



United States Office
Of Government Ethics

Report Number 10-018

Ethics Program Review

Consumer Product Safety Commission

August 2010 Report

Introduction

RESULTS IN BRIEF

While the U.S. Office of Government Ethics (OGE) found the Consumer Product Safety Commission's (CPSC) ethics program to be in general accordance with statutory and regulatory requirements, four issues were identified during its examination. First, the financial disclosure program has some weaknesses: late notification to filers of the requirement to file public and confidential financial disclosure reports, late submission of public financial disclosure reports, and failure to collect or waive the public financial disclosure late filing fee. Second, OGE found that the ethics office does not provide oversight of the initial ethics orientation (IEO) program. Third, OGE found that Freedom of Information Act (FOIA) regulations as opposed to the Ethics in Government Act and its implementing regulations are used as the criteria for release of public financial disclosure reports. Fourth, OGE found that written procedures for CPSC's financial disclosure program and acceptance of gifts and travel expenses from non-Federal sources require revisions. OGE makes recommendations for each of these issues. Implementation of these recommendations should bring the program into full compliance.

OGE also makes a number of suggestions for improving CPSC's ethics program. These suggestions focus on IEO, requests for approval of outside activity, and use of the "Notification of Conflict of Interest Referral" form (OGE Form 202) to notify OGE of referrals to the Department of Justice (DOJ) regarding potential violations of the criminal conflict of interest statutes.

OGE also identified model practices within CPSC's ethics program. Of special note is CPSC's written ethics advice and counsel. A list of the recommendations, suggestions, and model practices is located at the end of this document.

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OBJECTIVE, SCOPE, AND METHODOLOGY

As part of its monitoring activities, OGE conducted a review of the ethics program administered at CPSC. OGE's primary objective was to identify and report on the strengths and weaknesses of CPSC's ethics program by evaluating (1) agency compliance with ethics requirements as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the system.

OGE has the authority to evaluate the effectiveness of 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 CPSC focused on the elements listed below:

- Program structure
- Financial disclosure systems
- Ethics training
- Ethics counseling
- Agency specific prohibitions, restrictions, and requirements (prior approval for outside activities)
- Enforcement of ethics laws and regulations
- Ethics agreements
- 18 U.S.C. § 208(b)(1) and § 208(b)(3) waivers
- Travel payments from non-Federal sources

OGE's on-site fieldwork at CPSC was conducted in March 2010.

ETHICS PROGRAM STRUCTURE

CPSC's ethics program is housed within the Office of the General Counsel at CPSC's headquarters in Bethesda, MD. The General Counsel serves as the Designated Agency Ethics Official (DAEO) and the Assistant General Counsel for General Law serves as the Alternate DAEO. CPSC has six ethics officials who share responsibilities for several aspects of the ethics program. All six ethics officials work in ethics part-time at CPSC's headquarters.

CPSC's ethics program operates in a collaborative manner. Every ethics official is involved in each part of the ethics program, including review of public and confidential financial disclosure reports, training, and counseling. The ethics staff values client service and collaborates with each other to promote consistency throughout the ethics program. An example is weekly meetings to discuss financial disclosure reviews and any other ethics issues encountered. Ethics staff members receive training provided by OGE and attend OGE's National Ethics Conference. Additionally, CPSC relies on experienced staff to provide on-the-job training. CPSC also includes ethics duties in position descriptions of ethics officials.

FINANCIAL DISCLOSURE SYSTEMS

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

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prospective officers and employees. Financial disclosure reports also assist agencies in administering their ethics programs and providing counseling to employees. *See* 5 CFR § 2634.104(b). 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 publicly disclosing 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).

A technical review of CPSC's financial disclosure reports was conducted to determine if reports were submitted, reviewed, and certified in a timely manner. OGE found that timeliness issues with regard to filer notification and submission of reports exist in the financial disclosure program. First, OGE found late notification to new entrant public and confidential filers regarding their filing requirement. Outside of late notification, OGE also found a few instances of late submissions of public financial disclosure reports. Finally, OGE found that a public financial disclosure late filing fee was not assessed or waived according to the regulatory requirement.

Timeliness¹

Employees who enter positions that require the filing of either a public or confidential financial disclosure report must file the report within 30 days of entering that position. This requirement applies to employees who are new to the agency as well as to employees who are promoted into or temporarily detailed to a new position. A public financial disclosure report filer is required to pay a \$200 late filing fee to the agency if their financial disclosure report is filed more than 30 days after the date the report is required to be filed or the last day of any filing extension period granted.² OGE's examination of financial disclosure reports revealed no material issues with regard to filing timeliness of confidential financial disclosure reports. However, OGE's examination found that timeliness issues exist in the filing of public financial disclosure reports. Of the 35 public reports OGE reviewed, five, or approximately 14 percent, were filed late. Of those five, OGE found one instance where an employee filed a public financial disclosure report more than 30 days late and the \$200 late filing fee was not assessed or waived as required by 5 CFR § 2634.704(a). CPSC indicated that on occasion public filers do not adhere to the deadlines despite reminders. CPSC's ethics office acknowledged that enforcement with regard to submission of public financial disclosure reports could stand to be toughened.

Compliance with filing deadlines and assessment of the late filing fee is essential. These requirements allow for timely advice and counseling to filers to prevent ethics violations and

¹ OGE examined 35 of 36 public financial disclosure reports and 57 or approximately 20% of confidential financial disclosure reports filed in 2009. The one public financial disclosure report not reviewed by OGE could not be located; CPSC requested a copy from the filer.

² The DAEO may waive this fee if she determines that the delay in filing was caused by extraordinary circumstances.

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demonstrate the importance of compliance. Therefore, OGE recommends that CPSC assess or waive the late filing fee for public filers who submit reports more than 30 days late in accordance with 5 CFR § 2634.704(a). OGE also recommends that CPSC take steps to ensure timely filing of public financial disclosure reports. These steps could include involving a higher-level executive in attempting to collect the public financial disclosure report or instituting a requirement that substantive work cannot be performed until the financial disclosure report has been submitted. Any steps, however, must include strict adherence to regulatory penalties for late submissions.

OGE found that in a number of cases, new entrant public and confidential filers received delayed notification of filing requirements by CPSC ethics officials. In these instances, the filers submitted their financial disclosure reports in a timely manner once notified. CPSC ethics officials notified some new entrant filers late because ethics officials received late notification of new entrant filers from the Human Resources (HR) office. In the current process, the HR office sends a report to the ethics office providing the names of new entrant employees. However, the ethics office noted that the HR reports are provided on an inconsistent basis.

Information from HR must be shared timely with the ethics office so that the officials can ensure that new entrant filers file on time. Timeliness of filing will help ensure compliance with regulations but—perhaps most importantly—enable ethics officials to timely identify any potential or actual conflicts of interest and educate employees about conflicts of interest laws and the standards of conduct regulations. During the course of OGE's review the HR office stated that a new automated system will be implemented by CPSC and that the system will generate automatic emails to ethics officials notifying them of new entrant employees. CPSC ethics officials stated that such automatic notification would be a welcomed improvement to the current notification process. OGE recommends that the ethics office coordinate with the HR office to ensure that the proposed system of providing notification of new entrants is effective and is implemented promptly.

Once reports are received by ethics officials, several actions should occur: the reports are to be reviewed within 60 days, prompt remedial action is to be taken at any point within the review process if necessary, reports are to be certified if the reviewer can attest that the report is in compliance with all applicable laws and regulations, and the certification should occur within 30 days of the review. OGE's examination of public and confidential financial disclosure reports revealed no systematic problems with regard to review and certification timeliness.

Table 1
Public Financial Disclosure Reports

<u>Report Type</u>	<u># in Sample</u>	<u>Filed Late</u>	<u>Reviewed Late</u>	<u>Delayed Certification</u>
Incumbent	17	1	0	1
New Entrant	14	3	1	0
Termination	4	1	0	0
Total in Category	<u>35</u>	<u>5</u>	<u>1</u>	<u>1</u>

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Table 2
Confidential Financial Disclosure Reports

<u>Report Type</u>	<u># in Sample</u>	<u>Filed Late</u>	<u>Reviewed Late</u>	<u>Delayed Certification</u>
Incumbent	20	0	2	0
New Entrant	37	0	0	0
Total in Category	<u>57</u>	<u>0</u>	<u>2</u>	<u>0</u>

Quality of Review

Public and confidential financial disclosure reports were reviewed to determine if an ethics official reviewed and certified the report in accordance with 5 CFR § 2634.605. Documentation included in financial disclosure files as well as conversations with ethics officials indicated that the financial disclosure reports were reviewed and certified in accordance with the requirements.

CPSC has incorporated a useful practice into its process for reviewing financial disclosure reports. Ethics officials compile a list of entities that are determined to be potential sources of real or apparent conflicts of interest for CPSC employees. As CPSC's jurisdiction is broad, the list is not exhaustive, but is continually updated. The list provides efficiencies in the review process by flagging entities that have already been identified as potential sources of conflicts. Filers with interests in any of the identified entities receive a cautionary letter advising them if or when a recusal is appropriate.

CPSC does not notify all filers when the list of potential sources of conflicts is updated. Therefore, filers do not benefit from having the latest available information that may guide their investment decisions or the decision to engage in an outside activity. Since CPSC already makes the effort to create a list of potential sources of conflicts, OGE suggested to CPSC that it could maximize the benefits of its efforts by making that information readily available to all employees. CPSC's ethics officials responded that while the potential benefit of releasing the conflicts list to all employees is recognized, the potential for confusion outweighs the possible benefit. Ethics officials expressed concern that some employees would take it upon themselves to make their own determinations rather than seeking official ethics advice. Ethics officials also expressed concern that release of the list would create a sense of fear from employees who may already own interests in the listed entities lawfully under the \$15,000 de minimis threshold. Moreover, ethics officials noted that while the list is useful to the ethics officials in speeding the review time, CPSC's jurisdiction is so broad that it is impractical to provide a list that could be truly beneficial to all employees. Based on the reservations expressed by CPSC, OGE excluded the suggestion from the final report.

Release of Public Financial Disclosure Reports

Each agency is required to make available to the public, in accordance with the provisions of 5 CFR § 2634.603, public reports filed with the agency. At CPSC, release of public financial disclosure reports is handled by the FOIA office in the Office of the Secretary. While OGE found that CPSC utilized OGE Form 201 as the application form for access to public

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reports, the FOIA coordinator stated that FOIA guidelines are used to determine release of reports. This statement is of concern to OGE because release of public financial reports is governed solely by the Ethics in Government Act and its implementing regulations. CPSC must cease use of FOIA as the criteria for determining release of public financial reports and refer to the requirements of 5 CFR § 2634.603.

Written Procedures

OGE reviewed the written procedures the agency has established for its financial disclosure program to ensure that they conform to all statutes, regulations, and policies. (Section 402(d)(1) of the Ethics in Government Act) Comprehensive written standard operating procedures help to ensure that all agency ethics officials follow the same procedures for administering the ethics program.

CPSC has comprehensive written procedures for its public and confidential financial disclosure programs. However, its procedures state that “the Director of the Office of Government Ethics may waive the late filing fee by determining that the delay in filing was caused by extraordinary circumstances that made the delay reasonably necessary.” While an agency’s DAEO may consult with OGE prior to approving any waiver of the late filing fee, the DAEO has the authority to waive the late filing fee. *See* 5 CFR § 2634.704(b)(2). Correction of this statement will strengthen the integrity of the written procedures. Therefore, OGE recommends that CPSC correct its written procedures to reflect that the DAEO has the authority to grant waivers of the late filing fee.

In its prior ethics program review in 2002, OGE recommended that CPSC incorporate the OGE Optional Form 450-A process into its written procedures for financial disclosure. OGE closed this recommendation in 2003 based on updates to the copy housed in the ethics office. However, OGE found during its March 2010 onsite review that the current written procedures did not incorporate the OGE Optional Form 450-A process. Amendment of the written procedures to include this process will formally document its use within the agency as well as provide current and future employees with an understanding of all of the elements of the financial disclosure program. Thus, OGE reminds CPSC to formally incorporate the OGE Optional Form 450-A process into its written procedures.

ETHICS EDUCATION AND TRAINING

An ethics 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 (IEO) for all employees and annual ethics training for covered employees. OGE found that CPSC’s annual ethics training program meets regulatory requirements and commends CPSC for conducting in-person annual training. However, OGE found that CPSC ethics officials provide no oversight of the IEO program.

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Initial Ethics Orientation

While CPSC's ethics office provides in-person IEO for Presidentially appointed, Senate-confirmed (PAS) officials, the HR office manages the IEO program for all other new employees. Orientation packages, which include IEO materials, are provided to new employees usually two weeks before entrance on duty. However, IEO is provided to new employees on the first day of duty. OGE reviewed the materials provided to new employees and found that CPSC provides the required IEO materials to employees. Table 3 provides a summary of the results of OGE's review of the required IEO training elements.

Table 3
Initial Ethics Orientation

<u>Content</u>	<u>Required</u>	<u>Provided</u>
The Standards of Conduct	Yes	Yes
Contact Information for the DAEO and other ethics officials	Yes	Yes
14 Principles of Ethical Conduct	Yes	Yes
Agency supplemental regulations	Yes	Yes
One hour of official duty time to review	Yes	Yes
Within 90 days of start-date	Yes	Yes

However, issues with IEO are as follows: (1) A verbal summary of ethics requirements is provided by an HR official. The ethics office does not oversee the IEO program conducted by the HR office. (2) New employees are required to sign a document confirming receipt of initial ethics orientation. This confirmation is kept in the employees' official personnel file. The ethics office does not routinely receive confirmation that all new employees receive IEO as required.

IEO is the first and, in some cases, the only opportunity an agency has to inform employees that they are subject to criminal conflict of interest laws and to raise awareness of the ethics program. The DAEO is responsible for coordinating and managing the ethics program, including the initiation and maintenance of ethics education and training programs as specified in 5 CFR § 2638.203. Therefore, OGE recommends that CPSC's ethics office provide oversight regarding the content, delivery, and tracking of receipt of initial ethics orientation to ensure that it fully meets the requirements of 5 CFR § 2638.703. Additionally, new CPSC employees would be greatly served if IEO was provided in person by individuals with detailed knowledge of the subject matter who are able to explain and respond to questions regarding conflict of interest laws. Therefore, OGE strongly suggests that CPSC's ethics office utilize its subject-matter expertise by assuming delivery of IEO and providing it in person.

Annual Ethics Training

OGE reviewed the training provided to incumbent employees and found that CPSC is meeting all the requirements for annual ethics training as specified in 5 CFR § 2638.704(b). Table 4 provides a summary of the results of OGE's review of the required training elements.

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Table 4
Annual Ethics Training

<u>Content</u>	<u>Required</u>	<u>Provided</u>
The Standards of Conduct	Yes	Yes
The Federal Conflict of Interest Statutes	Yes	Yes
14 Principles of Ethical Conduct	Yes	Yes
Agency supplemental regulations	Yes	Yes
Contact Information for the DAEO and other ethics officials	Yes	Yes
One hour of official duty time to review	Yes	Yes

OGE reviewed the system by which CPSC ensures that employees who are required to receiving training do, in fact, receive that training. Based on a review of this process, OGE determined that all employees who were required to receive annual ethics training in 2009 did receive the training.

CPSC's ethics office provides in-person annual ethics training to covered employees at headquarters. CPSC provides annual ethics training to field employees either by video conference or in-person field office conferences. Individual one-on-one training sessions were provided to PAS officials and their staff in 2009. A sign-in sheet is used to record non-PAS employees who have completed in-person annual ethics training. Those employees who were unable to attend one of the in-person sessions in 2009 were asked to complete an on-line training module and send an email to the ethics office confirming completion of the module, that one hour of official-duty time was spent reviewing the material, and knowledge of how to contact CPSC ethics officials in the event of ethics questions or concerns.

CPSC provided documentation detailing plans for 2008, 2009, and 2010 annual ethics training in accordance with 5 CFR § 2638.706(c). The 2010 training plan states that training sessions and materials for financial disclosure report filers will primarily focus on seeking other employment issues and post employment restrictions and will also include a review of the *14 General Principles of Ethical Conduct*, the *Standards of Ethical Conduct*, CPSC supplemental ethics regulations, and the Federal conflict of interest statutes.

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. OGE reviewed 24 samples of advice and counseling on a variety of topics, including financial conflicts of interest, impartiality, misuse of position, gifts, and post-employment. OGE's review found that the advice and counseling was accurate, complete, and consistent with applicable laws and regulations. The samples reflected a high degree of accuracy and were outstanding in two specific areas:

- The advice and counseling typically followed a standard template that provided a clear introduction, background, applicable authorities, analysis, and recommendations.

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While the template varied slightly in some cases, it was generally consistent and formatted in a useful and easy-to-read manner.

- The samples also struck an excellent balance between providing the recipient with precise language from the applicable authorities and explaining that language and CPSC's recommendations in easily understood terms.

It should also be noted that due to the excellent template and language some samples of CPSC's advice and counsel were included in the student materials for the New Ethics Official Certificate Program given at the 17th National Government Ethics Conference in Chicago, IL.

CPSC's ethics office provides transparency, consistency, and accountability with regard to ethics advice provided by memorializing counseling and sharing it among staff. Requests for ethics advice are received in various ways, including via email, telephone calls, and face-to-face communications. CPSC's ethics office, as a general rule, seeks to provide ethics counseling within a day or two. However, depending on the complexity of the matter and the amount of research and writing involved, the response can take a few days, but not more than a week. CPSC's ethics office utilizes an Office of General Counsel database for housing formal ethics advice memos. Other pieces of counseling are stored by subject matter on a shared drive that all ethics staff can access. Ethics officials typically provide detailed, written opinions in order to memorialize the advice that employers receive. During weekly meetings, ethics staff members also discuss ethics issues encountered.

AGENCY SPECIFIC PROHIBITIONS, RESTRICTIONS, AND REQUIREMENTS

CPSC's regulation at 5.CFR part 8101 supplements the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. This regulation requires employees, other than special Government employees, to receive written approval from their supervisor and the DAEO or Alternate DAEO prior to engaging in any outside employment. The approval period is not to exceed two years, after which a renewed approval must be sought.

To measure the effectiveness of the outside employment approval system, OGE cross-referenced outside activities listed on 2009 public and confidential financial disclosure reports reviewed with CPSC Forms 241 to determine whether initial prior approvals and renewed approvals were granted as required. OGE identified 23 filers (9 public filers and 14 confidential filers) who listed an outside activity on their financial disclosure reports. OGE found that three of the 23 filers did not request and thus were not granted initial or renewed approval for outside activities as required. Initial outside activity requests were required for two of the three filers but were not submitted. A renewed outside activity request was required for the third filer but was also not submitted. Upon follow-up by the ethics office, the filer stated that he forgot to submit the renewed request. In its prior review of CPSC's ethics program, OGE noted CPSC's practice of reminding filers to submit an initial request or renewed request, as appropriate, for their outside employment. CPSC's diligence in this regard is necessary as it assists in ensuring that the requirements of its supplemental regulations are met. We encourage CPSC to continue to engage in such periodic reminders. Additionally, as a part of its review of financial disclosure reports, OGE encourages CPSC to cross-reference outside activity listed with a CPSC Form 241 granting approval for activities, as appropriate.

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ENFORCEMENT OF ETHICS LAWS AND REGULATIONS

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 OIG 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).

CPSC's Office of General Counsel has a memorandum of understanding with the Office of the Inspector General that establishes the foundation of a working relationship between the two entities. OGE considers this memorandum of understanding to be a model practice. CPSC's Inspector General stated that his office is responsible for referring criminal matters to DOJ and conducting investigations of alleged ethics violations. The Deputy DAEO stated that the General Counsel's office is also responsible for referring criminal matters to DOJ and is responsible for concurrently notifying OGE of any referrals to DOJ. While both offices claimed responsibility for DOJ referrals, the memorandum of understanding states that "the Inspector General and the General Counsel agree to notify each other when either one refers any matter involving an alleged violation of Federal conflict of interest law to the Attorney General of the United States as required by 28 U.S.C. § 535." CPSC ethics staff and the Inspector General stated to the OGE review team that there is a good working relationship between the two offices.

CPSC's Inspector General noted one case regarding a potential violation of the criminal conflict of interest statutes that was referred to DOJ within the last two years. The Alternate DAEO stated that the Office of General Counsel notified OGE verbally. As stated in its DAEOgram DO-98-027, OGE encourages agencies to notify OGE of DOJ referrals via the "Notification of Conflict of Interest Referral" form (OGE Form 202). Use of the form helps to document referrals.

ETHICS AGREEMENTS

If potential or actual conflicts of interest exist, public and confidential financial disclosure filers may be required to enter into ethics agreements. Generally, employees entering into ethics agreements are required to comply with those agreements within three months of the agreement or of Senate confirmation, if applicable. *See* subpart H of 5 CFR part 2634. CPSC enters into ethics agreements only with PAS officials. Three PAS officials from CPSC entered into written ethics agreements in 2008 and 2009. Two of the three PAS officials complied with the terms of their ethics agreements within three months of Senate confirmation. The PAS official who did not comply with his ethics agreement within 90 days complied five days later. CPSC stated that it consults with OGE and drafts screening arrangements to ensure ethics agreement compliance for PAS officials.

18 U.S.C. § 208(B)(1) AND §208(B)(3) WAIVERS

The criminal conflict of interest law at 18 U.S.C. § 208 prohibits an employee from participating in an official capacity in a particular matter in which he has a financial interest.

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The law is intended to be prophylactic, and its scope is quite broad. In order to mitigate the impact of section 208, Congress included two provisions (18 U.S.C. § 208(b)(1) and § 208(b)(3)) that permit an agency to issue a waiver of the prohibition in individual cases. Under Executive Order 12674, agencies have the responsibility to consult "when practicable" with OGE prior to issuing a waiver under section 208. Additionally, agencies are required to send OGE copies of any waivers they issue.

CPSC has not issued any 18 U.S.C. § 208(b)(1) or § 208(b)(3) waivers during the past two years. However, CPSC stated to the OGE review team that there is a process in place to consult formally or informally with OGE prior to granting a waiver under section 208 and ensure that copies of any waivers issued are forwarded to OGE.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

An employee may accept payment of travel expenses from non-Federal sources on behalf of the agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. In 2009, a prohibition on industry-sponsored travel for CPSC's Commissioners or employees was enacted by 15 U.S.C. § 2086. The statute bans travel, subsistence, or related expenses with respect to attendance by a Commissioner or employee at any meeting or similar function relating to official duties of a Commissioner or an employee from a person (1) seeking official action from, doing business with, or conducting activities regulated by, the Commission or (2) whose interests may be substantially affected by the performance or nonperformance of the Commissioner's or employee's official duties.

CPSC has written guidance covering acceptance of gifts and travel expenses from non-Federal sources (CPSC Directive 0680.2). Appendix D of the directive further clarifies the entities from which travel expenses or non-travel related gifts cannot be accepted. CPSC's written procedures state that the agency's Executive Director is delegated authority to accept payments for travel expenses and other non-travel gifts from non-Federal sources for CPSC employees (or authorize CPSC employees to receive such payments on the Commission's behalf). Commissioners may accept payment for travel expenses and other non-travel gifts from non-Federal sources on behalf of themselves and their immediate staff member. The Directive also states that the General Counsel shall provide legal counsel to the Commissioners and employees on conflict of interest issues relating to the acceptance of travel expense payments or non-travel gifts.

CPSC ethics officials noted that Commissioners follow the same practice as other employees by receiving approval from the Executive Director. Ethics officials also noted that the General Counsel provides legal counsel to Commissioners and their immediate staff members. Ethics officials stated that written procedures will be revised to clearly require Commissioners to seek advice from the General Counsel and approval from the Executive Director for acceptance of travel expense payments and non-travel gifts. OGE recommends that these revisions to the written procedures be made promptly. Clearly including these practices as requirements in written procedures will ensure that they are consistently performed and will endure personnel changes.

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OGE obtained a sample of written authorizations supporting acceptance of travel payments from non-Federal sources to determine whether the travel payments accepted under 31 U.S.C. 1353 were properly authorized, including conflict of interest analyses. OGE found that the requests were reviewed by the General Counsel and conflicts of interest analyses were performed as required.

Agencies are required to submit semiannual reports to OGE of travel payments from non-Federal sources in excess of \$250. *See* 31 U.S.C. § 1353. All of the semiannual reports CPSC submitted to OGE covering the period from October 1, 2008 through September 30, 2009 were submitted timely.

SUMMARY

OGE makes the following recommendations to bring CPSC's ethics program into full compliance with statutory and regulatory requirements:

1. OGE recommends that CPSC's ethics office strengthen its financial disclosure system by working with the HR office to develop an effective system of timely notifying new entrants of their filing requirement, devising mechanisms to ensure timely filing of public financial disclosure reports, and assessing or waiving the late filing fee for public filers who submit reports more than 30 days late.
2. OGE recommends that CPSC's ethics office provide oversight regarding the content, delivery, and tracking of receipt of IEO to ensure that it fully meets the regulatory requirements.
3. OGE recommends that CPSC cease use of FOIA as the criteria for determining release of public financial reports, but rather refer to the requirements of the Ethics in Government Act and its implementing regulations.
4. OGE recommends that CPSC revise its written procedures to reflect that the DAEO has the authority to waive the public financial disclosure late filing fee, to include the OGE Form 450-A process, and to include current practices of requiring Commissioners to seek advice from the General Counsel and approval from the Executive Director for the acceptance of gifts and travel expenses.

OGE makes the following suggestions for improving CPSC's ethics program:

1. OGE strongly suggests that the ethics office assume delivery of IEO and provide it in-person.
2. OGE encourages CPSC to continue to remind employees of the requirement to seek initial or renewed approval prior to engaging in outside activities and to cross-reference outside activities listed on financial disclosure reports with CPSC Form 241 granting approval for activities.
3. OGE encourages CPSC to use the "Notification of Conflict of Interest Referral" form (OGE Form 202) to notify OGE of referrals to DOJ regarding potential violations of the criminal conflict of interest statutes.

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OGE also notes the model practices incorporated into CPSC's ethics program:

1. CPSC uses a standard template to provide ethics advice and counsel. Advice and counsel also strikes a balance between precise legal language and easily understood explanations. OGE presented CPSC's advice and counsel as models to other agencies by including samples in the student materials distributed during its New Ethics Official Certificate Program given at the 17th National Government Ethics Conference in Chicago, IL.
2. CPSC includes ethics duties in the position descriptions of ethics officials.
3. CPSC provides in-person annual ethics training to covered employees at headquarters.
4. CPSC's Office of General Counsel has a memorandum of understanding with the Office of the Inspector General that includes ethics-related responsibilities.

AGENCY COMMENTS

A draft of this report was provided to CPSC's Office of the General Counsel for comment. CPSC's Alternate DAEO provided comment on the corrective actions that CPSC either had taken or plans to take to address OGE's recommendations. OGE will review the status of CPSC's progress in addressing these recommendations as part of a follow-up review that will be scheduled within six months from the date of this report.

Below is a summary of CPSC's comments on the draft report:

Recommendation #1: OGE recommends that CPSC's ethics office strengthen its financial disclosure system by working with the HR office to develop an effective system of timely notifying new entrants of their filing requirement, devising mechanisms to ensure timely filing of public financial disclosure reports, and assessing or waiving the late filing fee for public filers who submit reports more than 30 days late.

CPSC Comments: We have already incorporated this recommendation. Since OGE's review of the ethics program, the HR office has been making an effort to get the reports to the ethics office on time. Also, in May 2010 the Alternate DAEO was added to the automatic email notification list, whereby she receives emails when a new employee is assigned an office and network access. This is an additional tool to assist the ethics officials to achieve timely notification of new filers. Thus far, since the program review, we have been successful in timely notifying new entrant filers.

CPSC's ethics office was silent regarding OGE's recommendation to assess or waive the late filing fee for public filers who submit reports more than 30 days late. OGE reminds CPSC of its responsibility to take steps to address this recommendation. Additionally, OGE suggests that CPSC document the new process it has implemented to ensure timely notification of new entrant filers and timely submission of financial disclosure reports in its policies and procedures or a memorandum of understanding in order to facilitate continuity of operations.

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Recommendation #2: OGE recommends that CPSC's ethics office provide oversight regarding the content, delivery, and tracking of receipt of IEO to ensure that it fully meets the regulatory requirements.

CPSC Comments: OGE's recommendation and suggestion regarding the IEO program has already been incorporated into the ethics program. New employees arrive and are processed through CPSC's HR office on the first Monday of every pay period. The ethics office has worked with HR to ensure that on each such Monday an ethics officer will deliver IEO by providing a live briefing to all new employees in HR's conference room before they are completely processed through HR. On June 7, 2010, ethics officials began delivering this in-person IEO to all new employees.

Recommendation #3: OGE recommends that CPSC cease use of FOIA as the criteria for determining release of public financial reports, but rather refer to the requirements of the Ethics in Government Act and its implementing regulations.

CPSC Comments: We have already amended our ethics directive to reflect that all requests for release of public financial disclosure reports must be made via OGE Form 201, and release will be determined by the requirements of the Ethics in Government Act rather than FOIA. The amended directive is currently in clearance and will be effective once all required signatures are obtained.

Recommendation #4: OGE recommends that CPSC revise its written procedures to reflect that the DAEO has the authority to waive the public financial disclosure late filing fee, to include the OGE Form 450-A process, and to include current practices of requiring Commissioners to seek advice from the General Counsel and approval from the Executive Director for the acceptance of gifts and travel expenses.

CPSC Comments: We have already amended our ethics directive and our gift directive to reflect these recommendations. The amended directives are currently in clearance and will be effective once all required signatures are obtained.

Suggestion #1: OGE strongly suggests that the ethics office assume delivery of IEO and provide it in-person.

CPSC Comments: As discussed in the response regarding the second recommendation, our office began providing in-person IEO to all new employees on June 7, 2010.

Suggestion #2: OGE encourages CPSC to continue to remind employees of the requirement to seek initial or renewed approval prior to engaging in outside activities and to cross-reference outside activities listed on financial disclosure reports with CPSC Form 241 granting approval for activities.

CPSC Comments: Ethics officials routinely cross-reference outside activities listed on financial disclosure forms with outside activity files as a regular part of the process of reviewing financial disclosure forms. As a rule, whenever ethics officials review a form, if an outside

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activity is listed, the reviewer checks the outside activity files to determine whether the filer has approval for the listed activity on file. If so, the reviewer annotates the date approval expires in the "comments" section of the financial disclosure form. If there is no approval on file the reviewer informs the filer of the need to submit the request form and reviews the request upon receipt.

CPSC questioned whether the three filers noted in the report as not having requested approval for engagement in outside activities actually required approval for those activities. CPSC's ethics office noted that pursuant to the agency's supplemental standards of conduct at 5 C.F.R. § 8101, outside activities performed for certain organizations (i.e. charitable, religious, fraternal organizations) do not require approval. In response to this comment and based on prior follow-up with CPSC ethics officials, OGE revised the report to specifically note that the outside activity requests were indeed required.

Suggestion #3: OGE encourages CPSC to use the "Notification of Conflict of Interest Referral" form (OGE Form 202) to notify OGE of referrals to DOJ regarding potential violations of the criminal conflict of interest statutes.

CPSC Comments: Our office will be sure to utilize this form to promptly notify OGE if a referral of a conflict of interest issue to DOJ becomes necessary.