



United States  
**Office of Government Ethics**  
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Washington, DC 20005-3917

April 28, 1995

David P. Holmes  
Deputy General Counsel  
and Designated Agency Ethics Official  
Central Intelligence Agency  
Washington, DC 20505

Dear Mr. Holmes:

The Office of Government Ethics (OGE) has completed its third review of the Central Intelligence Agency's (CIA) ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Act). Our objectives were to determine the ethics program's effectiveness and compliance with applicable statutes and regulations. To meet our objectives we examined the following program elements: the public and confidential financial disclosure systems, ethics education and training, ethics counseling and advice, and acceptance of travel reimbursements from non-Federal sources. The review was conducted intermittently during December 1994 through February 1995.

We found that the CIA has developed the foundation for an effective ethics program. However, our review found that improvements in the management of the public and confidential financial disclosure systems are needed. Further, revisions are needed in the written procedures for administering the public and confidential financial disclosure systems.

#### PRIOR OGE REPORTS

OGE completed a review of CIA's public financial disclosure system during September 1981. During this review, we only examined the public reports. The examination disclosed minor technical deficiencies in the reporting of some information; however, most reports were complete in substance and form. Based on the examination of the reports and interviews with ethics officials, OGE was of the opinion that the CIA's public disclosure system was effective.

In 1989 OGE conducted a comprehensive review of CIA's ethics program. This review disclosed that while the ethics program had a sound structure, there was a need for certain improvements in the administration of the public and confidential financial disclosure systems. With regard to the public financial disclosure system, the review again revealed minor technical deficiencies regarding the reporting of required information, and the lack of appropriate documentation concerning potential conflicts of interest where

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filers reported stock holdings in companies doing business with CIA.

With regard to the confidential disclosure system, OGE recommended that ethics officials consider a more centralized system. Further, OGE recommended that the ethics officials ensure that reviewing officials use the same reference materials in reviewing financial disclosure reports.

**WRITTEN PROCEDURES FOR ADMINISTERING THE PUBLIC AND  
CONFIDENTIAL FINANCIAL DISCLOSURE  
SYSTEMS NEED TO BE REVISED**

In accordance with section 402(d)(1) of the Act, each executive branch agency is required to establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available, financial disclosure reports filed by the agency's officers and employees. Further, the written procedures developed by each agency must be consistent with the executive branchwide uniform financial disclosure regulations at 5 C.F.R. part 2634.

We examined CIA Headquarters Regulation (the Regulation) 20-6g(3) which contains procedures for the public and confidential financial disclosure systems. Our examination revealed that Regulation 20-6g(3) requires revision to be in conformance with the executive branchwide uniform financial disclosure regulations at 5 C.F.R. part 2634. For example, the Regulation did not address the filing of termination reports by public filers, the review process for public reports as discussed below, and the collection of the \$200 late filing fee from delinquent public filers. Furthermore, the Regulation addressed the filing of the CIA confidential disclosure report forms previously used and did not address the SF 450. The Regulation restricted the filing of confidential disclosure reports to individuals in grades GS-13 to GS-15. Further, the Regulation did not discuss the new entrant confidential report filing requirement. OGE provided guidance on establishing written procedures for financial disclosure in a DAEOgram entitled "Developing written procedures for the public and confidential financial disclosure systems" dated September 3, 1992.

**PUBLIC FINANCIAL DISCLOSURE SYSTEM  
IS GENERALLY EFFECTIVE**

The management of the public financial disclosure system is primarily the responsibility of the Chief of the Policy, Analysis, and Services Group, Office of Personnel, Directorate of Administration. This official is also the Chairperson of the Financial Disclosure Review Panel (FDRP). FDRP members are senior support staff officials from each of the five directorates (Office of the Director of Central Intelligence (DCI), Deputy Director for

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Operations, Deputy Director for Science and Technology, Deputy Director for Intelligence, and Deputy Director for Administration). Currently, the primary function of the FDRP members is the review and certification of the public financial disclosure reports. The panel members use the CIA vendor list and the OGE publication Public Financial Disclosure: A Reviewer's Reference in their review process. Potential conflicts of interest or the need to obtain additional information, are resolved by the FDRP member and the filer. When there is the appearance of a more complex conflict of interest, the report is referred to the Designated Agency Ethics Official (DAEO) for resolution. When a filer disagrees with a panel member's review, the filer can appeal the matter to the DAEO. The public reports are maintained within the Office of Personnel.

We selected 168 reports from the master list for examination; 7 of the selected reports were not available. Examination of the 161 reports revealed minor technical deficiencies such as incomplete or omitted information, and inconsistencies between information reported on Schedules A and B. However, one technical deficiency occurred in 116 (72 percent) of the public reports. This deficiency dealt with reports that had mutual fund holdings listed that appeared to meet the definition of an "excepted investment fund" (EIF) as defined at 5 C.F.R. § 2634.310(c)(2). However, none of the 116 filers indicated the holdings to be EIFs. FDRP members should make an effort to ensure that public filers understand the definition of an EIF and report EIFs correctly. Otherwise, FDRP members should, during the review process, request filers to provide the underlying assets of the listed mutual funds in accordance with 5 C.F.R. § 2634.301(a).

#### CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM NEEDS ATTENTION

The confidential financial disclosure system is decentralized and managed by non-ethics officials within the various offices under the five directorates. The DAEO, by memorandum dated September 17, 1993, notified the Directors to designate positions within the offices in their area of responsibility, which require confidential disclosure and identify the incumbents as confidential filers. Each employee was instructed to complete and submit the report to a designated intermediate reviewer. The intermediate reviewer may be the employee's immediate supervisor or another individual higher in the management hierarchy. Final review and certification are accomplished by a senior official within each office. The reports are then maintained within that office. A complete master list of confidential filers does not exist. Instead, each office maintains a list of designated positions and current incumbents.

We examined 400 confidential financial disclosure reports filed during the 1993 filing cycle. The reports consisted of 259

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incumbent reports, 91 new entrant reports, and 50 reports which did not reveal a filing status. Of the 400 reports examined, 195 reports were filed late, or the timeliness of the filings could not be determined. Further, the date the report was received by the agency was not indicated on 205 reports. Additionally, 26 reports were not reviewed and certified by a final reviewer and, in violation of CIA procedures, 112 reports were not reviewed by an intermediate reviewer, and 44 reports were signed and certified by the same person acting as both the intermediate and final reviewer, respectively.

The examination revealed a number of substantive and technical deficiencies. The substantive deficiencies consisted of 12 reports on which assets were reported in companies appearing on the CIA vendor list. Additionally, one report reflected dividend income, and another report included spousal income from companies appearing on the vendor list, while one report (not yet certified) had a notation that the filer's holdings could pose a conflict of interest.

The technical deficiencies consisted of 18 reports on which apparently compensated positions were reported in Part III without a corresponding entry in Part I, 2 reports on which earned income from what were apparently outside positions were reported in Part I without a corresponding entry in Part III, 79 reports on which the underlying assets of mutual funds not identified as EIFs were not disclosed, 106 reports on which incomplete information was provided concerning rental property locations and mutual fund names, and 86 reports on which there was overreporting of liabilities on personal residences, savings accounts and bonds, and thrift savings plan holdings. In addition, one filer indicated on his report that, because of a prenuptial agreement between him and his spouse, he did not have to report his spouse's assets and liabilities. Nevertheless, section 2634.309(a)(3) of 5 C.F.R. sets forth three conditions which must be satisfied before a filer can exclude the interests of a spouse or dependent child. OGE would suggest that the CIA ethics officials ensure that these three conditions are discussed with this filer and determine whether reportable information may have been withheld by the filer.

Consequently, we discussed the review process with several officials responsible for the final review of the confidential reports, as well as with the Alternate DAEO. According to many of the reviewers, there is a lack of uniformity in the use of review tools like the CIA vendor list and OGE's SF 450 Review Guide. The Alternate DAEO stated that he has proposed changing, prior to the 1995 filing cycle, the final review and certification procedures for confidential reports. Specifically, he has proposed that the same FDRP member who conducts the review and certification of a directorate's public reports should conduct the final review of the

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confidential reports (which would also result in a more centralized filing system for the confidential reports).

Somewhat related to the centralization of the review and filing of the confidential reports, because it could facilitate such centralization, several reviewers expressed concern that too many positions at CIA may be designated as requiring confidential disclosure reporting. According to these reviewers, it appears to be management's view that any question about a position being designated should be resolved in favor of designating the position. As a result, some of the designated positions may not in fact need to be covered. We discussed with the reviewers the designation criteria at 5 C.F.R. § 2634.904 and the exclusion criteria at § 2634.905. Most of the reviewers agreed that the designations should be looked at again and they opined that the number of filers could be reduced considerably.

#### COUNSELING AND ADVICE PROGRAM IS EFFECTIVE AND COMPREHENSIVE OVERALL

The counseling and advice program appears to be responsive to the needs of CIA personnel. We examined a sample of written determinations concerning a variety of ethics-related issues and found them to be thorough and indicative of effort that ethics officials make to ensure CIA employees receive the best guidance possible. The guidance appeared to be consistent with all appropriate regulations and statutes.

Post-employment issues are the responsibility of an associate general counsel in the Administrative Law Division. Having recently been assigned responsibility for post-employment issues, the Associate General Counsel has primarily been involved in writing letters to CIA employees who are about to retire or have retired concerning 18 U.S.C. § 207 issues.

CIA has a Career Transition Program for employees who are about to retire where they are given information about post-employment issues. The information "walks" the employee through the Procurement Integrity Act, applicable Department of Defense regulations, and 18 U.S.C. § 207. The Associate General Counsel plans to make presentations to participants in the program beginning some time in 1995.

#### ACCEPTANCE OF TRAVEL REIMBURSEMENTS FROM NON-FEDERAL SOURCES

Prior to September 1993, CIA prohibited the acceptance of travel reimbursements from non-Federal sources under 31 U.S.C. § 1353. The DCI approved a change in policy during the summer of 1993 that allowed limited acceptance of travel reimbursements from non-Federal sources for members of the National Intelligence

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Council and participants in the Officers in Residence Program. A travel reimbursement can only be accepted when the non-Federal source is a nonprofit organization defined by 26 U.S.C. § 501(c)(3). The Deputy DCI approves the acceptance of travel reimbursements from non-Federal sources.

An associate general counsel is responsible for preparing a written conflict analysis for those requests from employees in the Officers in Residence Program. When members of the National Intelligence Council request approval, the administrative officer of the Council prepares a memorandum to the Associate General Counsel concerning agency contracts, if any, with the concerned non-Federal source and whether or not the Council member involved has had personal and substantial interaction on the contract. After the Associate General Counsel receives the memorandum from the administrative officer, a conflict of interest analysis is accomplished. The request is then sent to the Deputy DCI for final approval. We examined the available requests for reimbursement and found the conflict analysis process to be very thorough.

#### EDUCATION AND TRAINING ARE EFFECTIVE

Ongoing initial orientation and annual ethics training requirements are being met. New employees participate in a week-long "entry on duty" seminar during which an associate general counsel speaks for approximately one hour and discusses the standards of conduct and conflicts of interest. These sessions are used to meet the requirements of 5 C.F.R. § 2638.703.

At the beginning of 1994, an Employee Bulletin listed the dates for the annual ethics training required by § 2638.704 and provided an explanation of who was required to attend. There were 14 sessions scheduled at headquarters, with additional sessions at other local offices. These sessions consisted of slides and a lecture. For those employees who were not located in the Washington, DC area, a session of the training was videotaped and distributed to them.

According to the Associate General Counsel, positive feedback has been received from employees regarding the annual training, and after each session there has been an increase in ethics-related questions. Our review of the training materials revealed that the presentations were thorough and comprehensive. The responsible officials should be commended for their efforts in the training area.

#### COORDINATION WITH THE OFFICE OF THE INSPECTOR GENERAL

In 1989, a statutory Office of Inspector General (OIG) was established for the CIA. Since that time, the OIG has experienced

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some "growing pains" with regard to its authority and responsibility within the agency. As a result, the OIG has had some problems regarding referring matters to the Department of Justice (DOJ). Other CIA offices have authority to refer matters to DOJ within their area of responsibility. The OIG has been tasked as the office responsible for conflict-of-interest investigations and the referral of such matters to DOJ. However, the current policy is that when the OIG wants to make a referral to DOJ, the Office of the General Counsel (OGC) reviews the referral paperwork to make sure that everything is in order. The referral documentation then goes to the DCI who forwards the referral to the Attorney General.

The OIG is involved in the investigation of ethics-related matters through two different avenues, one of which is the Inspections Division within the OIG. The Inspections Division distributes a compliance questionnaire to employees during on-site inspections which includes a question as to whether the employee is aware of any agency contract or other official matter that could create a potential conflict of interest. If an affirmative answer to this question is received, the matter is turned over to the OIG Investigations Division for further inquiry. The second avenue is that the OGC alerts the OIG of any issues that warrant investigation.

#### CONCLUSIONS

Our review indicates that CIA has the foundation for a sound ethics program. The public financial disclosure system is effectively managed; and the advice and counseling, including that related to post-employment and acceptance of travel reimbursements from non-Federal sources, are thorough and effective. Further, the CIA ethics training program is excellent. However, our review did identify areas in need of improvement. The CIA's written procedures concerning administration of the public and confidential financial disclosure systems need to be revised. Further, CIA ethics officials need to address the numerous issues identified during the examination of the confidential financial disclosure program.

#### RECOMMENDATIONS

We recommend you ensure that:

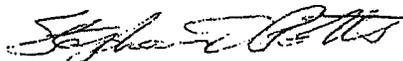
1. CIA's written procedures for administering the financial disclosure systems are revised and in conformance with the executive branchwide financial disclosure regulations.
2. Public and confidential filers are provided guidance which explains the definition of

EIFs, the correct method for reporting financial interests, and how to avoid technical deficiencies.

3. Public and confidential report reviewers receive guidance on how to conduct thorough conflict-of-interest analyses and appropriate follow up to resolve questionable issues.
4. Consideration is given to a more centralized management of the confidential financial disclosure program.
5. The substantive and technical issues involving potential conflicts of interest identified during the review of the confidential disclosure reports are addressed and resolved.
6. Consideration is given to re-evaluating the positions designated for confidential disclosure in accordance with 5 C.F.R. §§ 2634.904 and 2634.905, and reductions made, if appropriate, to the number of CIA employees required to file confidential disclosure reports.

In closing, I wish to thank you for all of your efforts on behalf of the ethics program. Please advise me within 60 days of the actions you have taken or plan to take on each of the recommendations of our report. A brief follow-up review will be scheduled six months from the date of this report. In view of the corrective action authority vested with the Director of the Office of Government Ethics under subsection 402(b)(9) of the Ethics in Government Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that the CIA implement actions to correct these deficiencies in a timely manner. We are sending a copy of this letter report to the Director of CIA and the CIA Inspector General. Please contact Charles Kraus at 202-523-5757, extension 1154, if we can be of further assistance.

Sincerely,



Stephen D. Potts  
Director