduction

THE OFFICE OF GOVERNMENT ETHICS' 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 the program by: (1) measuring agency compliance with ethics requirements found in the relevant laws, regulations, and policies and (2) evaluating 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 programs. This review of the U.S. Agency for International Development (USAID) focused on the enforcement of ethics laws and regulations, ethics agreements, financial disclosure systems, special Government employees, ethics education and training, the acceptance of travel payments from non-Federal sources, Federal advisory committees, and advice and counseling rendered to employees. The review also addressed the structure and administration of the ethics program, agency-specific ethics rules, employees serving under the Intergovernmental Personnel Act, and USAID's Financial Disclosure Tracking System. Title IV of the Ethics in Government Act of 1978, as amended, and 5 C.F.R. part 2638.

This review was conducted onsite at USAID Headquarters in Washington, DC in February and March 2006.

Ethics Program Review: USAID

Findings

PROGRAM STRUCTURE AND ADMINISTRATION

OGE was pleased to find several positive aspects related to the structure and administration of USAID's ethics program. The number of staff assigned to administer the ethics program appears adequate, program procedures are memorialized, employees have a positive view of their interactions with the ethics staff, and the highest echelon within USAID supports the ethics program and ethical behavior.

Staffing

USAID's ethics program is administered by the Office of the General Counsel, Office of Ethics and Administration (GC/EA). The number of personnel assigned to administer the ethics program appears adequate. The ethics staff at headquarters is comprised of the Designated Agency Ethics Official (DAEO), the Alternate DAEO, two Attorney-Advisors, the Ethics Program Specialist, and the Program Specialist. Additionally, USAID employs approximately 30 Regional Legal Advisors (RLA) who function as deputy ethics officers at overseas posts.¹ OGE was pleased to hear that ethics duties are included in the position descriptions and annual performance appraisals for the ethics staff at headquarters and for RLAs overseas. OGE applauds USAID's inclusion of ethics duties in position descriptions and annual performance appraisals as a means to enhance the accountability of its ethics staff in carrying out ethics duties.

Documentation of Program Procedures

A Standard Operating Procedures (SOP) notebook contains guidance for administering USAID's ethics program. The guidance includes, among other things, procedures for the public and confidential financial disclosure systems, annual ethics training plans, and procedures relating to the acceptance of travel payments from non-Federal sources. OGE commends USAID for enhancing the transparency and efficiency of the ethics program by documenting program procedures in the SOP notebook; such documentation should also aid in a smooth transition in program administration should a major change in staff occur.

Employees' Satisfaction With GC Interaction

OGE was advised by ethics officials that much of the employee interaction with GC relates to ethics. USAID conducted a survey in which employees expressed their satisfaction with the services of offices within USAID. GC ranked number one in customer service.

¹ Prior to being stationed overseas, RLAs participate in a rotational assignment at headquarters where they are exposed to ethics program operations.

Ethics Program Review: USAID

Support of the Administrator

OGE examined two ethics directives issued as agency-wide notices by USAID's former Administrator and current Administrator. The directive issued by the former Administrator in January 2003 was included in the folder of written materials distributed to employees during ethics training sessions. The current Administrator's directive, issued in July 2006, has replaced the former Administrator's directive in the folder of written materials.

The former Administrator's directive stressed the importance of adhering to the rules on accepting gifts from outside sources and receiving an advance determination of agency interest under the widely attended gatherings exception to the gifts rules. Additionally, the directive stated that information on gifts and other ethics rules was included in the ethics training that the former Administrator attended every year. Such a pointed reference to the former Administrator's own observance of ethics training requirements supported the message that ethics is important at USAID.

The current Administrator's directive stresses USAID's commitment to ethical conduct and integrity. The directive states that "Conduct that falls short of established standards undermines our Agency and impedes our success in achieving our goals. I expect supervisors to set the tone for their work units, and I expect a high level of accountability." Additionally, the directive encourages employees to review the ethics information posted on USAID's ethics Web site. The Administrator expects employees to reach beyond minimum legal compliance to ensure that USAID upholds the highest standards of ethical conduct and integrity.

The Administrator's support of the ethics program is also evident in the agency's awards program. USAID's incentive awards program contains a category for ethics. As indicated in the award's statement of purpose, "The Ethics Award recognizes one employee who has made exceptional contributions to the promotion of ethical standards and conduct [at USAID]. These contributions must far exceed the individual's normal job responsibilities and [the] ethical rules and policies." The Ethics Award consists of a certificate signed by the Administrator and a cash award.

AGENCY-SPECIFIC ETHICS RULES

USAID does not have a supplemental standards of conduct regulation issued with OGE's concurrence and co-signature pursuant to 5 C.F.R. § 2635.105. However, USAID is subject to certain provisions in the Department of State's Foreign Affairs Manual (FAM).² For example, 3 FAM 4123 contains restrictions on employment and outside activities while abroad.

² Provisions in the FAM are based on independent statutory provisions and treaty law requirements, or implement regulations contained in 5 C.F.R.

Ethics Program Review: USAID

OGE found that a handout given to employees during initial ethics orientation and annual ethics training contained a reference to a provision of the FAM that no longer exists. OGE advised USAID that 3 FAM 620 was removed by the Department of State at least five years ago.³ During OGE's review, USAID amended the handout by removing the reference to the nonexistent provision and inserting references to current provisions of the FAM.

ENFORCEMENT

USAID complies with the provisions of 5 C.F.R. § 2638.203(b)(12), ensuring that the services of USAID's Office of Inspector General (OIG) are utilized when appropriate. USAID also complies with § 2638.203(b)(9), ensuring that prompt and effective action, including administrative action, is taken to remedy ethics violations. However, OGE's review revealed that USAID needed to comply with § 2638.603, requiring agencies to provide concurrent notification to OGE of referrals to the Department of Justice (DOJ) of alleged violations of the conflict of interest statutes and to provide prompt notification to OGE of the disposition of such referrals. OGE notes that actions were taken by USAID to address this issue during the review.

Coordination Between Ethics and Enforcement Offices

GC/EA maintains an effective working relationship with OIG. GC/EA forwards ethics-related allegations it receives to OIG immediately after receipt.

OGE was concerned that, prior to the review, neither office had a clear understanding of its role relative to preparing and forwarding to OGE conflict of interest referral notification forms (see the *Concurrent Notification of Criminal Referrals to DOJ* subsection of this report). As a result of the review, GC/EA and OIG officials entered into a Memorandum of Understanding to formalize their ethics program responsibilities. This Memorandum of Understanding should enhance the transparency, efficiency, and accountability aspects of the enforcement element of the ethics program.

Criminal Conflict of Interest Cases

From March 2004 through November 2005, three criminal conflict of interest cases were referred to DOJ. Two cases involved alleged violations of 18 U.S.C. § 208 and one case involved an alleged violation of 18 U.S.C. § 207.

³ 3 FAM 620 contained standards of conduct regulations which applied to employees of the Department of State, USAID, and the former U.S. Information Agency. The regulations were added to 22 C.F.R. part 10 and were superseded after OGE issued executive branchwide standards of conduct regulations. The Department of State and USAID published their revocation of the residual standards of conduct regulation at 22 C.F.R. part 10 on April 4, 2005.

Ethics Program Review: USAID

In the first 18 U.S.C. § 208 case, the employee was accused of communicating with a USAID contractor that employed his spouse. Although the employee had received ethics training and recused himself from matters that might impact the contractor, he allegedly continued to participate in such matters. He insisted that he could not perform his job duties without such participation. He was removed from his position and reassigned to another position. OIG referred the case to the criminal and civil divisions of DOJ; although the criminal division declined to prosecute, the civil division accepted the case. The case is currently under review.

In the second 18 U.S.C. § 208 case, the employee was accused of misusing her Government car and driver's time. The employee had received ethics training. OIG referred the case to the criminal division of DOJ which declined to prosecute. The case was referred for administrative action after the declination occurred. When the employee retired, USAID deducted funds from her retirement check to pay the wages owed to the driver.

The final case involved an alleged 18 U.S.C. § 207 violation by a former Presidentially-appointed, Senate-confirmed employee. He allegedly communicated with a USAID employee within his one-year post-Government employment ban on representation back to USAID. The employee had received post-Government employment counseling prior to leaving USAID. OIG referred the case to the criminal and civil divisions of DOJ; both divisions declined to prosecute the case.

Based on OGE's discussions with USAID officials and an examination of pertinent documents, OGE believes that prompt and effective administrative actions were taken in these cases.

Concurrent Notification of Criminal Referrals to DOJ

Prior to the review, OGE had not received an OGE Form 202 (Notification of Conflict of Interest Referral), which is used to provide concurrent notification to OGE, for the three criminal conflict of interest referrals to DOJ discussed in this report. The forms were drafted and forwarded to OGE during the review. During separate meetings held with GC/EA and OIG, OGE received conflicting accounts of which office was responsible for notifying OGE of criminal conflict of interest referrals to DOJ. Each office believed the other office bore the notification responsibility. Under the terms of the Memorandum of Understanding which formalizes the ethics program responsibilities of GC/EA and OIG, the OGE Form 202s will be prepared by OIG and GC/EA will forward them to OGE to fulfill the concurrent notification requirement.

Financial Disclosure Enforcement Action

In 2004, USAID referred an employee to DOJ for failing to file his incumbent public financial disclosure report. Two days after the referral was made, the employee filed his public

Ethics Program Review: USAID

report. As such, USAID withdrew the referral. However, the \$200 late filing fee was garnished from the employee's pay.

Based on OGE's examination of pertinent documents, OGE believes that prompt and effective administrative action was taken in this matter.

OIG's Audit of USAID's Compliance With Certain Ethics Requirements

On December 30, 2002, OIG released a report on its audit of USAID's compliance with annual ethics training and financial disclosure regulations for selected employees. OIG limited the scope of its audit to "determining whether USAID had accurately identified which staff members were required to complete financial disclosure reports and attend annual ethics training and whether these requirements had been met." The audit resulted in the issuance of 10 procedural recommendations to improve USAID's systems for tracking annual ethics training and financial disclosure requirements. Subsequently, USAID's Financial Disclosure Tracking System was redesigned and procedures were established to address the recommendations. No follow-up review by OIG was necessary because GC/EA was already in the process of implementing the recommendations by the time OIG provided GC/EA with a draft of the report.

ETHICS AGREEMENTS

The ethics agreements element of USAID's ethics program generally complies with subpart H of 5 C.F.R. part 2634 and subpart C of 5 C.F.R. part 2640. OGE notes that actions were taken by USAID during the review to address consultation and notification issues with respect to waivers. OGE also notes that during the review, several recusal statements were revised to incorporate specific screening arrangements.

Ethics Agreements Entered Into by Presidentially- Appointed, Senate-Confirmed Employees

OGE examined 10 written ethics agreements entered into by Presidentially-appointed, Senate-confirmed employees (PAS). All terms of the ethics agreements were complied with in a timely manner and screening arrangements for recusals are in place.

In accordance with 5 C.F.R. § 2640.303, when practicable, an official is required to consult formally or informally with OGE prior to granting a waiver under 18 U.S.C. § 208(b)(1) or (b)(3). Additionally a copy of each such waiver is to be forwarded to the Director of OGE.

Prior to the review, OGE did not have a copy of one associated 18 U.S.C. § 208(b)(1) waiver on file; however, OGE received a copy of the waiver during the review. Additionally, USAID could not recall whether it had consulted with OGE prior to granting the waiver. In response to OGE's concerns regarding compliance with 5 C.F.R. § 2640.303, USAID drafted an

Ethics Program Review: USAID

SOP for consulting with OGE prior to granting a waiver and for providing OGE with a copy of the final waiver.

Remedial Actions not Associated With PAS Employees' Ethics Agreements

OGE examined two additional 18 U.S.C. § 208(b)(1) waivers which were not associated with PAS employees' ethics agreements. OGE did not have copies of the waivers on file prior to the review, but received copies during the review. Additionally, USAID could not recall whether it had coordinated with OGE prior to granting the waivers. Based on the SOP that was drafted to address these issues, OGE is not issuing a formal recommendation.

OGE examined 50 recusal statements executed in 2005 and 1 recusal statement executed in 2004. OGE was concerned that seven recusal statements did not have specific screening arrangements in place to ensure that employees did not work on matters from which they were recused. During the review, USAID revised three of the recusal statements to incorporate specific screening arrangements. The remaining four recusal statements were not revised because the individuals no longer worked for USAID. Based on the actions taken to address the sufficiency of screening arrangements for recusal statements, OGE is not issuing a formal recommendation to address this issue.

FINANCIAL DISCLOSURE SYSTEMS

The financial disclosure systems generally comply with the provisions of 5 C.F.R. part 2634. Master lists of financial disclosure report filers and an electronic tracking system are used to track the filing of reports (see the *Financial Disclosure Tracking System* section of this report). A list of contractors is used in reviewing reports to assess whether any conflicts of interest exist. OGE notes that USAID took action during the review to correct the administration of the confidential financial disclosure system as it relates to special Government employees (SGE).

Public Financial Disclosure

OGE examined a sample of 63 of the 399 public financial disclosure reports required to be filed in 2005; there were 25 incumbent (annual), 31 new entrant, and 7 termination reports in OGE's sample.⁴ Fifty-nine reports were filed in a timely manner. The remaining 4 reports filed late but within 30 days after the due date or last day of a filing extension.⁵ All reports were

⁴ OGE's sample of public reports included 14 reports filed by PAS employees, 2 reports filed by employees serving under the Intergovernmental Personnel Act, 2 reports filed by special Government employees, and a report filed by the DAEO.

⁵ In accordance with 5 C.F.R. § 2634.605(a), the date of agency receipt must be noted on the reports. The date of receipt was entered on all but 19 public reports. OGE used the date of

Ethics Program Review: USAID

reviewed in a timely manner. While minor technical errors were found, OGE did not uncover any substantive deficiencies. OGE notes that documentation in the files and comments on the reports showed that there were questions from and annotations made by the reviewing officials which indicated a thorough review of reports.

USAID was slow in forwarding to OGE the termination reports filed by two PAS employees. The termination reports were received by OGE in July 2005, approximately three and five months after agency certification. The termination reports were received by OGE on the same day as the incumbent PAS reports were received. OGE reminds USAID that PAS reports should be forwarded to OGE right after agency certification, in accordance with the guidance contained in DAEOgrams DO-05-009, dated April 13, 2005, and DO-06-010, dated April 7, 2006. As these reports are filed by the highest-level executive branch officials, it is vital that they be reviewed and certified by both USAID and OGE as soon as possible to bolster public confidence in Government processes, enhance employee respect for the ethics program, and prevent the embarrassment of the filers.

Confidential Financial Disclosure

OGE examined a sample of 82 of the 2,070 confidential financial disclosure reports required to be filed in 2005; there were 11 new entrant and 71 annual reports in OGE's sample.⁶ Seventy of these reports were filed in a timely manner and 11 were filed between 1.5 and 13 months after the due date. OGE could not determine the timeliness of filing for the one remaining report.⁷ All reports were reviewed in a timely manner. While minor technical errors

receipt entered in USAID's tracking system to assess the timeliness of filing and review of reports which lacked the date of agency receipt on the reports. OGE reminds USAID that the date of agency receipt must be recorded on all reports. Although 6 out of 13 filing extensions were not recorded on the reports, the extensions were entered in the tracking system. However, OGE reminds USAID that all filing extensions should be indicated by using the check-off box, noting the number of days granted, in the reviewer comments area on the cover page of the reports. In Section 2.4 of the second edition of *Public Financial Disclosure: A Reviewer's Reference*, OGE recommended that agencies follow this practice for extensions to increase public confidence in the public financial disclosure system.

⁶ OGE's sample included nine confidential reports filed by special Government employees. Although they were incorrectly marked as annual reports, they have been included in OGE's count for new entrant reports.

⁷ The date of receipt was entered on all but 23 confidential reports. OGE used the date of receipt entered in USAID's tracking system to assess the timeliness of filing and review of reports which lacked the date of agency receipt on the reports. OGE reminds USAID that the date of agency receipt must be recorded on all reports in accordance with 5 C.F.R. § 2634.605(a). Additionally, although all five filing extensions were not recorded on the reports,

Ethics Program Review: USAID

were found, OGE did not uncover any substantive deficiencies. OGE notes that documentation in the files and comments on the reports showed that there were questions from and annotations made by the reviewing officials which indicated a thorough review of reports.

Confidential Reports Filed by Special Government Employees

Eight out of the nine confidential reports included in OGE's sample that were filed by SGEs were incorrectly marked and filed as annual reports.⁸ In accordance with 5 C.F.R. § 2634.903(a), no annual confidential reports were required of these SGEs; rather, they should have filed *new entrant* confidential reports upon each appointment or reappointment. Although the reports were filed in connection with the annual filing cycle, USAID considered these reports to be new entrant reports.

Only two of nine SGEs correctly submitted new entrant confidential reports within 30 days of their appointments (one of them also submitted a mismarked annual report four months later that need not have been filed because he was appointed to serve for one year). In accordance with 5 C.F.R. § 2634.903(b)(1), a new entrant confidential report filer is required to file a report within 30 days of assuming a position requiring the filing of such a report. The most serious instances of confidential reports being filed in an untimely manner occurred with SGEs; four reports were filed between 2.5 and 13 months late; none of these SGEs had filed new entrant reports within 30 days of their appointment prior to filing the mismarked annual reports.

Previously, USAID manually entered SGEs into its financial disclosure tracking system based on the USAID bureaus' filer lists which were prepared for the annual filing cycle. A new SOP has been instituted whereby the human resources office will notify SGEs, as they enter on duty, of the need to contact GC/EA regarding financial disclosure responsibilities. This early notification procedure should assist USAID in tracking SGEs soon after they enter on duty and facilitate the filing of new entrant reports by SGEs within 30 days of their appointment or reappointment. The timely filing of new entrant reports will assist the ethics staff's identification of any potential or actual conflicts of interest in a timely manner. Based on the action taken to address this issue, OGE has not issued a formal recommendation (see the *Special Government Employees* section below for more information concerning SGEs).

they were entered in the tracking system. OGE encourages USAID to record filing extensions on the reports.

⁸ A filer should accurately mark her reporting status because this determines the report sections to be completed and the reporting periods to be covered. As a new entrant, an SGE should also provide her appointment or reappointment date on the report. This will enable the reviewing official to determine whether the report was filed within 30 days of the SGE's assumption of a position or duties requiring the filing of a confidential report.

Ethics Program Review: USAID

SPECIAL GOVERNMENT EMPLOYEES

USAID employed approximately 27 SGEs who served as experts or consultants in 2005. Nine SGEs filed confidential financial disclosure reports and two SGEs filed public financial disclosure reports. The remaining SGEs were not required to file financial disclosure reports in accordance with 5 C.F.R. § 2634.905(a).⁹

With the exceptions of two public financial disclosure report filers who left USAID prior to the end of 2005, all covered SGEs received annual ethics training. OGE was pleased to learn that USAID exceeded minimum regulatory requirements by training three non-covered SGEs. The ethics training materials given to SGEs were the same as those provided to regular employees. However, because SGEs are subject to less restrictive conflict of interest requirements than regular employees, OGE encouraged USAID to supplement the training materials currently given to SGEs with materials specifically tailored to SGEs.¹⁰ USAID established a new SOP whereby GC/EA will provide SGEs with a copy of OGE's DAEOgram DO-00-003, dated February 15, 2000, which summarizes ethical requirements applicable to SGEs.

The duration of the SGEs' appointments ranged from 20 to 130 days. The number of days actually worked by an SGE did not exceed the limitation set out at 18 U.S.C. § 202(a), which defines an SGE, in part, as an employee who is appointed to work for no more than 130 days during any period of 365 consecutive days.

EDUCATION AND TRAINING

The education and training program complies with the provisions of 5 C.F.R. part 2638. Indeed, certain aspects of USAID's education and training program exceed the minimum regulatory requirements. For example, in 2005, USAID trained over 2,700 non-covered individuals, such as contractors and Federal advisory committee members serving as representatives, who were not required to be trained. USAID has also developed innovative ethical decision-making training, an "Ethics Tip of the Week" program, and a Web site that offers extensive ethics resources.

⁹ Although an SGE usually files either a public or confidential financial disclosure report, depending on whether the SGE meets the applicable criteria, an agency may exclude an SGE from the confidential financial disclosure reporting requirement under the provisions of 5 C.F.R. § 2634.905(a), (b), or (c).

¹⁰ The conflict of interest statutes (i.e., 18 U.S.C. §§ 203, 205, 207, 208, and 209) contain special provisions for the treatment of SGEs. There are exceptions for the treatment of SGEs under the ethics regulations at 5 C.F.R. part 2635, as well.

Ethics Program Review: USAID

Initial Ethics Orientation

The initial ethics orientation (IEO) program complies with, and in some aspects exceeds, the provisions of 5 C.F.R. § 2638.703.

OGE applauds USAID for exceeding the minimum regulatory requirements by providing new employees with both a written and in-person IEO. On their first day at USAID, new employees are provided with a folder from the human resources office containing, among other things, the 14 Principles of Ethical Conduct and a copy of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). Employees are told that they have one hour to review the ethics materials and are directed to the ethics Web site to obtain the most current contact information for the ethics staff. OGE noticed that two versions of the Standards were included in the folder—one was the outdated 1999 version and the other was the 2002 version. USAID removed the outdated version of the Standards from the folder.

In-person IEO sessions for non-PAS employees are offered at least three times per month. Attendees receive a folder containing summaries of ethics rules, a copy of the Administrator's directive on ethics, a printout of the ethics Web site's home page, a printout from the ethics Web site featuring the ethics staff's contact information, and a certification form. The DAEO or Alternate DAEO provides one-on-one IEO to new PAS employees.

The names of new employees are obtained through a biweekly download from the National Finance Center's payroll/personnel system to USAID's tracking system (see the *Financial Disclosure Tracking System* section of this report). New employees receive an e-mail directing them to register for an upcoming in-person IEO session. Information from the in-person session attendees' certification forms is entered into the tracking system to track the receipt of IEO.

OGE's examination of the written materials in the folder revealed that two handouts were in need of minor revisions. As discussed previously in this report, OGE found that a handout given to employees contained a reference to a provision of the FAM that no longer exists. Another handout contained an outdated dollar amount for the minimum value of a gift under the Foreign Gifts and Decorations Act. USAID revised both handouts.

Annual Ethics Training

As with the IEO training, USAID's annual ethics training (AET) program complies with, and in some aspects exceeds, the provisions of 5 C.F.R §§ 2638.704 and 2638.705.

Ethics Program Review: USAID

According to USAID, approximately 98 percent of all training is provided in-person.¹¹ This has resulted in USAID exceeding OGE's minimum regulatory requirements by providing in-person training to confidential financial disclosure report filers who are required to receive verbal training only once every three years.

The 2005 AET sessions for non-PAS employees were offered approximately three times per month at headquarters. RLAs determined how often sessions were offered abroad. AET covered a wide range of topics such as the 14 Principles of Ethical Conduct, conflicting financial interests, gifts, seeking and post-Government employment, impartiality, and misuse of position. The same folder containing written materials and contact information for the ethics staff that is distributed during IEO sessions is distributed at AET sessions. The Alternate DAEO provided one-on-one AET to PAS employees.

Certification forms are used to track completion of AET. Information from the forms is entered into USAID's tracking system. With the exceptions of 15 employees, all covered employees received AET by the end of 2005. Three of the 15 employees who did not receive AET by the end of 2005 were evacuated from their overseas posts before they could attend an AET session; one evacuee completed online AET in January 2006, another received AET in March 2006, and the third evacuee did not return to USAID. Of the remaining 12 employees, one who left on leave received AET in April 2006, another who left on leave has not returned, and 10 left the employ of USAID prior to the end of 2005.

Ethical Decision-Making Training

In addition to the standard AET sessions, USAID offers specialized, value-based ethical decision-making training designed to help employees "...define and establish ethical values to distinguish between 'right' [and] 'wrong' decisions where no law or rule exists. The [training] stresses distinctions between minimal legal compliance and higher ethical conduct." This specialized training has been provided to employees upon request or when they are designated by GC/EA to receive the specialized training.

The training focuses on topics such as careerism, misplaced loyalty, short-term thinking, and arrogance of power. When the specialized training is used to satisfy AET, compliance issues are also covered to comply with the regulation. The same written materials that are distributed during IEO and AET sessions are distributed during the specialized training.

¹¹ In the instances when in-person training is not feasible (e.g., when an employee is in a war zone), a video is shown to meet the training requirement.

Ethics Program Review: USAID

Contractor Training

USAID exceeded the minimum regulatory requirements by providing ethics training to certain contractor employees in 2004 and 2005. Topics included, among other things, post-Government employment and gift rules applicable to Government employees.

Training for Federal Advisory Committee Members

Although members serving on USAID's two Federal advisory committees are representatives not subject to Government ethics rules, the Alternate DAEO provided ethics training to members of one committee. The members' training focused on appearance of conflicts of interest issues. The Alternate DAEO hopes to provide such training to the members of the other committee.

Ethics Tip of the Week

USAID has developed an Ethics Tip of the Week program. An ethics tip and corresponding question appear on the computer monitor when an employee logs onto USAID's network. The employee must answer the question prior to being able to continue the log-on process. The capability to track incorrect answers exists; however, the program has not yet developed to the point where such answers have been tracked. USAID hopes to track incorrect answers to enable the agency to focus its ethics training accordingly.

Ethics Web Site

Ethics resources are available on USAID's ethics Web site which employees access via USAID's Intranet. The resources include, among other things, the ethics staff's contact information, seeking and post-Government employment information, guidance on filing financial disclosure reports, information on restrictions while abroad, and a link to the Standards. The Web site makes ethics information easily accessible to USAID employees, including those who are not within physical proximity to USAID's ethics staff, such as employees stationed overseas.

OGE's examination of the ethics Web site revealed the need for minor corrections and clarifications to be made to information posted on the financial disclosure Web pages. USAID corrected the inaccuracies and clarified information at OGE's request.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

OGE examined a combined total of 57 payments reported on two of USAID's semiannual reports to OGE of travel payments accepted from non-Federal sources of more than \$250 per event, covering the reporting period from October 1, 2004 through September 30, 2005. The payments appeared to have been accepted in accordance with 31 U.S.C. § 1353, 41 C.F.R. chapter 304, and USAID's procedures.

Ethics Program Review: USAID

OGE was concerned that the standard language of the conflict of interest analysis statement contained within the remarks section of all but four of the travel authorizations implied that the travelers had performed their own conflict of interest analysis.¹² OGE was assured that ethics officials perform the conflict of interest analysis and provide "clearance" of the payment on the travel authorization. In order to clarify the ethics staff's involvement in the travel payments process, USAID amended the standard language to include an explicit statement that the ethics staff had conducted a conflict of interest analysis.

One semiannual travel report was forwarded to OGE prematurely. The report was dated seven days prior to the end of the reporting period. OGE was assured that no additional travel payments were accepted between the time the report was forwarded to OGE and the end of the reporting period. The other semiannual travel report was submitted to OGE in a timely manner. OGE reminds USAID that semiannual travel reports are to be submitted to OGE after the end of the applicable reporting period.

Eleven payments included in the semiannual reports were not required to be reported to OGE; the amounts fell below the \$250 reporting threshold. OGE reminds USAID that travel payments which fall below the reporting threshold are not required to be reported to OGE under 31 U.S.C. § 1353.

FEDERAL ADVISORY COMMITTEES

USAID is responsible for providing support to two Federal advisory committees--the Advisory Committee on Voluntary Foreign Aid (ACVFA) and the Board for International Food and Agricultural Development (BIFAD). The charter for ACVFA states that members serve as representatives, rather than individuals. Although BIFAD's charter is silent as to the capacity in which members serve (i.e., individual or representative), OGE was advised that BIFAD was modeled after ACVFA. As such, members of BIFAD serve as representatives. As representatives, committee members are not subject to the criminal conflict of interest statutes and Federal ethics regulations.

ADVICE AND COUNSELING

Ethics advice and counseling services comply with 5 C.F.R. § 2638.203(b)(7) and (8). Additionally, USAID employs innovative approaches to share amongst ethics officials written responses to requests for advice and other ethics information.

¹² The statement in question generally read as follows: "The traveler affirms that his/her duties do not affect the interests of [name of donor]." Four travel authorizations contained the following statement: "[The] traveler's duties do not affect the interests of [name of donor]."

Ethics Program Review: USAID

Written Advice

OGE examined a sample of written advice rendered by various headquarters ethics officials and RLAs in 2005. Gifts, conflicts of interest, post-Government employment, and widely attended gatherings were popular topics of inquiry. OGE's review revealed that the advice rendered was appropriate, correct, and issued in a timely manner.

Innovative Approaches

USAID employs innovative approaches to share amongst ethics officials written responses to requests for advice and other ethics information. An electronic archive of ethics advice and the online posting of responses to requests for advice enhance the ethics staff's ability to be consistent in the advice rendered to employees.

USAID maintains a searchable electronic archive of ethics advice on a computer network drive. The drive is available to GC/EA and the RLAs.

In an effort to make ethics advice and other information accessible to USAID ethics officials worldwide, an Intranet tool, dubbed *Documentum*, is also being developed. *Documentum* is a searchable and interactive Web-based environment. Among other things, *Documentum* allows for online collaboration through the posting of ethics inquiries and viewing of answers to posted inquiries. Opinions will be housed in a database organized mostly by topic; the database can also be used to alert ethics officials to rule changes. *Documentum* will allow a user to select officials to whom alerts about changes to a posting will be sent. At the time of OGE's review, *Documentum* was in the beta phase, but was expected to debut later this year after all system folders were completed and materials were redacted and posted online. However, GC/EA was able to demonstrate various capabilities of *Documentum* for OGE.

These innovative approaches help to enhance the transparency, efficiency, accountability, and measurability of the advice and counseling element of the ethics program.

Post-Government Employment Counseling

USAID offers post-Government employment counseling upon request. GC/EA is included on the sign-out sheet that departing employees use. This provides the ethics staff with an opportunity to address employees' post-Government employment issues. Departing employees are told that they can contact ethics officials on post-Government employment issues even after departing USAID.

FINANCIAL DISCLOSURE TRACKING SYSTEM

USAID utilizes a Financial Disclosure Tracking System (FDTS) to track ethics training and financial disclosure report filing of employees. The FDTS is updated through a biweekly

Ethics Program Review: USAID

download from the National Finance Center's personnel/payroll system and through manual data entry. Filer information is also verified with bureaus and missions one month prior to the due dates for the public and confidential financial disclosure reports. GC/EA uses reports generated from the FDTS to track employees who still need to attend ethics training or file financial disclosure reports. Such reports trigger GC/EA to send reminders to the cognizant RLAs, bureaus, officers, or employees. The reports are also used to capture data that is reported to OGE.

Data Fields

The FDTS contains many useful data fields within an employee's record. In addition to an employee's vital statistics (e.g., name, location, position title, pay grade, etc.), there are fields to reflect an employee's ethics training date and the type of ethics training received. Most of the fields pertain to financial disclosure report information. These fields include, among others, the following: an employee's filing status (i.e., public, confidential, or not a filer); the type of report filed (e.g., new entrant); the dates on which the report is due, received, reviewed, and certified; filing extensions; and recusal information.

Report Capability

A variety of reports can be generated from the FDTS. These reports include, among others, the following: public and confidential filers by filing year; delinquent filers; employees who are required to receive annual ethics training; and employees who still need such training. Of particular note is the FDTS' capability of generating an annual tracking list which provides grand totals of ethics training and financial disclosure filing statistics. The total number of covered employees for a given year is broken down by those who have and have not received ethics training, the number of public and confidential reports filed and not filed, and the number of filing extensions granted. The annual tracking list is particularly effective in allowing USAID to efficiently compile certain statistics needed to complete the Agency Ethics Program Questionnaire that is submitted to OGE on an annual basis.