



July 13, 2006

National Institutes of Health
Bethesda, Maryland 20892
www.nih.gov

Steven Aftergood
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RE: NIH FOI Case No. 32743

Dear Mr. Aftergood:

This is the final response to your June 6, 2006, Freedom of Information Act (FOIA) request addressed to the FOIA Office, National Institutes of Health (NIH). You requested a copy of a "January 2006 'ethics audit' performed for NIH by the National Academy of Public Administration" (NAPA).

We searched the files of the NIH Ethics Office for records responsive to your request. Although that search did not produce an "ethics audit," it did produce a report prepared by the NAPA in January 2006, that provides guidance on establishing an audit program for the NIH ethics program. We have determined that this NAPA report on creating an audit program is responsive to your request. Therefore, enclosed is the 107 page report prepared by the NAPA.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this case, the cost fell below the \$25 minimum fee, so there is no charge for the enclosed material.

Sincerely,

A handwritten signature in cursive script that reads "Susan R. Cornell".

Susan R. Cornell, J.D.
FOIA Officer, NIH
Building 31, Room 5B35
9000 Rockville Pike
Bethesda, MD 20892

Enclosure: 107 pages

Technical Paper by the Staff of the

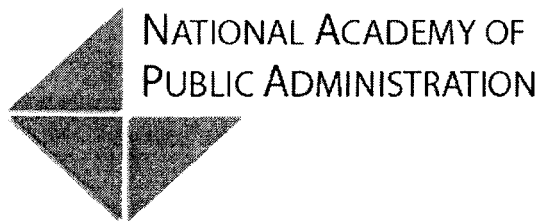
**NATIONAL ACADEMY OF
PUBLIC ADMINISTRATION**

For the National Institutes of Health

January 2006

**ENHANCING RISK MANAGEMENT
AT THE
NATIONAL INSTITUTES OF HEALTH
THROUGH AN AUDIT
OF THE ETHICS PROGRAM**

Prepared by a
National Academy of Public Administration
Staff Study Team



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The National Academy of Public Administration is the preeminent independent, non-profit organization for public governance. Established in 1967 and chartered by Congress, the Academy has become an independent source of trusted advice for every branch and level of government, Congressional committees and civic organizations. The Academy works constructively with government agencies to improve their performance and management through problem solving, objective research, comprehensive analysis, strategic plans, and connecting people and ideas. The Academy is led by its elected membership of more than 600 distinguished Fellows.

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ACRONYMS

ACERI	Advisory Committee on Ethics Regulations Implementation
CNEO	Chief NIH Ethics Officer
CRADA	Cooperative Research and Development Awards
DAEO	Designated Agency Ethics Official
DEC	Deputy Ethics Counselor
DOE	Department of Energy
DOL	Department of Labor
EC	Ethics Coordinator
ED	Ethics Division
EMIS	Ethics Management Information System
EPA	Environmental Protection Agency
FTE	Full-time equivalent
GAO	Government Accountability Office
HHS	Department of Health and Human Services
HR	Human Resources
IC	Institute or Center
IG	Inspector General
IPA	Intergovernmental Personnel Act
IT	Information Technology
NCI	National Cancer Institute
NEAC	NIH Ethics Advisory Committee
NEES	NIH Enterprise Ethics System
NEO	NIH Ethics Office
NIH	National Institutes of Health
NRC	Nuclear Regulatory Commission
OD	Office of the Director
OGC	Office of General Counsel
OGE	Office of Government Ethics
OHR	Office of Human Resources

OMA	Office of Management Assessment
ORS	Office of Research Services
SAO	Substantially affected organization
SGE	Special Government Employee

EXECUTIVE SUMMARY

In November 2005, National Institutes of Health (NIH) officials working with the Academy on internal management controls sought the Academy's assistance in developing a strategy to ensure that its ethics program—the subject of recent media attention, Congressional oversight hearings, and Government Accountability Office/Inspector General (GAO/IG) review—is effective and compliant with recently revised and implemented regulations. NIH's efforts to enhance its ethics program are consistent with the revised Office of Management and Budget Circular A-123 and with NIH's broader effort to strengthen all of its internal management controls.

Dr. Raynard Kington, Deputy Director of NIH, met with the Academy study team on two occasions, November 8th and December 2nd, to discuss his vision for “an ethics audit” to fulfill his commitment to Congress and the Department of Health and Human Services (HHS). Dr. Kington's goals included:

- design and conduct a thoughtful and statistically valid audit, with a high confidence level, that will serve as a model to other federal agencies
- factually demonstrate agency compliance with its newly revised regulations
- analyze compliance by Institutes and Centers (ICs) and other sub-sets of the NIH population, and determine consistency across the organization
- verify the sufficiency of ethics program documentation, previously criticized by Congress and others
- find out what NIH may not have known but should have known about its employees, their outside activities, and possible conflicts of interest
- use external, publicly available sources of data to verify internally available information—particularly that provided by employees on a voluntary basis
- limit agency vulnerability to future criticism of its ethics program management by instituting additional management controls where needed
- use available scientific expertise, such as existing NIH science advisory boards, to validate that proposed outside activities are not in conflict with existing official duties

Based on subsequent consultation with NIH ethics staff, including the Deputy Director of the Ethics Office and manager of the Ethics Management Information System (EMIS) database, the proposed parameters of the audit also include:

- basic records from January 1, 2004 to present
- a random sample of all full-time equivalent (FTE) employees, excluding, for example, contractors, grantees, fellows
- stratified sampling with weighting to ensure all ICs and areas of vulnerability are sufficiently subject to review and to provide a high level of confidence in results
- a focus on:
 - compliance with new regulations
 - success of implementation
 - changes in behavior based on baseline

- problem identification and analysis
- use of external source data to verify internal data provided by employees and the agency
- early warning system indicators
- comparison of the current state of ethics compliance (including violations and procedural deficiencies) to compliance in January 2004
- personal interviews with employees, supervisors, Ethics Coordinators (ECs), Deputy Ethics Counselors (DECs), directors of ICs, and NIH Ethics Office (NEO) staff, as needed to clarify records and processes
- use of scientific expertise, as necessary, to gain clarity as to potential overlaps between proposed outside activities and official duties

This four-chapter report provides a history of the program, issues, and a road map for the ethics audit, as follows:

- *Chapter 1, The NIH Ethics Function—History and Background*, to provide federal, departmental and agency context
- *Chapter 2, Recent Changes in NIH Ethics Regulations*, to summarize the major provisions of detailed Federal Register notices as well as their impact on staff and agency management
- *Chapter 3, Sample Design and Costs to Conduct an NIH Ethics Audit*, to provide a detailed understanding of how the audit was designed, specifics on the sampling plan, and an estimate of the labor and other costs involved
- *Chapter 4, Benchmarking the NIH Ethics Program*, to provide Office of Government Ethics (OGE) data and Academy staff analysis of the ethics programs of other federal agencies of similar size, program complexity, or staff educational level

In addition, the following appendices provide in-depth information in support of the proposed audit:

- *Appendix A, Summary Data from NIH Ethics Management Information System*, to provide a preliminary analysis of currently available agency data on which the proposed audit would rely
- *Appendix B, National Institutes of Health Ethics Audit Program, Step-by-Step Guide*, a framework for this initial NIH ethics audit as well as for ensuing audits
- *Appendix C*, comprised of three documents relating primarily to the proposed use of publicly available external data to verify internal NIH data
 - A flow chart representation of the *NIH Ethics Audit-Data Verification Cycle*, which depicts how, as part of the audit, the agency would use external data sources to verify internal requests and records, primarily for outside activities
 - A table summarizing the various categories of outside activities, external and internal data sources
 - A more detailed process description of external verification for major outside activities reviewed in the audit and a process for verifying the consistency of internal process management and decision-making at the IC levels

- *Appendix D, Audit Check List, By Form*, which proposes a list of “yes or no” questions for auditors, as they review specific forms required by NIH as part of the ethics process.
- *Appendix E, Sample Design*, to provide detailed information on sample construction, confidence level, and the selected sample size of 719 cases
- *Appendix F, IC Groupings for the Sample*, to provide a detailed listing of each of the four IC groupings, by IC and population, as currently reflected in EMIS
- *Appendix G, Selected OGE Guidance on Limiting the Number of Confidential Filers*—OGE regulations and issuances from 1994 and 1999 on how to appropriately reduce the number of confidential filers, while maintaining program integrity and reducing vulnerability
- *Appendix H, OGE Ethics Program Questionnaire for 2005*, the source document for the federal agency benchmarking data provided to the Academy through a Freedom of Information Act request
- *Appendix I, OGE Employee Survey*, a copy of a survey form used by OGE to solicit employee and managerial perspectives on agency ethics programs and excerpted analysis from its year 2000 report
- *Appendix J, Individuals Interviewed or Contacted*

CHAPTER 1

THE NIH ETHICS FUNCTION—HISTORY AND BACKGROUND

FEDERAL AND DEPARTMENTAL CONTEXT

In 1978, Congress passed the Ethics in Government Act and established the Office of Government Ethics (OGE). Its purpose is to:

- oversee ethics programs at all executive branch agencies
- direct policies relating to the prevention of conflicts of interest on the part of federal executive branch officers and employees.

OGE developed and issued various executive branch-wide regulations in Title 5 of the Code of Federal Regulations, including:

- in October 1992, the promulgation of government-wide Standards of Ethical Conduct for Employees (Part 2635), which became effective on February 3, 1993
- financial reporting requirements (Part 2634)
- rules that implement criminal conflict of interest laws (Parts 2635, 2637, 2640, and 2641).

While OGE provides direction and overall leadership to the executive branch ethics program, the head of each agency has primary responsibility for the ethics program at his/her agency. Although there is a uniform set of ethics rules for the entire executive branch, agencies may add special provisions to address agency specific needs. OGE must approve these supplemental regulations. Each agency head appoints a Designated Agency Ethics Official (DAEO) to manage the ethics program and act as a liaison to OGE. The DAEO and his/her staff ensure that the required ethics program elements are accomplished. In HHS, the DAEO is the Associate General Counsel for Ethics, within the Office of the General Counsel. The HHS DAEO has oversight responsibility for the NIH Ethics Program.

Basic elements and responsibilities of an agency ethics program include:

- effective collection and review of financial disclosure reports
- ethics training that meets the requirements of OGE's training regulations
- an employee counseling program
- prompt and effective action for violations of the ethics rules
- approval of outside awards
- review and approval of outside activities

In support of these efforts, OGE provides training and guidance to officials in a variety of ways, including:

- publishing advisory opinions
- issuing memoranda to ethics officials
- conducting periodic national and regional training courses
- communicating regularly with ethics officials through an electronic list service
- providing consultative services to agency officials through the OGE desk officer system and through telephonic and written advice from OGE legal staff.

OGE also monitors and evaluates the executive branch ethics program through periodic reviews of the ethics program at each agency. The purpose of these reviews is to ensure that agencies have developed effective ethics systems and procedures, in compliance with OGE regulations, to prevent conflict of interest and other violations of ethics laws and regulations. Typically, the focus of these reviews is on agency systems, rather than instances of misconduct by individual employees. The Office of Inspector General for each agency is responsible for investigating individual misconduct by employees.¹

CURRENT NIH CONTEXT

On August 31, 2005, NIH published final regulations (5CFR Parts 5501 and 5502) regarding employee requirements for reporting of certain financial interests, stock divestiture, outside activities, and awards. On October 26, 2005, the agency made technical amendments to these regulations. (See Chapter 2 for a summary of the major provisions and their agency impacts.) The regulations were developed by HHS, in close collaboration with NIH, with the concurrence of OGE. As specified in the *Federal Register*, the new regulations will be reviewed within one year to evaluate their continued adequacy and effectiveness in relation to current agency responsibilities.

NIH initiated these regulatory changes to its ethics program following external inquiries from a variety of sources:

- In December 2003, an investigative report in the *Los Angeles Times* raised concerns about the ethics program at NIH; the article particularly focused on outside, compensated activities and employment and the appearance of conflict of interest with official duties.
- During the spring of 2004, the House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, conducted hearings on NIH ethics concerns, with a particular focus on awards and outside activities.²

¹ Prepared Statement of Marilyn L. Glynn, Acting Director, U.S. Office of Government Ethics, Hearings before the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, U.S. House of Representatives, May 18, 2004, pp. 88-89, <http://www.access.gpo.gov/congress/house>.

² Congress referred for agency review the cases of 81 NIH employees, for whom there was inconsistent information concerning their outside activities. NIH's Office of Management Assessment's (OMA) Division of Program Integrity conducted the review, which covered the period from, roughly, 1999 to the end of 2003. Thirty-six cases were referred to the Office of Human Resources for administrative action; 45 individuals either had no problem or had left the agency—some prior to administrative action. A few cases are still pending. In December 2005, the Director of OMA prepared an internal report, including recommendations for management of ethics issues and outside activities.

- From January through May 2004, the Office of Government Ethics conducted a review of the ethics program at NIH.
- In July of 2005, the HHS Inspector General (IG) completed a review of the outside activities of senior level NIH employees.

Each of these entities raised concerns about the NIH ethics program, its consistency, and agency compliance, and will be following up with NIH to ascertain the effectiveness of these highly visible new ethics regulations and their implementation.³

NIH Historical Approach to Activities with Outside Organizations

While government ethical regulations relate to a wide-variety of employee responsibilities and potential conflicts and NIH has taken steps to address each of these areas, the majority of external criticism leveled at NIH relates to the outside activities of its employees and particularly those activities which involve compensation. Activities with outside organizations include:

- teaching
- conferences/speeches
- writing/editing/publications
- serving as an expert witness
- engaging in a clinical practice
- consulting
- receiving an award, either monetary or honorary, from an outside (non-federal) organization

Government-wide rules permit an outside activity, such as consulting, and are designed to be reasonably flexible. They reflect a balance between the rights of the employee to have a life outside of work with the need for the government to demand the highest ethical standards from its employees. Generally speaking, the rules permit compensated consulting, for example, unless the activity would require recusal from matters central to or critical to the employee's official position, or if the activity would violate a particular statute or regulation, such as the OGE rules prohibiting the use of public office for private gain.

Agencies can take one of two approaches to implement rules concerning outside activities. An agency can choose to either review outside activities of each individual employee on a case-by-case basis in light of the general standards found in the OGE rules. Or, an agency can seek approval from OGE to issue supplemental regulations restricting certain specific outside activities for all employees at that agency or certain groups of employees.⁴ A 1995 OGE review of the NIH ethics program discovered that NIH had a series of restrictions on outside consulting that were not promulgated in accordance with procedures prescribed by Executive Order. OGE directed that NIH either remove these restrictions or propose them for inclusion in HHS

³ NIH has established an Advisory Committee on Ethics Regulations Implementation (ACERI). Administrative Officers are seeking representation on this committee, which advises the Director and Deputy Director on policy and procedural matters in this area.

⁴ Prepared statement of Marilyn Glynn, p. 87.

supplemental regulation.⁵ NIH elected to remove these restrictions, and, since 1995, has relied on case-by-case evaluations under the general standards applicable to all executive branch employees.

Organization and Staffing of the NIH Ethics Function

As with most federal agencies, ethics at NIH was a minor issue with minimal staffing until the enactment of the Ethics in Government Act in 1978. With the 1992 promulgation of the government-wide standards, the burden and workload further increased.

With regard to the organizational location and evolution of the NIH ethics function and its non-attorney staffing:

- From initial implementation of the 1978 enactment of the Ethics in Government Act, the ethics function was housed in the Office of Human Resources (OHR), within a branch, within a division. A single individual, for whom this was one of several duties, was the agency ethics point of contact and liaison to HHS Office of General Counsel (OGC). In about 1992, HHS added an NIH-located ethics attorney. Employees channeled their ethics questions through their Institute DEC to this OHR employee, who could then channel the question to the attorney, as needed.⁶
- At the same time, roughly 1979 to 1980, IC directors were named as DEC's, responsible for reviewing and approving confidential financial disclosure reports for their own organizations.
- Following the 1991/1992 OGE ethics audit, those with ethics responsibilities in ICs which had been audited began to meet regularly to discuss issues raised. The Human Resources (HR) point of contact participated in these meetings. The IC group requested that the head of OHR ask each IC to identify an Ethics Coordinator (EC). This was the beginning of meetings between the DEC's and EC's, which continue to this day. Many of the EC's were also HR staff and some were the Personnel Officers for their ICs. For most designated staff, ethics was a collateral, if somewhat informal, duty. The large National Cancer Institute (NCI) was the exception, with its own formally established ethics office.
- In roughly 1994 or 1995, a senior HR person took on the ethics role in addition to other duties; a support staff member assisted him in sending out requests for required form completion.
- In 1995, NIH decentralized its approval authority for outside activity requests and delegated authority to IC Directors and Deputy Ethics Counselors (DEC's).
- In July 1997, OHR added a full-time professional dedicated to the ethics function to supplement the part-time investment of the pre-existing senior staff person. The group began calling itself the NIH Ethics Office, set up a website, prepared a brochure, and attended employee orientation to increase ethics program visibility.
- In 2000, OHR designated an NIH Ethics Program Manager, but through attrition, the staff dropped back to one FTE.

⁵ Ibid, p. 95.

⁶ Later, as ethics staffs in the ICs grew, the IC ethics staff members began seeking advice from either the central OHR ethics contact or directly from the OGC ethics attorney.

- In 2002, an additional staff member was added to the ethics function, and the staffing rose to two full-time FTEs for the first time in NIH history.
- In mid-2003, NIH created a new organization, in the Office of the Director (OD), and officially titled it the NIH Ethics Office; seven of the eight staff members are not attorneys; four of these six are ethics specialists and two are administrative employees.
- The office also has four contract staff, including three professional ethics staff (two part-time, one full-time) and a receptionist. The contractors assist with:
 - financial disclosure review, including public and financial disclosure reports and the supplemental report of financial interests in substantially affected organizations.
 - managing the Ethics Management Information System (EMIS) database
 - identifying needs for the new NIH Enterprise Ethics System (NEES)
 - updating the web site
 - drafting policy chapters, forms, check sheets, and procedural chapters

To recap the history of the NIH ethics function and its legal staffing:

- From 1978 until 1994, non-legal staff in the NIH OHR centrally reviewed all employee outside activity requests; the NIH Director, as DEC, was the deciding official.
- In a 1991-1992 OGE review, OGE determined that NIH was so large in terms of employee population that it needed an ethics attorney available on-site, at NIH; HHS OGC Ethics Division (ED) set up an office at NIH so an ethics attorney was immediately available to NIH.⁷ (NIH is not permitted to have an attorney function in an attorney position; all legal counselors are HHS level employees. While for purposes of organizational specification these ethics attorneys are listed as being located in NIH's OD, NIH in fact reimburses HHS for OGC attorneys of any specialty located at the NIH campus.)
- From 1992 through roughly 2001, HHS had one ethics attorney sited at NIH.
- From mid-1997 on, an NIH resident attorney (or in the absence of one, on rare occasion, an HHS OGC attorney) reviewed outside activity requests forwarded by and for individual IC Directors and DEC's.
- After a few years, HHS authorized a second ethics attorney, but recruitment difficulties kept attorney staffing at a single ethics attorney.
- For a period of time of approximately six months, both slotted positions were vacant, and non-attorney professional staff manned the function, with off-site HHS OGC attorneys available to assist.⁸
- The current NIH Ethics Office (NEO) has 21 assigned FTEs, of which only 8 are filled. The office has a director, who is an attorney, a deputy director, as well as six additional staff, including four specialists.

⁷ The U.S. Environmental Protection Agency (EPA) and NIH are roughly the same size. By contrast, EPA's ethics function is housed in its Office of General Counsel, with two full-time attorneys, a paralegal, and support in information technology (IT) and training from employees with other responsibilities. See Chapter 4 for other benchmarking analysis.

⁸ The source for much of the organizational and staffing history of the NIH Ethics Program is Fran Plyler, the former NIH Ethics Program Manager and current NEO Ethics Consultant.

ETHICS STRUCTURE AND SUPPORT THROUGHOUT NIH

In addition to the required DAEO, who resides at the department level within the HHS OGC (titled the Associate General Counsel, Ethics Division), the Director of NIH is responsible for:

- establishing NIH policies and procedures to implement the government-wide standards of conduct and HHS supplemental standards relating to activities with outside organizations
- making program or policy exceptions when justified by special circumstances.

Deputy Ethics Counselors (DECs)

On January 12, 2004, the Director of NIH designated the Deputy Director to the new position of DEC for all of NIH as well as for the OD.⁹ The agency had historically taken a decentralized approach to ethics management, with each IC having its own DEC. There are now 30 DECs in all, including the Deputy Director of NIH. The DECs within the ICs are primarily at the GS-15 and Senior Executive Service Level and have responsibilities other than ethics; many are the Executive Officer for their IC; some are Deputy IC Directors.

The DECs are responsible for:

- coordinating and managing IC ethics programs
- providing advice to managers and employees regarding the application of the standards of conduct and policies on activities with outside organizations
- reviewing requests for activities with outside organizations for conformance with regulations and policies and approving or disapproving requests as needed
- approving waivers and written recusals
- assuring the maintenance of all records associated with IC employee activities with outside organizations.

DECs may delegate review and approval authority to other IC managers consistent with the NIH delegations of authority.¹⁰

NIH Ethics Office (NEO)

The Director and Deputy Director of NIH rely on the NEO as the main point of contact for NIH ethics. The office is headed by a Director and staffed with a Deputy Director, four ethics specialists, and two program assistants, to:

⁹ Prepared Statement of Elias A. Zerhouni, Director, National Institutes of Health, HHS, before the Subcommittee on Oversight and Investigations, May 12, 2004, p. 25.

¹⁰ In the summer of 2004, the DEC/EC community established four ethics working groups (Database, Financial Disclosure, Official and Outside Activities, and Training) to help identify priority policy and operational issues and to help resolve them in a coordinated manner.

- provide assistance to the DECs, IC ECs, and other managers and supervisors on all aspects of the NIH Ethics Program, including activities with outside organizations
- advise the Director, NIH, and other top management officials of new developments, trends, or practices associated with the participation of NIH employees in outside organizations
- provide assistance on informal or formal training for IC officials as needed
- disseminate ethics information from NIH or the HHS OGC/Ethics Division to the DECs and IC ECs
- conduct post audit reviews consistent with NIH management control guidelines

NIH has endorsed a proposal to restructure the NEO. It will advertise the position of Chief NIH Ethics Officer (CNEO) and utilize a search committee in its recruitment.

Ethics Coordinators (ECs)

DECs also rely heavily on ECs and ethics staff within their ICs. ECs and ethics staff, who number 66,¹¹ are responsible for:

- serving as the primary point of contact for the exchange of information on activities with outside organizations and other ethics issues
- providing the annual ethics report for their organizations
- providing administrative and/or program support¹² for IC Ethics Programs, as defined by their Directors and/or DECs.

HHS Attorneys

At the NIH main campus, there are two resident HHS ethics attorneys, who:

- function as the NIH liaison to OGE
- provide general advice on conflicts of interest, financial disclosure, and other ethics issues
- provide advice on ethics training materials
- forward HHS, OGC/ED directives and other documents to the NIH Ethics Office

Additional Input and Centralization

In addition to those with ethics responsibilities designated above, the Director of NIH created a Blue Ribbon Panel on Conflict of Interest Policies—a group of outside experts to review existing laws, regulations, policies, and procedures under which NIH operates regarding real and apparent financial conflicts of interest where compensation is received by employees. The panel

¹¹ Of these 66, some are full-time and some are part-time, including administrative officers who play varying roles in IC administration of the ethics program. See Chapter 4 for information on full- and part-time staffing at other federal agencies.

¹² A workgroup of agency administrative officers participated in an Executive Officer/Administrative Officer retreat in November 2005 and presented seven short-term and long-term recommendations to enhance their ethics knowledge and improve internal ethics operations. The workgroup continues to meet.

began its review on March 1, 2004 and made its recommendations to the standing Advisory Committee to the NIH Director May 6, 2004.

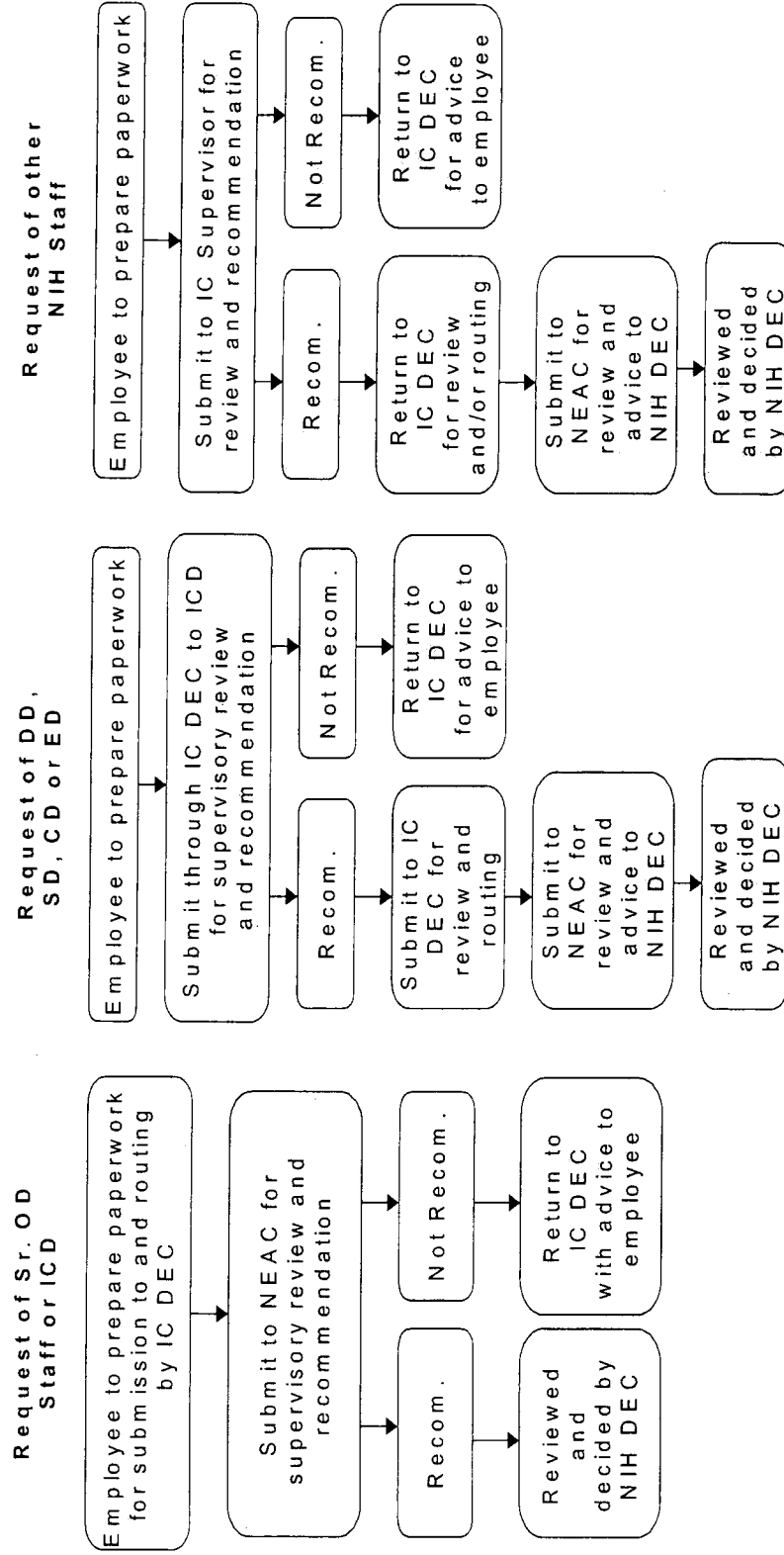
In 2004, the agency also established the NIH Ethics Advisory Committee (NEAC) to review a segment of requested outside activities. The group, co-chaired by the NIH DEC and Deputy Director for Intramural Research, consists of ten rotating members and two ex-officio ethics advisors, all of whom are full-time federal employees. The rotating members are nominated by the IC Directors and appointed by the co-chairs. Membership represents the categories of employees submitting proposals to the NEAC, including the IC Directors and Deputy Directors, Scientific Directors, Clinical Directors, Extramural Directors, OD Senior Staff, and others. The committee reviews requests for proposed activities to help assess whether they create an actual or apparent conflict of interest and bases these reviews on criteria set forth in the Standards of Ethical Conduct for Employees and HHS supplemental regulations. With limited exception, the NIH DEC is responsible for providing final approval for the activities subject to the jurisdiction of the NEAC.

Among requests within the jurisdiction of the NEAC are the following:

- all requested outside activities for those senior leadership officials designated as “The Top Five” (e.g. IC Directors, IC Deputy Directors, Scientific Directors, Clinical Directors, Extramural Program directors) as well as OD senior staff (including all NIH Deputy, Associate, and OD Office Directors)
- a subset of all requested compensated, outside activities, regardless of the position of the employee proposing the activity, including:
 - awards where compensation equals or exceeds \$2500
 - outside activities where total compensation is anticipated to exceed \$10,000 or is expressed as a future income stream
 - activities for which the compensation proposed is stock, stock options, or other equity positions.

While the NEAC initially looked at proposed outside activities with biotechnology or pharmaceutical companies, in August 2005 the agency revised its supplemental regulations and now broadly prohibits such outside activity for all NIH employees.

Below is a schematic representation of the NEAC process:



The Academy's Role

Already working with the Academy to strengthen its internal management controls and limit its vulnerability to risk, in November 2005, NIH sought the Academy's assistance in developing a multi-pronged strategy to ensure that its ethics program is effective and compliant. NIH's efforts to enhance its risk management in its ethics program are consistent with this broader effort and with the Office of Management and Budget's Circular A-123, which requires increased use of internal management controls.

The Academy study team recommends that NIH continue to work to:

- achieve program readiness by:
 - ensuring a consistent, updated message on the agency website
 - reviewing and updating training manuals and modules
 - updating and revising relevant NIH Policy Manual Chapters

- collaborate within the agency to:
 - refine its current data system, EMIS (See Appendix A for summary data gleaned from EMIS and an insight into what data can be mined from the current system.)
 - plan for its future NEES, which will feature more sophisticated and integrated data systems to limit ethics vulnerability
 - prepare tools, such as management reports and standardized documentation formats, that will enable reviewing and approving officials to more easily, speedily, and accurately determine the application of consistent criteria in the decision-making process
 - develop checklists for those with similar functional responsibilities to prevent common errors or lack of consistency
 - design and implement cross-organizational checks and balances to prevent violations or approvals of non-compliant activities

As requested, the Academy study team has designed a thoughtful, creative, and adaptable audit program for the ethics function. The step-by-step plan (see Appendix B), which establishes a framework for short and long-term auditing, includes:

- traditional after-the-fact auditing
- testing of internal controls
- continuous process improvement
- the broad use of external data verification sources
- varied options for future audits, which will likely be smaller once population variance is determined

The proposed initial audit calls for:

- substantial data mining and analysis prior to sampling

- statistically valid sampling specifications
- random sample by employee
- varied strata to ensure that all employees know they are potentially subject to audit
- a cross-walk of all forms relevant to each selected employee
- IC aggregated and analyzed data for use by management
- testing of management controls
- a proactive audit element—for each case, a comparison of publicly available external source data to internal data (See Appendix C for information on external data verification)
- follow-up interviews with employees, supervisors, ethics counselors, and deputy ethics counselors, where there are inconsistencies or need for clarification
- use of scientific expertise, as necessary, to gain clarity as to potential overlaps between proposed outside activities and official duties

See Chapter 3 for additional detail on the sample design and costs for conducting the initial audit.

CHAPTER 2 RECENT CHANGES IN NIH ETHICS REGULATIONS

On August 31, 2005, HHS published in the Federal Register new Supplemental Standards of Ethical Conduct and Financial Disclosure Requirements.¹³ The rules apply to employees of both NIH and the Food and Drug Administration, with variances for the two organizations. HHS developed the regulations in collaboration with NIH and with the concurrence of the Office of Government Ethics (OGE).

On October 26, 2005, HHS published correcting amendments to provide affirmatively that NIH new entrant confidential and public filers, as well as clinical investigators, must disclose the value of financial interests in substantially affected organizations (SAOs).¹⁴ The agency made this correction because:

- SF-278 (Public Financial Disclosure Report) requires reporting of value of holdings only within certain dollar ranges
- OGE-450 (Confidential Financial Disclosure Report) requires no report of the value of holdings whatsoever

MAJOR PROVISIONS

The major features of the final rules include:

- a basic prohibition on outside consulting¹⁵ by NIH staff with SAOs, such as:
 - pharmaceutical, biotechnology, or medical device manufacturing companies
 - health care providers or insurers
 - supported research institutions
- divestiture of all holdings in SAOs in excess of \$15,000 per company for all senior NIH employees and their spouses and minor children¹⁶
- limitations on monetary awards received from outside sources, including:

¹³ 5CFR Parts 5501 and 5502, *Federal Register*, Vol. 70, No. 168, August 31, 2005.

¹⁴ 5CFR Part 5502, *Federal Register*, Vol. 70, No. 206, October 26, 2005.

¹⁵ Also prohibited are compensated teaching, speaking, writing, or editing for any of these three groups and self-employed business activity that involves the sale or promotion of products or services of an SAO or a health care provider or insurer.

¹⁶ Senior employees include the NIH Director and Deputy Director; all direct reports to the NIH Director; all IC Directors, Deputy Directors, Scientific Directors, and Clinical Directors; extramural program officials who report directly to an IC Director; and other employees designated as senior because they possess equivalent levels of decision-making responsibility. All other employees may be required to divest if, after a review, a potential conflict resulting from their holdings or those of their spouses and minor children would impede their ability to do their governmental job.

- prior approval
- only awards that have been determined through a pre-screening process to be bona fide
- a bar on senior employees receiving cash from even pre-screened awards if offered by donors who have matters pending under their official responsibility
- allowance, subject to prior approval and review by the appropriate ethics official of outside activities, including:
 - activities with professional and scientific organizations
 - service on data and safety monitoring boards
 - Grand Rounds lectures
 - scientific grant review
- allowance, under existing government-wide rules and with prior approval, of compensated, academic outside activities, such as:
 - teaching courses at universities
 - writing general textbooks
 - performing scientific journal reviews or editing
 - providing general lectures to physicians and scientists as part of a continuing professional education program
 - practice of medicine and other health professions

IMPACTS ON NIH STAFF

Impacts on NIH staff include the following:

- more forms to fill out; and more attention to deadlines, completeness/ accuracy of information provided, and presence of required signatures. Most common forms include:
 - for those designated by virtue of their position—roughly 11,000 of the estimated 18,000 employees¹⁷—either the public or confidential version of the financial disclosure form
 - HHS Supplement 716, Initial Report of Prohibited Financial Interest for Employees of the NIH
 - HHS 520 (NIH 2657), Request for Approval of Outside Activity, including record of prior compensation from same source within last six calendar years
 - Supplement to HHS 520, including employment agreement.
 - HHS 521, Annual Report of Outside Activity, for previous calendar year, including income amounts

¹⁷ The EMIS database, as of December 2005, had 16,384 employees. The agency frequently includes non-FTE employees and, to some extent, on-site contractors, and describes its workforce as approximating 18,000. The proposed audit will rely on the employees listed in EMIS, including 479 public filers and 10,566 confidential filers. The audit will, however, randomly sample from among all employees, including non-filers.

- HHS Award Review and Approval Form, for prior award approval
- more emphasis on mechanisms to resolve real and apparent conflicts of interest and to document such resolution, including:
 - waivers of actual conflict of interest
 - authorization to participate, including a method of resolving an apparent conflict
 - recusal/disqualification from official duties because of outside activity or financial interest
 - divestiture
- more training
- likely to be audited, per management's commitment to Congress and HHS
- more public scrutiny, including that from industry, the scientific community, media, Congress, the IG, and GAO

IMPACTS ON MANAGEMENT/ AGENCY

Impacts on NIH's management and on NIH as an agency include the following:

- increased need for interconnected data systems with historically replete information, so the agency can determine basic information and see trends
- increased need for centralized administration of ethics program to minimize inconsistencies and vulnerabilities, and to ensure legal compliance
- related increased investment in in-house ethics expertise and coordination—already higher on an employee per capita basis than many other federal counterparts (See *Chapter 4, Benchmarking the NIH Ethics Program*)
- increased time and attention on the part of senior management, called to testify before Congress on multiple occasions on this topic
- increased management accountability if things go awry
- decreased employee morale
- potential damage to agency's credibility and its scientific reputation
- potential difficulties in recruitment

CHAPTER 3

SAMPLE DESIGN AND COSTS TO CONDUCT AN NIH ETHICS AUDIT

As requested, the Academy has designed an ethics audit plan to meet the needs expressed by NIH and has estimated the cost of conducting the audit. (See Appendix B for a Step-by-Step Plan for the audit, which may be replicated/amended in subsequent years.) The estimated cost is \$518,400. This chapter provides additional detail on the various elements of the audit plan.

The audit will focus on:

- compliance with new regulations
- success of implementation
- changes in behavior from the baseline, such as reduced number of requests, more timely and thorough submissions, better documentation by agency officials
- problem identification and analysis
- early warning system indicators
- solicitation of additional scientific/technical expertise to assure full understanding of official versus outside duty similarities and conflicts
- use of publicly available external sources of data (see Appendix C) to verify information provided by the employee/agency for all individuals audited
- the use of personal interviews (employee, supervisor, DEC, EC, IC Director, and ethics staff) where there is a need for clarification of information or inconsistency

AUDIT PERIOD AND PARAMETERS

Based on discussions with agency ethics staff, the proposed parameters of the audit will include:

- initial reliance on the EMIS data base and its listing of current NIH employees, with future audits shifting to reliance on NEES, as that system comes on line
- a review of all case records from January 1, 2004 to present to compare the current state, under the newly imposed regulations, to the prior state, under the previous regulations, and allow year-to-year comparison of, for example, official duties, holdings, and activities
- a random sample of all FTE (excluding, for example, contractors, grantees, fellows), with all NIH employees having an equal chance of being audited
- the estimated proportion of the NIH employees in compliance
- a stratified sample design to assure that all ICs and areas of vulnerability are sufficiently subject to review
- a sample of sufficient size to provide a high level of confidence in the results

COST ESTIMATE

The cost estimate, which assumes the audit team has a pre-existing knowledge of the subject matter, is based on:

- the number of cases to be sampled, as determined by the desired confidence level and size of the employee population
- the time estimated for each case, including a full file review, external source verification for all cases, and interviews for purposes of clarification or resolution of inconsistency, as needed
- the labor costs for the mix of audit staff required
- the cost of analyzing the results of the audit
- the production of a report summarizing the results of the audit

TIME PER SAMPLE

Academy staff estimates that it will require an average time of six hours per case audited. Given that there are no real case audit standards, Academy staff sought the expert opinion of the following individuals:

- a Certified Public Accountant and former regional manager of the Government Accountability Office (GAO), who has experience auditing personnel and ethics files at other federal agencies, including the Nuclear Regulatory Commission
- a former GAO Associate Director and former IG for the Federal Deposit Insurance Corporation
- a former GAO area director, who specialized in tax audits, and former Deputy Director of the Internal Revenue Service management and finance function

The consensus of these experts was that while the most complicated cases, including those with extensive holdings/recusals/visibility/authority, could take as much as two full work days, simple cases could take as little as three hours. The three experts agreed that a range of four to eight hours per case was valid and that, for purposes of audit cost estimation, an average of six hours per case should be used. Variables that could affect the amount of time required include:

- extent of holdings
- numbers of relevant forms/requests
- accessibility of the materials
- quality/clarity of the information
- visibility of the employee's position
- breadth of the employee's responsibilities

This estimate assumes that for *all* employees audited, the auditor will:

- complete a full file review (See *Appendix D, Audit Checklist, by Form*, to be used by auditors in the review of the most common ethics forms)

- use potentially relevant sources of publicly available, external data to verify internal sources (See Appendix C for a flow chart detailing the process, a chart summarizing potential external data sources, and a more detailed description of those sources.) Prior to the audit, NIH management will convey to employees that every NIH employee has an equal chance of being audited and that auditors will use external data verification for all cases.
- interview relevant parties, including the employee, the supervisor, the IC Director/ Deputy Director/ DEC, the Ethics Coordinator, and NEO Staff, as needed, for clarification or where inconsistencies between internal and external sources arise
- enter the results from the audit checklist in a database, which can then be compiled for various subgroups, such as ICs, occupational categories, pay levels, etc.
- designate compliance or non-compliance in each of three categories:
 - the standards of ethical conduct (5CFR part 2635)
 - the criminal conflict of interest statutes
 - NIH procedures

SAMPLE SIZE

Appendix E details the rationale and methodology used to decide sample size. The size of the sample will be 719 employees chosen randomly from among the 16,384 employees listed in EMIS. These employees, split into four relatively equal groups, termed IC Groupings (specified in more detail in Appendix F) are divided as follows:

- IC Grouping A—Office of Research Services, Clinical Center, Office of the Director
- IC Grouping B—larger ICs
- IC Grouping C—smallest ICs
- IC Grouping D—medium size ICs

CONFIDENCE LEVEL

With the above sample design and scenario, the proportion of employees in compliance +/- 3% will be estimated at a confidence level 90 percent.¹⁸ Because this is a first-time, baseline audit, the auditors have no knowledge of the population variance and will have to assume maximum theoretical variance. This first audit will require a larger sample (719) than will subsequent audits. Thus, NIH should view this first ethics audit as an investment and an opportunity to demonstrate, in a factual, documented, and statistically valid manner, compliance with the new regulations in three critical areas and compare the current state to the pre-existing state of January 2004. With this baseline data in hand, NIH can then conduct smaller random samples in future years at a lower cost and, using different focal areas, hone in on pockets of potential non-compliance. Using external data for verification during this audit will give NIH a breadth and

¹⁸ This confidence level is consistent with NIH guidance, as detailed in OMA's Sampling Guidance for NIH Management Control Reviews, Appendix 5, page 1.

depth of information about agency ethics compliance not previously attained. As NIH communicates with its employees about this audit, it should highlight its random nature, high level of confidence, external source verification methods, and reliance on personal interviews to resolve inconsistencies.

CHAPTER 4

BENCHMARKING THE NIH ETHICS PROGRAM

High-performing organizations use quantitative and qualitative benchmarking tools to see how they compare to other organizations for a particular business process. In the words of Benjamin Disraeli, “The most successful organizations are the ones with the most information.” While recognizing that no two organizations are exactly alike in their structure, mission, staffing, or ethical conflicts, Office of Government Ethics (OGE) assesses the impact and health of its program each year via a programmatic survey of ethics managers across government and a separate survey, on a less regular basis, of individual employee attitudes and experiences. The Academy study team used OGE data from the program questionnaire as its source for benchmarking data. The information and analysis provided in this chapter about how other agencies manage their ethics program may lead NIH to consider alternative approaches or the potential application of best practices.

AGENCY VARIABLES

There are many variables in the management of an agency ethics program, including:

- number of filers of public disclosure, as indicated in part by the agency structure and hierarchy
- number of filers of confidential disclosure, as necessitated by the mission
- visibility of the mission
- potential economic impact of the work of the agency
- potential for conflict of interest with the official work of the agency
- marketability of the agency’s workforce for outside employment
- degree of transference of skills from the federal to the private sector
- public recognition and interest in the work of the agency
- salary structure of the agency, with higher salary increasing the likelihood of increased financial holdings
- occupational mix
- agency culture
- degree of employee autonomy
- degree of organizational autonomy
- agency leadership attitudes and priorities
- sophistication and integration of agency data systems and their ability to support the ethics management function in a cost effective and efficient manner

These variables impact the visibility and vulnerability of the individual agency ethics program. Nonetheless, benchmarking remains a useful tool in the agency evaluation process. In comparing agencies of like size, occupational mix, etc., the agency can see outliers in terms of the number of filers it designates or the ratio of ethics staff to filers, and then examine its rationale with an eye toward minimizing filing without increasing risk. OGE has historically

urged agencies to review their designation determination practices to limit the number of confidential filers, so as to limit agency work burden and devote staff energy and valuable resources to the most vulnerable employees—those with most authority, autonomy, visibility, and most involved in resource decision-making. (See Appendix G for OGE regulations and selected guidance from 1994 and 1999 on limiting the number of confidential financial disclosure filers.) Benchmarking may also reveal best practices of sister agencies and provide comparisons for considering improved agency infrastructure, training, or program management.

OGE PROGRAM QUESTIONNAIRE

Each year, roughly 120 Executive Branch cabinet level departments and independent regulatory agencies respond to the OGE annual ethics program questionnaire, required by Section 402(e)(1) of the Ethics in Government Act of 1978. (See Appendix H for the 2005 version of this interagency report). Responses for 2005 are due to OGE on February 1, 2006. OGE made data for 2004 available to the Academy through a Freedom of Information Act request.

Agency ethics officials are typically responsible for collecting and providing the data, including:

- the number and types of employees, separating out those who are special government employees (SGEs) and those on Intergovernmental Personnel Act (IPA) assignments
- the number of filers, public and confidential
- the number of staff with full time ethics responsibilities in both headquarters and field offices
- the number of staff with part time ethics responsibilities in both headquarters and the field
- information about ethics training, including methods, frequency, and topical areas
- frequency of ethics opinions, advice, and counseling, by topic
- number of disciplinary actions based on violation of standards of ethical conduct
- number of disciplinary actions taken based on violations of criminal conflict of interest statutes
- number of referrals of potential violations and to whom

Academy staff sought OGE data from agencies meeting some or all of the following characteristics:

- similar to NIH in terms of employee population size (Department of Labor (DOL), Environmental Protection Agency (EPA), Department of Energy (DOE))
- having a highly educated and technical workforce (EPA, DOE, Nuclear Regulatory Commission (NRC))
- organizationally related to NIH (HHS, the parent department)

Below is the information provided by OGE:

Table 4-1. Agency Statistics Calendar Year 2004

Department of Energy, Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, and the Department of Labor

	DOE	NRC	EPA	HHS	DOL
Employees: F/T	13,799	3,085	17,067	63,992	15,704
SGE	7	84	0	3,313	247
IPA	9	1	0	1046	21
278 Filers	612	262	407	840	397
450 Filers	6348	548	9,536	18,263	0
Ethics Officials F/T: Headquarters	6	1	2	24	2
Field Office	3	0	0	30	0
Ethics Official P/T: Headquarters	1	4	89	103	2
Field Office	57	4	66	179	14

F/T-Full Time

P/T- Part Time

OGE SURVEY OF EMPLOYEES

In addition to this program questionnaire, OGE periodically conducts a survey of randomly sampled employees to determine ethics program awareness and perceptions at varying levels of official responsibility at sample agencies. For example, the survey for the year 2000 (contained in Appendix I) was comprised as follows:

- **Part A** asked general questions of employees about their personal interactions with their agency's ethics program, advice sought, and training received, and asked them to respond within a range of options.
- **Part B** focused on employee perceptions of supervisory and management actions and attitudes concerning ethics and ethics violations.
- **Part C** related to employee perceptions of how other employees view ethics and employee attitudes toward reporting ethics violations.
- **Part D** allowed for a more extended, narrative and asked the respondent for suggested improvements to ethics policies and program implementation tools.
- **Part E** solicited essential demographic information, such as time with the agency, pay plan, work location, financial disclosure responsibilities, and whether or not the person was a supervisor.

For purposes of this study, Academy staff had access to agency-specific program questionnaire data and to the government-wide information in the public *Executive Branch Employee Ethics Survey 2000, Final Report* (excerpted in Appendix I).¹⁹ NIH may find it fruitful to consult with OGE to secure agency-specific results of past employee surveys to inform decisions about

¹⁹ This report is available in its entirety online at the OGE website, http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/surveys_ques/srvyemp_rpt_00.pdf.

employee orientation programs, specific topics for future ethics training for employees and managers, potentially useful ethics tools, and messages for ethics related communications vehicles.

COMPARISONS AND OBSERVATIONS

Taking the OGE raw data, Academy staff conducted the following analysis:

**Table 4-2. Agency Ethics Statistics:²⁰
A Comparison of Population, Filers, and Full-time Ethics Staff**

Agency	Employee Population	Filers of Form 278 (%)	Filers of Form 450 (%)	FT Ethics Staff	Ratio FT Ethics Staff to Filers ²¹
NIH ²²	16,384	293 (1.8%)	10,566 (64.5%)	8	1:1,357
HHS	68,351	840 (1.2%)	18,263 (26.7%)	24	1:796
DOE	13,815	612 (4.4%)	6,348 (46%)	6	1:1,160
NRC	3,170	262 (8.3%)	548 (17.3%)	1	1: 810
EPA	17,067	407 (2.4%)	9,536 (55.9%)	2	1:4,971
DOL	15,972	397 (2.5%)	0	2	1:198

Recognizing that NIH has among the most educated and credentialed workforce in the federal spectrum and among the highest degree of marketability for outside employment and activities, it is nevertheless interesting to make the following observations:

- Of agencies of like size, (NIH, EPA, and DOL) and, to a lesser extent, DOE, the number of full-time ethics staff in headquarters varies:
 - EPA and DOL each have two ethics staff members
 - DOE, with roughly 2500 fewer employees than NIH, has six
 - NIH has eight ethics staff members residing in its centralized Ethics Office²³

²⁰ Information provided by OGE for non-NIH agencies and is based on 2004 data; 2005 data is not at this time available. OGE collects data only for cabinet departments and independent regulatory agencies; the information provided on HHS therefore includes NIH as a subset.

²¹ Ratio represents number of full-time ethics staff in centralized agency function to total number of filers of both SF-278 (public) and SF-450 (confidential) financial disclosure forms. Some agencies also reported full time ethics staff in field offices and part-time ethics staff in Headquarters and field locations. (Neither of these last two categories is included here.) OGE has stated that it believes that agency voluntary reporting of part-time ethics staff is not consistent.

²² The source of NIH data is the agency's Ethics Management Information System (EMIS), as of December 2005. The number of filers of forms 278 and 450 may be underreported and reflect delayed input on the part of some ICs; EMIS data may also reflect uncorrected errors. The source of the employee population number for NIH is the agency's human resource records, as stored in EMIS.

²³ The OGE questionnaire does not specifically mention contractors who support the ethics function. NIH currently has four contract staff. Likewise, the questionnaire does not ask for vacant ethics positions, of which NIH has 13.

- HHS, the parent agency, including NIH, has 24 full time ethics officials, or three times the number that NIH has for the whole of HHS. The employee population of NIH represents roughly one-quarter (just under 24 percent) of the total HHS population, but one-third of the full-time ethics staff.
- One of the federal agencies for whom OGE provided data has a ratio of one ethics official to almost 5,000 filers (EPA).
- Among agencies with a highly educated and technical workforce, there is wide variance as to the number of employees designated to file confidential disclosure forms:
 - NRC has 17.3 percent
 - DOE has 46 percent
 - EPA has 55.9 percent
 - NIH has the highest at 64.5 percent
- There is far less variance among the percentage of public filers. This may in part be attributable to the greater degree of specificity as to who is required to file and a greater reluctance on the part of most agencies to require an individual to file these more detailed and specific forms unless it is deemed absolutely necessary.
 - HHS and NIH are at the low end of the spectrum, with 1.2 percent and 1.8 percent respectively.²⁴
 - EPA and DOL have comparable percentages, with 2.4 and 2.5 percent respectively.
 - DOE has 4.4 percent of its employees as designated public filers.
 - NRC tops the list with 8.3 percent.
- The amount of staff time/resources required to administer an ethics program varies widely across the government, with a certain core required no matter how small the agency or limited the number of filers. DOE and NIH are most closely comparable in terms of ratio of ethics staff to total filers, with each ethics staff member servicing over 1,100 employees (NIH 1,357; DOE 1,160).
- The number of employees with part-time responsibility for ethics is far more difficult to gauge. As OGE readily admits, the questionnaire is not precise enough in this area to elicit consistent replies. For this reason, Academy staff has not attempted to make cross-organizational comparisons of part-time efforts. Indeed, within NIH itself, there is wide variance among IC-level Ethics Coordinators as to the percentage of time spent on this function. Larger ICs, however, typically have more staff dedicated to the function for greater percentages of time, with some of the larger ICs having their own ethics offices, data systems, and significant expertise.

Potential Applications

Although the primary focus of the Academy staff review was the establishment of an audit program to limit NIH vulnerability in the ethics arena, this benchmarking exercise points to

²⁴ The number of NIH public filers may be artificially low due to delayed data entry on the part of some NIH ICs. The agency should redo this benchmarking exercise when it is reasonably sure all ICs have entered their data and errors have been corrected.

future opportunities for the agency to maximize its effectiveness in ethics program administration.

For example, the agency might profitably explore:

- *Reducing the number of confidential filers.*²⁵ NIH would take this action, perhaps in small increments, and consistent with OGE guidance and best practices of other federal agencies. This would allow ethics staff to focus on areas of highest vulnerability and reduce paperwork and data files. Such a move most logically follows the completion of an ethics audit cycle, when the agency can factually demonstrate with a 90 percent confidence level that, for example, employees below certain pay levels or in certain occupational categories pose a low likelihood of risk of non-compliance.^{26,27}
- *Speeding up data entry* by all ICs into the EMIS data system and design of the new and integrated NEES system in recognition that the absence of timely, complete data is a strategic handicap.
- *Adopting the best practices and systems* of other agencies that have successfully managed complex ethics programs with fewer ethics staff.
- *Reducing or simplifying the number of ethics forms* as well as automating as many forms as possible (with drop-down windows and alerts)—an exercise which is already underway at NIH and consistent with efforts to develop the NEES.

²⁵ NIH recently increased its number of public filers and imposed new requirements for clinical investigators, new entrant filers, and others regarding the disclosure of the value of financial holdings in SAOs, using Supplemental HHS-716. The agency took these actions following analysis of perceived vulnerabilities. The Academy study team is not recommending rescission of these recent requirements.

²⁶ As of December 2005, EMIS includes among NIH's total number of 10,566 confidential filers, 1990 employees with salaries under \$70,000 per annum. Of these 1990 employees, 75 are without compensation. A relatively small portion of the 1990 employees may be experts or consultants, whose EMIS recorded salary is actually their per diem rate of pay. These experts and consultants, as Special Government Employees, are subject to and warrant financial disclosure.

²⁷ For positions involving responsibilities enumerated in 5CFR Section 2634.904(a)(1), designation as a confidential filer is compelled only if the employee will be required to participate personally and substantially through decision or the exercise of significant judgment. For positions designated under the more general criteria in Section (a) (2), there is more latitude.

**SUMMARY DATA FROM
NIH ETHICS MANGEMENT INFORMATION SYSTEM (EMIS)
DECEMBER 28, 2005**

**BACKGROUND INFORMATION AND ANALYSIS USEFUL FOR SAMPLE
CONSTRUCTION¹**

MASTER LIST OF ALL FILERS/REQUESTERS

Pay

- Of the 11,334 files contained in this composite list, 1,218 are employees paid from \$136,000² up to \$250,000. Based on likelihood of desirable expertise, these top 1,218 employees should be a logical focus.
- Conversely, there are 519 employees with compensation less than \$50,000, of whom 85 show as without compensation. While some of these may be consultants paid at a daily rate for limited service, those individuals who are paid at this lower rate and are not consultants are less likely to have conflicts. The sample should exclude these employees.
- In addition to the 519 employees paid less than \$50,000 per annum, there are an additional 1,523 employees paid between \$50,000 and less than \$70,000 per annum. Thus, this combined group of 2,042 employees, each earning less than \$70,000 a year, is likely to represent a less vulnerable group than the higher earners. This group of employees warrants a smaller sample.

Occupation

- There are 1,523 individuals classified in the 602 occupational series of medical officer; given their expertise and marketability, this group should be a likely sample focus. Salaries range from entry level to the highest salary paid at NIH, \$250,000. Even entry level medical officers may have opportunities to moonlight at local medical facilities/practices and may therefore represent vulnerability.
- Given the number of requests for approval of outside activities, employees in all 400 and 600 series occupations should be part of the sample (e.g., 440, 660). Some of these disciplines are very specialized, and therefore not highly populated, but taken together, these science and health related positions are—as a group—vulnerable to outside employment compensation offers.
 - Among other highly populated series with cross-over to frequency of outside activity filings are:
 - Series 601, General Health Science, with 1,501 employees
 - Series 401, General Biology, with 1,196 employees

¹ While the initial audit sample will be a random sample from among four IC groupings, with salary strata, the information gleaned from EMIS provides useful insights into the agency population for future sampling.

² Based on 2005 pay rates, \$136,000 exceeds pay (including locality pay, but not special allowances) for all employees at the GS-15/10 level. Government pay rates will increase in January 2006 for most employees; therefore, the study team may need to recalculate pay analysis for consistency if new entries reflect 2006 pay levels.

- Series 610, Nurse, with 731 employees
- Series 1320, Chemistry,³ with 510 employees
- Series 301, Administrative, with 497 employees
- Series 341, with 383 employees
- Series 403, Microbiology, with 363 employees
- Series 334, Computer Specialist, with 293 employees
- Series 180, Psychology, with 131 employees
- Series 1529, Mathematical Statistician, with 101 employees

IC

- Because EMIS data entry is at this time incomplete, conclusions about sampling by IC would be premature. Once NIH ICs finish their data entry (deadline is Dec. 31, 2005) and/or correct errors, the study team can recommend a sample by IC with a higher degree of confidence. EMIS managers indicate that by early to mid-January the data should be improved.
- Earlier studies by the Inspector General revealed senior level employee requests were highest in terms of actual numbers and/or percentages in the following ICs:
 - National Institute of Mental Health, 77 approved activities, 54 percent of senior employees participating
 - National Human Genome Research Institute, 45 activities, 80 percent participation
 - National Heart, Lung and Blood Institute, 44 activities, 56 percent participation
 - National Institute of Neurological Disorders and Stroke, 25 activities, 67 percent participation
 - NIH Clinical Center, 16 activities, 67 percent participation
 - National Institute of Diabetes and Digestive and Kidney Diseases, 12 activities, 60 percent participation
 - National Institute of Child Health and Human Development, 9 activities, 71 percent participation
 - National Institute of Deafness and Other Communications Disorders, 9 activities, 60 percent participation
 - National Institute of Environmental Health Sciences, 4 activities, 60 percent participation

Possible Focus of Master List Sample by IC

Conclusions about sample selection by IC should take into consideration that larger ICs with long-standing, automated systems and larger internal ethics staff should not be the exclusive focus of any sample. Smaller ICs and those with less ethics expertise or fewer resources devoted to ethics may well have equal or greater vulnerability.

³ Dr. Kington has noted that, with the advent of new ethics regulations barring consultation with pharma and biotech companies, chemists have requested far fewer outside activity approvals than in the past.

Following receipt of updated EMIS entries early in 2006, the study team should analyze data across selected pay levels and occupations to determine the optimal sample and IC strata.

AWARDS

- 448 requests
- compensation associated with awards, ranged from 0 to \$501, 200
- multiple awards requested by one employee—63 employees in this category
- 94 awards \$5000 or more

Possible Focus of Awards Sample

- 63 employees requesting multiple award approvals
- 94 instances of employees seeking awards with compensation of \$5,000 or more

OUTSIDE ACTIVITY REQUESTS

- 9,492 requests overall, with 2,022 files now in EMIS; some requests date back as far as 1984; larger number reflects many now inactive employees, whose files are not included among the 2,022. Data entries expected in the next few weeks may alter these numbers.
- 5,168 requests in 2005, but only the last 28 requests have start dates of January 1, 2005 or after. This may reflect lack of complete data input and, to some extent, decreased number of requests following publicity.
- Of 14 categories of organizations associated with these requests, the catch-all “other organizations” was most populous in 2005 with 1,089 and 2003 overall
- The ranking for the next 2-5 spots showed the following consistent pattern:
 - Ranking number 2, non-profits, 906 in 2005, 1,752 overall
 - Ranking number 3, other for-profit organizations, 802 in 2005, 1,585 overall
 - Ranking number 4, educational institutions/ universities, with 633 in 2005, 1,459 overall
 - Ranking number 5, hospital/medical care facilities, with 407 in 2005, 591 overall

Compensation for Outside Activity Requests

- EMIS field designated to reflect compensation for activity is blank except for a handful of entries (fewer than 75 out of all entries)
- As background, HHS-520 prompts outside activity report filers to respond if there is compensation, other than expenses; the employee is asked to indicate among the following possibilities:
 - Advance – receipt of an advance payment for service
 - Fee – for consulting, similar activities
 - Honorarium – for speaking engagements
 - Other – when types of compensation, other than those listed, are received

- Retainer – payment for employees to be available for future service, e.g., payment to an attorney for representation
 - Royalty – when employee indicates receipt of royalties, e.g., for a book being written
 - Salary
 - Stock – when employee receives shares of stock as payment
 - Stock options – when employee receives ability to purchase share of stock at a set price
- If employee indicates compensation in one or more forms, the employee is prompted to show amounts and to add all types of compensation for a total, single amount.
 - Where currently indicated in EMIS, compensation ranged from 0 to \$388,261, for a professional association board secretary.
 - Given that there is so little data on compensation, follow-up inquiries should focus on adding this information to EMIS and NEES and ensuring that new procedures facilitate entry of this information into the data base. (Until this past year, compensation was not required to be revealed. While many outside activities are uncompensated, it is likely that more than 75 of the requests were compensated. As NIH officials continue to input data, compensation information should grow.)

Duration

- 32 filers of Form 521 have indicated an end date for their outside activity that ranges from December 31, 2005 through December 31, 2009
- 121 of the requests were for less than one year; the remainder were for one year or more
- 270 individuals had multiple requests for outside activities in EMIS

Possible Focus of Outside Activity Sample or Samples

- top five categories of activities
- all 32 of those with Form 521 indications that the approval extends beyond December 31, 2005, on the premise that future activity presents greater vulnerability than activity already ceased
- all of the last 28 requestors, with start dates from January 1, 2005 and on (As more data is entered into EMIS, this universe will logically expand.)
- a sample of the 270 individuals with multiple requests, perhaps taking those with the highest number of requests. (Note: there are a number of individuals, for example, with more than 10 requests apiece.)
- as more compensation data is entered, use levels of compensation as a further screen; data so far is too spotty to be useful.

NATIONAL INSTITUTES OF HEALTH ETHICS AUDIT PROGRAM STEP-BY-STEP GUIDE

This is a sample audit program and can be tailored to meet changes in ethics laws and regulations. The approaches, methodologies, and concepts applied in this proposed work plan are appropriate for use by management oversight personnel as well as internal and external auditors.

This Guide includes the following sections:

- A. Gain Necessary Understanding—establishes the basis for a valid audit, a preliminary step that would be required only for those new to government ethics requirements
- B. Preliminarily Assess the Adequacy of Designed Control Activities—identifies the risks, controls, and data mining opportunities
- C. Test Adherence to Policies and Performance of Control Activities—tests transactions and controls, with the option for the agency to select different focal points each audit cycle
- D. Pursue Untimely, Incomplete, Fraudulent or Improper Disclosures or Reviews/Approvals—data mining for potential violations and enforcement referral
- E. Feedback into Management Control Systems—uses results of the audit to continuously improve ethics program.

To facilitate ongoing internal control monitoring efforts by management, sections C and D can be performed independently of each other, and section D can be applied on a continuous basis. Section E is the follow-up to the audit process, which integrates the lessons learned into the continuous improvement cycle.

A. Gain Necessary Understandings

A-1. Understand the risk of untimely, incomplete, fraudulent, or improper disclosure or review/approval of employee conflicts or financial interests.

1. Obtain and review relevant reports and audits of the NIH ethics program.
2. Obtain and review recent reports on audits and reviews of internal controls over the NIH ethics program and
 - determine management’s response to findings and recommendations
 - determine the status of corrective actions taken by management
3. Obtain and review detailed summaries prepared by the organization’s investigative personnel (e.g., HHS Inspector General) of all ethics violations within the past 5 years.

A-2. Understand internal controls

1. GAO/AIMD-00-21.3.1, *Standards for Internal Control in the Federal Government (Green Book)*
2. GAO-01-1008G, *Internal Control Management and Evaluation Tool*

A-3. Understand the relevant government-wide laws and regulations

1. Review:

1. Ethics in Government Act of 1978 (Public Law 95-521) and Ethics Reform Act of 1989 (Public Law 101-194)
2. Part I of Executive Order 12674 and 5.C.F.R. 2635 Regulations, Office of Government Ethics Standards of Ethical Conduct for Employees of the Executive Branch
3. 5C.F.R. Part 2634, Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture
4. 18 U.S.C. 423, Office of Federal Procurement Policy Act, as amended by Section 814 of the FY 90/91 National Defense Authorization Act, Public Law 101-189, and Section 815 of the 1991 National Defense authorization Act, Public Law 101-510 (Procurement Integrity Act), and section 4304 of the FY 1996 National Defense Authorization Act, Public Law 104-106 (Office of Federal Procurement Policy Act)

A-4. Understand the NIH-specific ethics program and organization

1. Review:
 5. 5 C.F.R. Parts 5501 and 5502, Supplemental Standards of Ethical Conduct and Financial Disclosure Requirements for Employees of the Department of Health and Human Services, August 31, 2005, and October 26, 2005 (Corrections)
 6. NIH Manual Chapter 2300-735-1, Avoiding Conflicts of Interest and updates to the Manual
2. Establish contact with the Deputy Agency Ethics Official (DAEO) at HHS and with the desk officer for NIH at the Office of Government Ethics.
3. Obtain and review the organization's written policies and procedures describing its operations and activities, including mission statements, activity descriptions, operational policies, procedures, or instructions.
4. Identify and interview selected organization personnel to supplement and clarify the auditor's understanding of the organization's mission and operating activities.
5. Obtain and review the organization's written policies and procedures describing and controlling the ethics program. Such documents might include:
 - Delegations of authority
 - The charter and operating procedures for the agency's NIH Ethics Advisory Committee (NEAC)
 - Agency written instructions to potential recruits
 - Agency training of NIH recruiters
 - Agency training modules related to ethics, including that provided at new employee orientation and in annual ethics training
 - Agency instructions/guidance provided to public and confidential filers
 - Agency instruction/guidance provided to reviewers of disclosure forms
 - Agency training for reviewers
 - Agency training for Deputy Ethics Counselors (DECs)
 - Ethics related information provided to employees in announcements, newsletters, bulletins, electronic mailings, etc.
 - Procedures governing the acceptance of travel payments from non-federal entities, 31 U.S.C. Section 1353

- Procedures for determination of attendance at widely attended gatherings, 5C.F.R. section 2635.204(g)
 - Procedures for approval for outside employment/activities.
 - Agency leave requirements for leave usage related to outside employment
 - Procedures for requesting a recusal from NIH official duties and instructions for documenting and dispersing the recusal to potentially impacted NIH officials, including designation of alternative NIH official to whom such work should be redirected
 - Procedures for obtaining a waiver under 18USC 208(b)(1) and (b)(3) and for forwarding copies of approved waivers to OGE
6. Identify and interview selected NIH personnel, including individuals from the following categories, for the purpose of supplementing and clarifying understanding gained from review of the organization's written policies and procedures
- Public filers
 - Confidential filers
 - Non-filers
 - Employees with approved outside activity requests, including personnel who have sought approval for outside clinical practices, and others who have sought approval to receive honoraria, serve as expert witnesses, write, edit, or teach for compensation
 - Employees who have sought permission for uncompensated outside activities
 - Employees who have sought permission for sponsored travel
 - Ethics Coordinators and administrative officers with ethics responsibilities
 - Deputy Ethics Counselors
 - NEAC members
 - IC Directors
 - NIH Ethics Office
 - Human Resource officials
- A-5. Understand and assess key elements of the control environment
1. Determine and document the organization's ethics program control activities, including the following key areas:
- **Management philosophy**—determine the message and tone emanating from senior management and determine the degree of risk the organization is willing to take in the operation of its ethics program
 - **Span of control**—determine universe of filers/requesters and current number of approving officials at the organization
 - **Exposure**—determine whether and how organizations initially and periodically verify the designation of filers and the potential for damage to NIH's credibility and ability to achieve its mission
 - **Expertise**—determine the appropriateness and sufficiency of organizational expertise relied upon in determinations of the similarities/differences of the technical content of an employee's official duties versus those in proposed outside activities

- **Training**—determine how and when the organization provides and documents initial and refresher training for employees, coordinators, DEC's, and agency ethics personnel; determine if the content is helpful
- **Consistency**—determine consistency of decision-making for like requests across the ICs
- **Discipline**—determine the organization's process for investigating allegations of ethics violations and how the organization decides and documents disciplinary actions taken for lack of adherence to policies and regulations, including incomplete or untimely documentation and failure to take leave of absence from official duties, whether the absence was approved or not; determine consistency of discipline for like violations
- **Enforcement**—determine process for determining referrals for criminal prosecution
- **Exemptions/waivers/recusals**—determine how the agency grants and documents exceptions to its policies and how it decides to establish recusals and document and implement such actions
- **Documentation**—determine agency requirements for documentation of ethics advice from agency officials and for approval/disapproval of official requests for outside activities and travel sponsorship/reimbursement
- **Records Management**—determine how the agency maintains, retains, and controls its ethics records, including the safekeeping of records which are confidential
- **Systems integration**—determine how the agency validates employee provided information or the lack thereof, e.g. annual leave taken for approved outside activity, agency rather than personal reimbursement for expenses for travel paid by non-federal entity, verification of subject matter for approved expert witness testimony, verification of compensation received for approved outside activity
- **Monitoring**—determine the organization's policies and procedures, such as NEO routine audits, Ethics Management Information System (EMIS) reports and alerts (including changed organization, salary, or position), IG/OGE audits, currency and scope of reports, provision of reports and to whom and when provided, frequency of updating of participant information, management utilization of reports.
- **Computer-based controls**—established to limit vulnerability, such as tickler systems for delinquent filers or employees failing to take required training; automatic rejection of incomplete requests, of requests filed after the onset of the outside activity, or of unsigned or uncertified documents
- **Cross-organizational controls**—such as Human Resource updates of those acting in covered Senior Executive Service positions or new Special Government Employees, cross-checks of clinical trials with stock ownership or of grantees/contractors with speaking engagement requests, or third party scientific review of official duties with proposed outside activity duties.
- **External data verification**—using publicly available data, cross-check such sources as listings of practicing physicians in the local metropolitan area with medical personnel employed by NIH and approved for outside clinical practice; recent medical publication authorship cross-checked with lists of agency

employees working in related areas. (See Appendix C for detailed external verification process materials and resources, including flow chart.)

2. Perform a walk-through of one or more selected requests for the various approvals sought, such as outside activity or travel payment by a non-federal entity, to confirm the understanding of the flow of a typical request and the system of internal controls.
3. Obtain samples of documentation evidencing the performance of all key controls.
4. Develop a flow chart and narrative that depicts and explains the typical requests process, including the process for clarification of incomplete or unclear requests.
5. Discuss the flow chart with agency officials having functional responsibility, and obtain their concurrence as to the validity of the process flow and controls.

B. Preliminarily Assess the Adequacy of Designed Control Activities

B-1. Identify risks and control activities, and assess the adequacy of designed control activities

1. Identify and list the significant risk/opportunities for untimely, incomplete, fraudulent, or improper disclosure or review/approval of employee conflicts or financial interests.
2. Identify the internal control policies and procedures designed to prevent or promptly detect each above significant/risk opportunity.
3. For each significant risk/opportunity identified, preliminarily assess, as strong, weak, or ineffective (including non-existent), the likely effectiveness of the related designed control activity (if in place and operating) to provide management with reasonable assurance that significant ethics violations will be prevented or promptly detected.

B-2. Determine the effects of the assessment on the design of performance tests and the identification of potential data-mining criteria

1. For each risk/control assessed, determine its effect on the design of audit tests for adherence to policies and performance of the control.
2. For each above risk/control assessed, consider potential criteria for data mining identified, if any.

C. Test Adherence to Policies and Performance of Control Activities

C-1. Obtain disclosure/request transaction data for transaction-level testing

1. Use EMIS (and eventually the NIH Enterprise Ethics System) to track data on ethics actions in these major areas:
 1. Public Financial Disclosure (SF-278)
 2. Confidential Financial Disclosure (OGE-450) and supplement HHS-716
 3. Outside Activities (HHS-520) and annual update (HHS-521)
 4. Official Duties Activities (NIH-2809)
 5. Awards
 6. Sponsored Travel (HHS 348)

C-2. Select the method and approach to the audit, e.g. specific filings/disclosures/requests and/or employees.⁴

1. NIH should do a probability sample. With a probability sample, each unit of the population has a known (non-zero) chance of being in the sample.
2. NIH will—in consultation with the audit team—determine the optimal design, based on agency core needs and interests. The Academy study team recommends, for the initial audit, a SAMPLE BY EMPLOYEE. The audit team will:
 - utilize EMIS to develop a comprehensive list of FTE employees of NIH
 - divide the entire employee population into four IC Groupings (See Appendix F)
 - IC Grouping A—Office of the Director, Office of Research Services, and Clinical Center
 - IC Grouping B—large size ICs
 - IC Grouping C—small ICs
 - IC Grouping D—medium ICs
 - subdivide each of the four IC groupings into those employees with incomes greater than \$100,00 per annum and those with less (thus creating eight strata).
 - list each employee randomly in each stratum, e.g., in alphabetical order.
 - add each list to the list of the previous stratum, so that, at the end, every employee in the population is grouped within his or her stratum and listed only once.
 - use straightforward systematic sampling as described in Appendix E to select the 719 employees required.
 - use the *Audit Checklist, by Form* (Appendix D) in the systematic review of the following applicable forms (from January 1, 2004 to the present) for each selected NIH employee:
 - SF-278 or OGE-450
 - HHS-716, Initial Report of Financial Interests in Substantially Affected Organizations⁵
 - HHS-520/521
 - HHS-348
 - Cooperative Research and Development Awards (CRADA)
 - other awards
 - honorary degrees
 - requests to attend widely attended gatherings (NIH 2803)
 - use Survey Monkey or other EXCEL tool to record, for each case reviewed, the “yes, no, or not applicable” responses to each of the queries on the *Audit Checklist, by Form*

⁴ For purposes of this audit work plan, NIH employees include FTE employees, such as Title 42, Commissioned Corps, Experts and Consultants, advisory board members, Senior Executive Service, Senior Level, Senior Technical, General Schedule and General Management, and Wage Grade. Contractors and grantees are excluded from the audit on the assumption that the organization receiving the contract or grant is required to meet standards which are different from that imposed on an individual with an employer/employee relationship.

⁵ HHS-716 is a new form required by HHS Supplemental Standards of Ethical Conduct (5CFR 5501). It is designed to capture specific financial interests for previous non-filers, primarily clinical investigators, confidential filers who previously did not report specific dollar amounts of holdings, and public filers, who previously reported holdings only within categorical levels. New entrant filers, while inadvertently exempted by Federal Register notice of August 31, 2005, are, with Federal Register correction of October 26, 2005, also subject to this requirement.

- for each randomly selected NIH employee, use publicly available, external source data (see Appendix C) to verify the information provided by the employee and the agency.

This method would allow NIH to compare all of an employee's records and external source data to determine whether the records are accurate, consistent, and complete. With the audit covering the period from January 1, 2004 to the present, the audit team will be able to see year-to-year changes in holdings, official duties, outside activities, etc. and, on a broader basis, the impact of the new agency regulations, announced in the Federal Register in August and October of 2005. Where there is lack of clarity or inconsistency in an individual's records, the audit team will conduct follow-up interviews with any or all of the following individuals:

- the employee
- the supervisor
- the DEC
- the EC or IC level ethics staff, including administrative officers
- the IC Director
- NEO staff

Compliance will be categorized as relating to:

- the standards of ethical conduct provisions (5CFR part 2635)
- the criminal conflict of interest statutes, or
- procedural deficiencies

At the conclusion of the audit of the 719 randomly selected employees, the audit team will collect and analyze the data and trends, including analysis by:

- occupation
- IC
- pay level
- ethics issue
- procedural deficiencies
- year-to-year changes
- compliance/non-compliance rates for the three established categories

Based on this analysis, the audit team will recommend alternative approaches, possible focus areas, and the sample size for ensuing audits.

C-3. Obtain data evidencing performance of control activities

1. In addition to the initial audit by employee, NIH, may, on an annual or bi-annual basis, also select a subset of institutes that would be the subject of a different variety of audit. NIH could select these institutes through cluster sampling or could simply develop a multi-year schedule that ensures each institute will be audited at least once within X period of time.

2. The auditor would interview key officials at the institute and examine records to determine whether operations and activities comply with government-wide ethics statutes as well as internal agency policies and procedures.

C-4. Test key control activities

- 1a. **Transaction control activity testing**—Using relevant documentation obtained for the specific filings and requests, test to determine if the established control is performing as intended. For example, test to determine if:

- employees have been appropriately and timely designated as filers (public, confidential, non-filer, non-filer but required to file HHS-716)
- employees required to be trained have completed training in a timely and documented fashion
- employees have requested prior approval for outside activities before their activity is slated to begin
- certifying officials sign and date forms in a timely manner
- certifying/approving officials sign forms that are incomplete, unclear, or untimely, without amending the parameters of the request to reflect follow-up discussions with the requesting employee or ethics restrictions that would enable approval (including recusal, divestiture, or other conditions)
- historical records are retained by the DEC in a retrievable fashion, so that the responsible officials can review employee requests in context

- 1b. **Document the summarized pass/fail rate** for each above test performed

- 2a. **Test key elements of the control environment** –In conjunction with tests of selected requests/filings, test to determine adherence to policy for each selected transaction, including:

- training (were compliant/ non-compliant filers trained?)
- discipline (were non-compliant filers/requesters counseled/disciplined?)
- reviewing /certifying/approving authorities (did designated officials fulfill their responsibilities?)

- 2b. **Document the summarized pass/fail results** of these tests

- 3a. **Evaluate each selected transaction** for potentially untimely, incomplete, fraudulent or improper disclosures or reviews/approvals against criteria warranting discipline or criminal referral.

- 3b. **Conduct follow-up** of all transactions exhibiting such criteria, and refer any likely for investigation.

- 3c. **Document the summary results** of follow-up and referrals for discipline or criminal referral.

- 4a. **Analyze and document sample results.** Project the results of sample transaction tests to the population in accordance with the sampling plan.

- 4b. **Document conclusions** about the effectiveness of individual control activities.

- 4c. **Document considerations made and conclusions reached** on the overall effectiveness of the design and performance of the ethics program and its internal management controls. Consider the transaction-level and control tests, results of data mining, and follow up on potential ethical violations.

D. Pursue Untimely, Incomplete, Fraudulent or Improper Disclosures or Reviews/Approvals

D-1. Data mine to identify potentially improper or illegal disclosures or reviews/approvals

1. In addition to the reviews described above, NIH could test for potential vulnerabilities such as:
 - minimal annual leave usage and high number of outside activity requests
 - high dollar value compensation for outside speaking engagements
 - outside activity requests over a certain number, such as five or more in a two-year period
 - high dollar value for awards over a two- year period
 - long-standing previous approval for outside activity, with focus on changes in outside activity, compensation levels, or relationship to evolving official duties
 - pattern of receipt of awards, travel reimbursement, and/or outside consulting fees from a Substantially Affected Organization (SAO) or repeated source or related sources (such as a pharmaceutical company, a law firm representing the company's interests, and a trade association to which the company belongs)
 - history of minimal or overly generalized documentation, particularly regarding the nature of outside activities

If a defined threshold level is reached, NIH could also conduct a simple random sample of those meeting that threshold to ensure that employees are in compliance.

D-2. Follow-up on selected actions with NEO and Deputy Ethics Counselors for clarification, consultation/counseling of employee, and possible referral.

D-3. Refer likely policy or procedural violations to management for administrative action or, for likely criminal violations, to the HHS Office of the Inspector General and/or Department of Justice

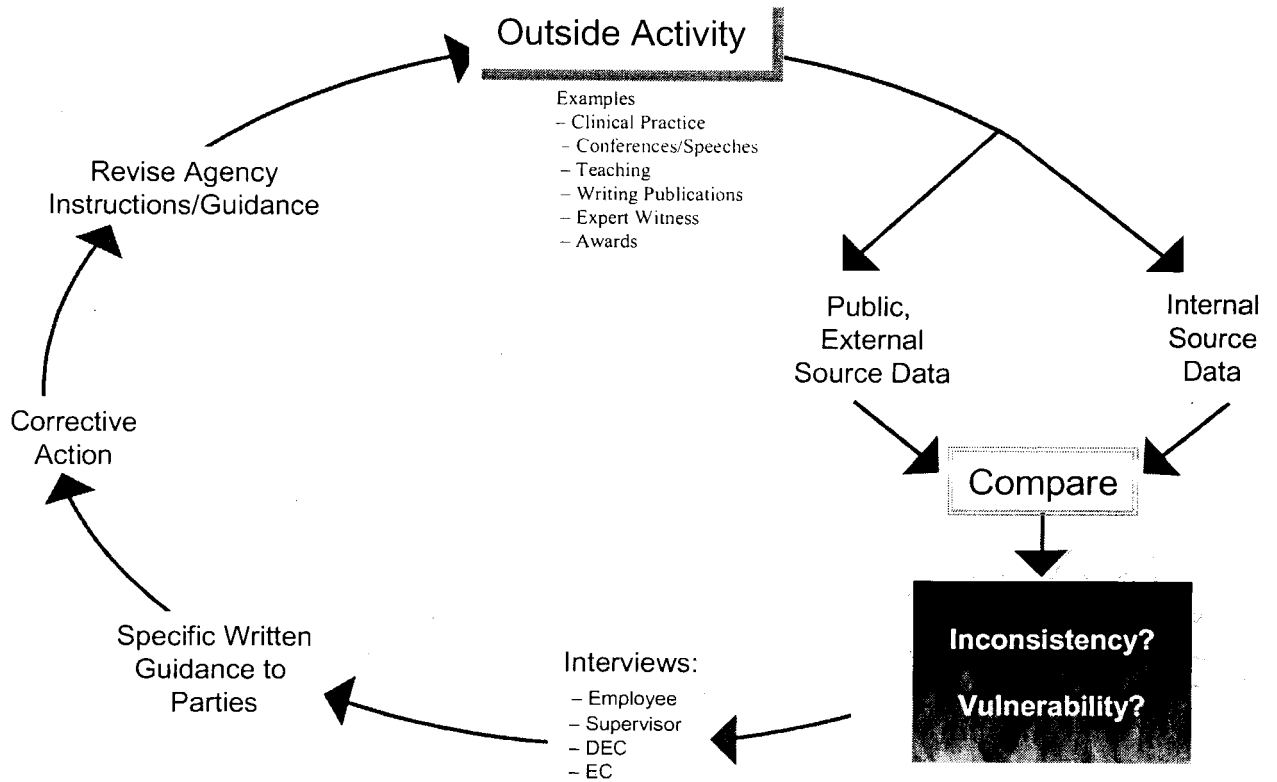
E. Feedback into Management Controls Systems

E-1. NIH should use the results of these audits to revise administrative policies and regulations, to improve training, revise existing management controls, and/or add additional controls.

E-2. In developing its successor system to EMIS, NIH should utilize the data and analysis derived from this audit to inform requirements for its new NIH Enterprise Ethics System (NEES).

**NIH ETHICS
OUTSIDE ACTIVITY DATA VERIFICATION AND APPROVAL CONSISTENCY**

Data Verification Cycle



NIH Ethics Audit—Additional Data Verification

Module Focus	Verification – External	Verification – Internal
Teaching	On-line and printed college course catalogs, syllabi, faculty listings	Follow-up interviews with employees, supervisors, DEC, and ethics counselor
Conferences/Speeches	Conference sponsor websites; newspaper event coverage; webcasts, publicly available slides, transcripts, videotapes; cross-check with www.cybermedicalcollege.com , a tailored event finder website	Follow-up interviews with employees, supervisors, DEC and ethics counselor.
Writing/Publications	Google search on name; life science journal sites	National Library of Medicine PubMed service; follow-up interviews as above
Expert Witness	Cross-reference EMIS requests with website listing of expert witnesses in the medical and technical disciplines, www.freereferal.com/all.php , as well as public court documents	Follow up on inconsistencies with employees, supervisors, DECs, and ethics counselors
Clinical Practice	Cross EMIS listing of Medical Officers and others who have requested approval for outside clinical practice with DC, VA, and MD public listings of medical practitioners; use yellow pages and licensing site for DC, online medical boards for others; consider using AMA doctor-finder site, published listings of doctors provided by major insurers, and anywho.com	Follow up on inconsistencies with interviews with employees, supervisors, DECs, and ethics counselors
Disapproval Consistency	Cross disapproved requests with website of external organization to monitor employee compliance with agency decision. Verify approved requests for consistency of content.	Compare IC level disapprovals against agency criteria. Follow up interviews with employees, supervisors, ethics counselors, DECs.
Awards	Cross employee requests with websites of sponsoring organizations.	Follow-up interviews, as above, with employees, supervisors, DECs, and ethics counselors.

TEACHING

1. Using EMIS, pull list of colleges, universities and medical schools that have previously utilized or sought to utilize the services of NIH employees.
2. Using EMIS and IC records not yet recorded in EMIS, pull the names of employees with previous requests, both approved and disapproved.
3. Access on line and print college catalogs, syllabi, and faculty listings.
4. Cross compare information to verify accuracy of course content, approvals, duration of assignment, etc.
5. Conduct follow-up interviews with employee, supervisor, DEC, and ethics counselor.
6. If there are specific documentation or process errors, provide written guidance to above to verify agency requirements.
7. Take corrective and/or disciplinary action as indicated.
8. Revise agency instructions and guidance if clarification is indicated.

CONFERENCES/SPEECHES

1. Use EMIS data to develop list of requested speeches, conference participation.
2. Check conference sponsor websites for webcast of the relevant event, as well as for slides presented, and videotapes/ transcripts available for purchase or on request. Use Event Finder website, hosted by the Cyber Medical College, www.cybermedicalcollege.com/CMCEvents/search.aspx, to search by type of event, target audience, specialty, dates, location, and keyword.
3. Compare content to outside activity approved.
4. Cross-reference newspaper coverage of events to determine title usage and content, as approved by agency.
5. Conduct follow-up interviews with employee, supervisor, DEC and ethics counselor to determine validity of gathered information.
6. If there are specific documentation or process errors, provide written guidance to above to verify agency requirements.
7. Take corrective/disciplinary action as appropriate.
8. Revise agency instructions and guidance if clarification is indicated.

WRITING/PUBLICATIONS

1. Use EMIS data to develop list of employees requesting approval to write for publication.
2. Use PubMed service of the National Library of Medicine, which includes over 15 million citations from MEDLINE and other life science journals for biomedical articles. www.ncbi.nlm.nih.gov/entrez/query.fcgi, and general Google search by author's name.
3. Compare content of writing found to outside activity approved.
4. Conduct follow-up interviews with employee, supervisor, DEC and ethics counselor to determine validity of gathered information.

5. If there are specific documentation or process errors, provide written guidance to above to verify agency requirements.
6. Take corrective/disciplinary action as appropriate.
7. Revise agency instructions and guidance if clarification is indicated.

EXPERT WITNESS

1. Using EMIS, create listing of all NIH employees who have requested approval to serve as an expert witness.
2. Cross reference with Expert Witness Referrals: Medical & Technical Experts Nationwide, at www.freereferral.com/all.php
3. Where specific cases can be determined, cross reference with public court documents related to the case.
4. Compare substance of documented expert testimony with original employee request for approval.
5. If there are inconsistencies between outside activity approved and expert witness service rendered, such as the subject of the testimony, conduct follow-up interviews with employee, supervisor, DC, and ethics counselor to determine validity of gathered information.
6. If there are specific documentation or process errors, provide written guidance to above to verify agency requirements.
7. Take corrective/disciplinary action as appropriate.
8. Revise agency instructions and guidance if clarification is indicated.

CLINICAL PRACTICE

1. Using EMIS, create listing of all NIH employees who have requested approval for clinical practice.
2. Also create listing of all those with title of Medical Officer.
3. Cross reference both lists with varied sources. Check state medical board registries and other sources in the three jurisdictions to determine if these NIH employees have private practices. Use:
 - online listings of medical practitioners in Washington, DC (no website for DC Board of Medicine): DC Yellow Pages, physicians by specialty, at www.yellowpagecity.com/sys/pageserver.dll?k=Washington&b=10053&s=-1&go=Physicians; and www.dchealth.dc.gov and click on “Professional Licensing” and “Professional Licensing Search.” Verify with DC Board of Medicine, at 202-727-9812
 - Virginia Board of Medicine (www.vahealthprovider.com/)
 - Maryland Board of Physicians (www.docboard.org/md/df/mdsearch.htm)
 - American Medical Association online doctor-finder service, at webapps.ama-assn.org/doctorfinder/home.html?wcf/iwcfmgr206/aps?2002024814, although disclaimer on site says the site is for personal use or use by individual physicians for patient referral and that the AMA monitors use of the site.

- listings of preferred providers published by major health insurance providers, such as Government Employees Hospital Association and Blue Cross
 - on-line services, such as anywho.com
 - a search engine, such as Google, on those selected for random sampling, to see if a search on their name reveals a private practice reference
4. Compare information (including clinical practice hours versus NIH work schedule) with original employee request for approval.
 5. If there are inconsistencies between outside activity approved and clinical practice information, conduct follow-up interviews with employee, supervisor, DEC, and ethics counselor to determine validity of gathered information.
 6. If there are specific documentation or process errors, provide written guidance to above to verify agency requirements.
 7. Take corrective/disciplinary action as appropriate.
 8. Revise agency instructions and guidance if clarification is indicated.

AWARDS

1. Use EMIS master list of awards approved, by sponsor, IC and dollar amount of award.
2. Select employees with highest cumulative amounts and/or most frequent requests for approval for random audit sample.
3. Verify amount of award, basis for award, and speech presented by award sponsor and/or recipient, using newspaper articles, sponsor website, programs, slides, etc.
4. If there are inconsistencies between that which employee requested and external information, follow up with interviews with employee, supervisor, DEC, and ethics counselor.
5. If there are specific documentation or process errors, provide written guidance to above to verify agency requirements.
6. Take corrective/disciplinary action as appropriate.
7. Revise agency instructions and guidance if clarification is indicated.

DISAPPROVAL CONSISTENCY

1. Pull requests disapproved at the IC/DEC level
2. Review documentation and compare to approvals at other ICs and to agency criteria.
3. Verify employee compliance with agency decision through external web search of relevant organization.
4. If there are inconsistencies, provide written guidance to responsible officials to verify agency requirements.
5. Take corrective and/or disciplinary action as indicated.
6. Revise agency instructions and guidance if clarification is indicated

AUDIT CHECKLIST, BY FORM⁶

**EMPLOYEE NUMBER -
 ORGANIZATION -
 EMPLOYEE PAY PLAN-
 OCCUPATIONAL CODE-
 SALARY -**

Questions highlighted below are questions that should have YES, NO, and the alternative NOT APPLICABLE. Other questions are either YES or NO.

PUBLIC FINANCIAL DISCLOSURE STATEMENT (SF-278)**Basics**

- Is the form completed?
- Was it filed by the deadline?
- Was an extension granted?
- Was a late fee imposed?
- Was a late fee paid?
- Was a late fee waived?
- Are assets clearly identified?
- Are sources of compensation (salary and earned income) clearly indicated for the employee/spouse/ dependent children?
- Does the list of outside activities match previously approved requests by the same employee?
- If the employee indicated receipt of honoraria, does the information on the employee's HHS-520 match this information?
- If the employee indicated receipt of aggregate awards of \$250 or more, does the information here match the information on the employee's outside award approval form?
- Did the DEC certify the report as having no conflict?
- Was a copy of the approved report sent to the employee?

Conflicts/ Resolution

- If a senior or designated employee, does the list of holdings include any Agency prohibited sources (pharma, biotech)?
- Does the list of assets include any CRADA partners of this employee?
- Is a divestiture required?

⁶ Once questions are finalized, questions will be put in EXCEL format, with boxes denoting YES, NO, NOT APPLICABLE, as appropriate. Thus, when the audit is conducted, the data can be easily entered in a consistent fashion, and compilation of meaningful data on a very wide variety of ethics program elements will be readily available.

- If so, is there documentation such a divestiture occurred?
- Based on the employee's official duties, is a recusal indicated?
- Is there documentation of such a recusal?
- Are the dates of the recusal, effective and ending, clearly specified?
- Was it approved by the DEC?
- Was the approved recusal circulated to those affected, including the newly responsible party?
- Did the agency send a copy of the approved/disapproved recusal to the employee?
- Was a waiver granted?
- If so, are the effective and end dates for the waiver clearly spelled out?
- Is there documentation that the IC or DEC approved/disapproved the waiver?
- Did the agency send the employee a copy of the decision memo regarding the waiver?
- Is there a record of ethics advice requested by the employee?
- Is there a record of ethics advice provided to the employee?
- Was the ethics advice provided consistent with law and regulation at the time dispensed?
- Is there a record of any other ethics action taken, other than divestiture, recusal, or waiver?
- Did the employee receive counseling?
- Did the employee receive a reprimand?
- Was the employee asked to terminate an activity?

CONFIDENTIAL FINANCIAL DISCLOSURE STATEMENT (OGE-450)

Basics

- Is the form completed?
- Did the employee use the short form, Certificate of No New Interests?
- If so, was the employee eligible to do so (by virtue of not having changed jobs or duties and having no new assets, gifts, liabilities)?
- Was it filed by the deadline?
- Was an extension granted to the employee?
- Is the form signed by the filer?
- Is the form signed by an initial reviewer?
- Is the form certified by the DEC as presenting no conflict?
- Was a copy of the approved report sent to the employee?
- Are sources of compensation (salary and earned income) clearly indicated for the employee/spouse/ dependent children?
- Does the list of outside activities match previously approved requests by the same employee?
- Did the employee list honoraria?
- If so, did the employee list this form of compensation on an HHS-520?

Conflicts/ Resolution

- If a senior or designated employee, does the list of holdings include any Agency prohibited sources (pharma, biotech)?
- Does the list of assets include any CRADA partners of this employee?
- Is a divestiture required?
- If so, is there documentation such a divestiture occurred?
- Based on the employee's official duties, is a recusal indicated?
- If so, is there documentation of such a recusal?
- Are the dates of the recusal, effective and ending, clearly specified?
- Was it approved by the DEC?
- Was the approved recusal circulated to those affected, including the newly responsible party?
- Did the agency send a copy of the approved/disapproved recusal to the employee?
- Was a waiver granted?
- If so, are the effective and end dates for the waiver clearly spelled out?
- Is there documentation that the IC or DEC approved/disapproved the waiver?
- Did the agency send the employee a copy of the decision memo regarding the waiver?
- Is there a record of ethics advice requested by the employee?
- Is there a record of ethics advice provided to the employee?
- Was the ethics advice provided consistent with law and regulation at the time dispensed?
- Did the employee receive counseling?
- Did the employee receive a reprimand?
- Was the employee asked to terminate an activity?

OUTSIDE ACTIVITIES (HHS-520)**Basics**

- Is the form completed?
- Is the information about the proposed activity so general as to be unclear?
- Is the information provided in scientific jargon requiring technical expertise to interpret?
- If so, is there evidence of technical expertise utilized in the review process?
- Is the form signed by the requestor?
- Is the form signed by an appropriate approving official (IC Director or NEAC)?
- Is the form dated?
- Was the form submitted prior to the proposed start date?
- Was the employee informed of the decision to approve or disapprove?
- Was the approval done in a timely manner, i.e. before the proposed start date?
- Is there documentation of any request for clarification?

Official Duties

- Is the subject matter of the activity significantly related to or an extension of the employee's current work?
- If so, is the activity requested appropriately performed as an official duty activity?
- Is the invited employee the appropriate person to represent NIH?
- Did the employee receive compensation for what should have been an official NIH duty?
- If the outside activity is related to the official duties, is the situation where the employee will be asked to discuss his/her work appropriate to be sanctioned as an official duty?
- Did the requestor previously participate in this outside activity as part of his/her official duties?
- If so, was there a change in the employee's duties or in the nature of the activity that would now warrant agency approval as an outside activity?
- Is this change documented?
- Does it appear that NIH is granting preferential treatment to the sponsor by granting the employee official duty status to engage in the activity?

Outside Context

- Is this an appropriate forum, e.g. not a closed door meeting that would limit the flow of information to selected parties?
- Is the information to be discussed publicly available for more than a year?
- Does the research to be discussed relate to any matter assigned to the employee within the last year or to any ongoing or announced policy, program, or operation of the agency?
- Was the invitation extended by someone who has interests that may be substantially impacted by the employee's duties?
- Was the invitation extended primarily because of the employee's official position rather than his/her expertise on the subject?
- Is the outside activity a one-way flow of information from the NIH employee to an audience?
- Is the information two-way, such as a consultancy?
- Is there an appearance problem?

Personal Capacity

- If the activity is not official duty and the employee is performing the outside activity in a personal capacity, will the time required by the activity exceed that which is available to the employee under the government leave system?
- Is there documentation that the employee understands he/she cannot use official NIH stationery or official NIH title (except as a means of identification) in performing this outside activity and cannot imply NIH endorsement of statements, work products, etc?
- Is there external, publicly available information that would verify employee compliance with the above restrictions?
- Does the request specify exact times during which the employee would be absent?

- Do agency leave system records indicate the employee took the leave projected?
- Will the absence require the employee to be away from NIH for critical periods of time?
- If performing the outside activity in a personal capacity with compensation, is the compensation specified?
- Is the compensation deemed to be a gift and subject to the gift limitations?
- Does it appear that the employee may have used his/her official position to secure compensated outside employment offers?
- Is there a covered relationship between the employee and proposed sponsor of the outside activity?
- Is there an imputed financial interest that would require the employee's disqualification from official duties?
- Is there documentation of a recusal?
- If so, was the recusal circulated to subordinates and colleagues impacted by the recusal?
- Is the NIH employee involved in a CRADA related to this outside activity request?
- Was there substantial alteration to the employee's official duties to accommodate the request for outside activity?
- Did the requested outside activity meet the requirements for NEAC review (e.g. compensation over \$10,000, future income stream, award \$2,500)?
- If so, is there documentation that a NEAC review occurred?
- Is there publicly available external information that would verify the information provided by the employee?

ANNUAL UPDATE, OUTSIDE ACTIVITIES (HHS-521)

- Were there any activities engaged in during the calendar year covered by the report which should have received advance approval, but did not (either not requested or not approved, but occurred)?
- Do the outside activities indicated on this form match those listed on the employee's financial disclosure form (either 450 or 278), if required?
- Is income/compensation reported?
- Is the income/compensation reported on the HHS-521 greater or different than that which was approved on the HHS-520
- Is the duration specified?
- Is the ending date after the date authorized in the official approval?
- Did the employee answer all the questions, including those which require added text?
- Did the employee sign the form?
- Did the employee date the form within the deadline for submission (February 28th of each year)?
- Did the supervisor sign the form?
- Did the supervisor date the form within the prescribed period?
- If the condition required it, did the form go to a second level of review beyond the supervisor?
- If the condition required it, did the form go to the NEAC for its review?
- Is approval/disapproval indicated on the form?

- Are there additional comments provided any place on the form?
- Is there documentation of any recusals for this employee?
- Are the name of the reviewer and his/her contact information provided?
- If this request is under the jurisdiction of the NIH DEC, is there documentation that the NIH Ethics Office has a copy?
- Is there documentation that the employee was informed of any issues needing resolution, such as a resubmission?
- Is the original report filed in the employee's ethics file?
- Was the employee required to file NIH 2657, a supplemental form for approval of consulting, clinical practice, etc?
- Is there external, publicly available information that would verify the information provided by the employee?

OFFICIAL DUTIES ACTIVITIES (NIH 2809)

- Did the employee file an annual update of approved official duty activities, if required?
- Did the employee complete the form?
- Did the employee sign the form?
- Does the information provided on this form match information provided on any required financial disclosure form (278 or 450)?
- Does the nature of the official duty activity appear to be consistent with current, assigned NIH responsibilities?
- Did the employee list any official activities that had not been documented as previously approved?
- Did the employee list any official activities which had previously been listed as outside activities?
- If so, were the reasons for the change from official to outside reasonably documented and justified?
- Did the employee indicate the number of hours required for each official activity?
- Are the start and end dates denoted?
- Did the DEC sign the form?
- Did the DEC date the form?
- Did the DEC indicate action taken (approved, disapproved, pending, none)?
- Did the agency send a dated, signed copy to the employee?

INITIAL REPORT OF FINANCIAL INTERESTS IN SUBSTANTIALLY AFFECTED ORGANIZATIONS (HHS-716)

- Was the report filed by the October 31, 2005 deadline?
- Was the form fully completed?
- Did the employee sign the form to signify certification? (Part III, Box 4)
- For non-senior employees, did the supervisor indicate review of the report?

- Did the employee have an interest in an SAO that required the reassignment of work to another individual?
- Was the work affected by the SAO critical to the employee's official duties?
- Did the DEC sign the determination?
- Did the DEC order total divestiture of an asset?
- Did the DEC order partial divestiture of an asset?
- Was recusal required?
- If required, did the employee reasonably describe actions taken to fulfill the recusal obligation? (Part VII, p.12, #2)
- Did the employee reasonably describe steps taken to monitor future individual and imputed holdings? (Part VII, p. 12, #3)
- If divestiture was required, did the employee provide a description of financial interests in order to secure a certificate of divestiture?
- If divestiture was required, and the employee did not seek a certificate, did the employee submit Part VII of the form when fully divested?
- Did this employee complete the sale on or before the deadline of January 30th?

AWARD FROM OUTSIDE ORGANIZATIONS

Basics

- Is the form completed?
- Is the form signed by the employee?
- Did the DEC sign the award to indicate action (approval, disapproval, pending)?
- Is the form dated by the employee prior to the presentation of the proposed award?
- Did the agency inform the employee of the agency decision prior to the expected date of presentation?

Nature of Award

- Is the sponsor of the award clearly identified?
- Is this an award previously recognized by NIH as a bona fide award?
- If not previously recognized, is this truly an award?
- Has the employee had a previous financial relationship with the sponsor?
- Has the employee previously engaged in outside activities with the sponsor?
- Is there a perception problem with the employee receiving this award?
- Has the employee been in a position to grant the sponsor favorable treatment?
- Is it likely that the employee will, in his/her official capacity, be making decisions that might affect the sponsor (e.g. grants, contracts, drug trials)?
- Is the amount of the award clearly detailed?
- If the aggregate award value (cash, cash equivalents, meals, lodging, transportation, reimbursements, entertainment, free attendance, or benefits) is \$250 or more, has the employee who is an SF-278 filer also included this information on their SF-278?
- Is this award subject to NEAC review, e.g. \$2,500 or more?

- If so, was this award reviewed by NEAC?

SAMPLE DESIGN

SAMPLE SIZE FOR NIH ETHICS AUDITS

The goal of the audit is to draw a sample from which the auditor can estimate the percentage of employees that are in compliance with ethics laws, regulations, and agency requirements. The criteria for the audit conclusion of compliance or noncompliance are in the audit plan and will be approved by the NIH Ethics Office. Compliance will be categorized as relating to (1) the standards of ethical conduct provisions (5CFR part 2635), (2) the criminal conflict of interest statutes, or (3) procedural deficiencies.

As this is the first audit of its kind undertaken at NIH, there is no prior knowledge about the overall level of compliance or how it varies within various institutes, by occupation, or by income level. Anecdotal history indicates that certain institutes, senior employees, and certain occupation groups across the institutes may be more likely to have outside regular employment or to receive compensation for specific external activities, such as speeches and consultations. This does not imply that they are out of compliance with ethics guidelines—only that there is greater opportunity.

In general, NIH salary level will be a good proxy for identifying many of these individuals. The sample design will want to make sure that, as much as possible, the largest institutes are covered separately. Because of potential similarities in staffing patterns and degree of ethics infrastructure, the sample design will want to group the smaller and medium institutes, as well, in order to keep auditing costs within reason. The Office of the Director, Office of Research Services (ORS), and the Clinical Center, each with their own very different staffing patterns and functions, are also separated into their own sample grouping. For these reasons, the proposed audit design groups all of NIH into four groupings (See Appendix F for more detail on these groupings.):

- IC Grouping A—ORS, Clinical Center, Office of the Director
- IC Grouping B—larger ICs
- IC Grouping C—smallest ICs
- IC Grouping D—medium size ICs

In order to estimate sample size, we need three pieces of information—the desired precision of the estimate, the desired confidence level, and the estimated variance of the population.

- **Precision of the estimates.** The audit team should be able to conclude that the percentage of employees in compliance with ethics laws, regulations, and agency requirements found in the sample, \pm some level of precision (e.g., 3%), are representative of the true level of compliance in the general population. This level of precision creates a range around the point estimate; smaller ranges (greater precision) mean that the true compliance rate is closer to the estimated rate.

- **Confidence level of the estimation process.** This is a measure of how likely it is that the true level of compliance would lie in the range created by the precision parameters. For example, a 99 percent confidence level indicates that the true percentage of compliance would lie within the point estimate, plus or minus the precision adjustments, in 99 samples out of 100, if many samples were taken.
- **Population variance.** The population variance is used to estimate the variance of sample proportions. The square root of the variance of estimated sample proportions is known as the standard error, and it is used to construct the precision ranges. Larger standard errors will require larger sample sizes for any precision and confidence level.

FIRST-TIME SAMPLE

The first time the compliance audit is undertaken, the auditors have no knowledge of the population variance or variance within selected sub-groupings, such as institutes, or specific classes of employees, as discussed above. However, the auditors do know the maximum variance for an event that is two-sided, such as an audit result of compliant or non-compliant. This occurs where exactly half the population is compliant; greater and smaller percentages will reduce population variance equally. The audit team can assume this maximum variance to calculate the sample sizes for a range of possible precision and confidence levels, and this is presented in Table E-1, below.

Table E-1. Sample Sizes for an Estimated Proportion at Maximum Variance

Precision +/- (%)	Confidence Level		
	90%	95%	99%
2	1534	2095	3308
3	719	1002	1656
4	413	580	975
5	267	376	638
6	186	263	448
7	137	194	332
8	106	149	255

NOTE: See Blalock, Hubert M., *Social Statistics, Revised Second Edition* (McGraw Hill, 1979) 215-218; and Kalton, Graham, *Introduction to Survey Sampling* (Sage Publications, 1983) 15-16, 82-84.

This is almost certainly an overestimate of required sample size, since it is highly unlikely that exactly half the population is compliant. It is more likely that most of the population is compliant, which will reduce future sample sizes and will likely result in a greater precision of the initial estimates of compliance. The problem is that the auditor cannot take advantage of any

of this until he/she has the initial estimates of population variance.⁷ Future audits will, therefore, likely be smaller in size and lower in cost than the initial foray.

STRATIFICATION

Stratification is the division of the population into mutually exclusive and exhaustive sub-populations and sampling from each. The audit team can use information from these sub-populations or strata to get better estimates and improve future sample designs. In addition, stratification can in some instances increase overall efficiency (“design effect”) and reduce future required sample size even further.

While there are no hard and fast rules for identifying strata, sample designers usually select them when there is a sub-population of interest, to make sure that simple random sampling does not omit them by chance. The audit team may also choose a sub-population if it believes that it has a different variance, is more/less costly to sample, or has other characteristics that might differentially affect the estimated rate of compliance. The team can sample different strata at higher or lower rates, although the greatest gains for overall efficiency occur when using a uniform rate across the population. If the audit team is going to estimate variances within the strata, each stratum should be large enough that any systematic sample should draw at least two observations from among its employee grouping.

Table E-2 presents one such possible stratification design. The institutes are collected together into groupings of interest and each is further subdivided according to other groupings of interest. In this instance, the sample designers have simply divided the population into “high salaried” and “low salaried” workers, believing that the high salaried workers will have other characteristics of interest, such as being senior researchers, physicians, or senior management.

The requirement that each cell have at least two members randomly selected limits the number of choices surprisingly quickly. In the example below, for instance, with a total population of 16,384 employees and a sample size of 719, the audit team will be selecting every 22nd or 23rd employee. To guarantee a minimum selection of two, each stratum will have to contain 45 people, and the eight strata combined will require a sample size of 360. Even one more characteristic applied across the four institutes would exhaust the total sample.

Table E-2. Hypothetical Sample Design

IC Grouping A	IC Grouping B	IC Grouping C	IC Grouping D
Income > 100,000	Income > 100,000	Income > 100,000	Income > 100,000
Income <= 100,000	Income <= 100,000	Income <= 100,000	Income <= 100,000

⁷ Since we know the size of the total population, the required sample size has been adjusted downward using a finite population correction.

SAMPLING PROCEDURE

The sampling procedure is very straightforward and uses systematic sampling to ensure that every employee in the sample has an equal probability of selection from the overall population. (In subsequent audits, when more is known about the characteristics of the population, other methodologies may be employed to sample some strata more intensively than others.)

1. In the above example there are eight strata – Institute A with Income > \$100,000, Institute A with income ≤\$100,000 ...Other Institutes with Income≤\$100,000.
2. List each employee randomly in each stratum, say in alphabetical order. Add each list to the list of the previous stratum, so that at the end, every employee in the population is grouped within his or her stratum and listed only once.
3. With a precision of +/- 3% and a confidence level of 90%, sample size is 719 out of a total population of 16,384 employees. This works out to a sampling interval of 22.7872.
4. Choose a random number between 10,000 and 227,872 from a table or by using a computer program.⁸ Say the number is 167,392. Insert a decimal before the fourth digit from the right (16.7392) and truncate the number to select employee number 16. This is the first employee selected. Now add 22.7872 to 16.7392 and truncate to select the 39th employee on the list. Add 22.7872 to 39.5264 and truncate to select the 62nd person on the list, and so forth. This can readily be done on a spreadsheet.
5. In this manner, the audit team will either select the 22nd or the 23rd person sequentially until the entire sample has been selected.⁹

Because this sample design orders employees by strata, each stratum will be represented in the overall sample. The minimum size for a stratum will be 45 people, which will assure selection of two individuals if the 23rd person in the stratum is then followed by the 22nd.

⁸ The value $x = 10000 + r [(227872 - 10000)/999999]$, where r is a random number between 0 and 999999.

⁹ Kalton, Graham. (1983) *Introduction to Survey Sampling*. Sage Publications. pp. 17-27.

IC GROUPINGS FOR THE SAMPLE

Group	IC	FTEs
A	Office of Research Services	725
	Clinical Center	829
	Office of the Director	2002
	TOTAL	3556
B	National Institute of Allergy and Infectious Diseases	1784
	National Cancer Institute	2451
	TOTAL	4235
C	National Center on Minority Health and Health Disparities	14
	National Institute of Nursing Research	33
	National Institute of Biomedical Imaging and Bioengineering	37
	John E. Fogarty International Center	45
	National Center for Complementary and Alternative Medicine	80
	National Center for Research Resources	92
	National Institute of General Medical Sciences	125
	National Institute on Deafness and Other Communication Disorders	137
	National Eye Institute	189
	National Institute of Arthritis and Musculoskeletal and Skin Diseases	223
	National Human Genome Research Institute	230
	Center for Scientific Review	235
	National Institute on Alcohol Abuse and Alcoholism	237
	National Institute of Dental and Craniofacial Research	300
	National Institute on Drug Abuse	317
	National Institute on Aging	342
	Center for Information Technology	379
National Library of Medicine	564	
TOTAL	3579	
D	National Institute of Child Health and Human Development	592
	National Institute of Neurological Disorders and Stroke	597
	National Institute of Mental Health	625
	National Institute of Environmental Health Sciences	648
	National Institute of Diabetes and Digestive and Kidney Diseases	679
	National Heart, Lung and Blood Institute	747
TOTAL	3888	

**SELECTED OGE GUIDANCE ON
LIMITING THE NUMBER OF CONFIDENTIAL FILERS**

September 14, 1994
DO-94-031

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Stephen D. Potts
Director

SUBJECT: Improving the confidential financial disclosure system

Over the past several months, the Office of Government Ethics' (OGE's) Office of Program Assistance and Review has been conducting a study to determine the effectiveness of the confidential financial disclosure system. After interviewing ethics officials at 75 agencies and analyzing their comments, we believe that a number of improvements should be instituted.

The most consistent concern which agencies expressed about the system was the process of designating positions in which employees are required to file an SF 450. While the 1992 regulation offered greater flexibility to agencies, it had the unintended effect of increasing the number of filers. In order to correct this over-designation and to insure that only those employees whose duties present potential conflicts have to file, we strongly urge agencies to reevaluate their designations. If you want to accomplish this in connection with the upcoming annual filing cycle on October 31, you may grant a blanket extension of the due date, under your authority in 5 C.F.R. § 2634.903(d), while you are performing that reevaluation. Some agencies, however, may find this task more time-consuming and will need to postpone their reevaluation of designations until next year's filing.

In reevaluating which positions require confidential disclosure, consider the following guidance:

For those positions involving responsibilities enumerated in 5 C.F.R. § 2634.904(a)(1), the regulation compels designation only if the employee will be required to participate personally and substantially through decision or the exercise of significant judgment. For assistance with the terms "personal and substantial," see the definitions at 5 C.F.R. §§ 2635.402(b)(4) and 2637.201(d). Additionally, the exclusion criteria in § 2634.905 should be considered in conjunction with the designation process, to eliminate designation of positions where, for example, there is a substantial degree of supervision or only a remote possibility of a conflict of interest. Thus, not all employees who must sign a procurement integrity certification under the Office of Federal Procurement Policy Act must also be required to file a confidential financial disclosure report. Agencies may

use an appropriate demarcation, such as a position's monetary level of procurement authority, a de facto pay grade floor, or degree of supervision over the position.

For positions being designated under the more general criteria in 5 C.F.R. § 2634.904(a)(2), designations should be limited to those pay grades where the duties and responsibilities clearly make filing necessary and relevant. As a concrete example, I have recently reviewed our filer designations at OGE and have determined that those desk officers, management analysts, and attorneys who have previously been designated for filing under § 2634.904(a)(2) but who do not have supervisory responsibilities will no longer be required to file. Applying the designation criteria in § 2634.904(a)(2) and the exclusion criteria in § 2634.905, I no longer believe that employees in these positions need to file, because the possibility of a conflict of interest in their work is remote and because there is a substantial degree of supervision and review over their positions. This cutoff at the supervisor level may not be suitable for all agencies or for all positions. As other alternatives, agencies may wish to establish de facto pay grade floors or limit designations for certain positions to those with discrete levels of technical responsibility.

The other major concerns expressed by agency ethics officials during our study centered on the degree and nature of required disclosures. I believe that the experience which we have gained over the past two years with the new confidential disclosure system, coupled with our recent study, supports the need for some changes in this regard. However, I want to insure that agencies have a voice in this reconsideration process. Therefore, I plan to hold one or more brown bag lunches this fall to specifically consider appropriate policy changes to the substantive disclosure requirements of the confidential system. This may ultimately lead to regulatory amendments, as well as revisions to the SF 450. In the interim, please continue to use the current SF 450 and any alternative or supplementary systems which OGE has previously approved for your agency. For any questions that arise, please consult with your OGE desk officer.

I look forward to working with you in improving our confidential financial disclosure system, so that it will continue to serve as an effective tool in conflict prevention and counseling.

Excerpts from “Additional Information Concerning OGE’s Review of the Confidential Financial Disclosure System” (1999)

In 1994, OGE conducted a single issue review and held two brown-bag lunches for ethics officials which concentrated on how to improve the confidential financial disclosure system. One of the findings of the 1994 single issue review was that while OGE’s 1992 regulation, at 5 C.F.R. part 2634 subpart I, offered greater flexibility to agencies on designating covered positions, it also had the unintended effect of increasing the number of confidential filers at many agencies. By the mid-1994 time frame, OGE was strongly urging agencies to reevaluate their filing designations. We advised ethics officials by DAEOgram (1) to consider additional guidance in reevaluating which positions required confidential disclosure. Since 1994, OGE has made several improvements to the confidential system, which focused mostly on report format-related changes and reducing the level and type of information required to be disclosed.

PRIMARY FINDINGS [excerpts]**Majority of Officials are not Currently Concerned About the Number of Designated Filing Positions at their Agencies**

- Our analysis of the total number of confidential filers at our selected agencies (as reported to OGE in Questionnaires from 1993 and 1998) showed varying rates of changes in those numbers. At some agencies the number of filers greatly increased, at other agencies the number greatly decreased, while at the remainder, the number of filers remained fairly constant over time. To a certain extent, information collected during our review supports the notion that reductions may be due to direct actions taken by ethics officials that were specifically geared towards reducing those numbers.
- Of the 44 responding ethics officials, 36 (84 percent) indicated that since implementing the current confidential system (OGE Form 450), they have reevaluated the filing designations.
- A majority of ethics officials told us that they are not currently concerned about the number of designated filing positions. However, some did express the concern that the number of covered employees at their agencies remains too high. (4) Interestingly, based on information reported by ethics officials, we found that efforts aimed at ensuring that appropriate employees were designated that worked well at some agencies, apparently did not work as well at others. Efforts to reduce the number of positions included a grade-based system or establishing a dollar procurement or grant authority threshold. Not surprising, based on the limited information we collected, it appears that those agencies that established the highest thresholds are those that are no longer concerned about the number of designated positions.
- Nine ethics officials indicated that they do believe that additional actions can be taken to reduce the number of filers. Some ethics officials recognize that they will have to work closely with management officials before increasing or raising filing thresholds, since management tends to be more cautious (casts a wider net) when designating positions.

Relevant Regulations**5 CFR Sec. 2634.904 Confidential filer defined.**

The term confidential filer includes:

(a) Each officer or employee in the executive branch whose position is classified at GS-15 or below of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate which is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each member of a uniformed service whose pay grade is less than O-7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the designated agency ethics official to be of equal classification; if:

(1) The agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially (as defined in Sec. 2635.402(b)(4) of this chapter) through decision or the exercise of significant judgment, in taking a Government action regarding:

(i) Contracting or procurement;

(ii) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;

(iii) Regulating or auditing any non-Federal entity; or

(iv) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity; or

(2) The agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, and to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by that employee. Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.

(b) Unless required to file public financial disclosure reports by subpart B of this part, all executive branch special Government employees as defined in 18 U.S.C 202(a) and Sec. 2634.105(s), including those who serve on advisory committees. The term special Government employees does not include an advisory committee member who serves only as a representative of an industry or other outside entity or who is already a Federal employee.

(c) Each public filer referred to in Sec. 2634.202 on public disclosure who is required by agency regulations issued in accordance with Sec. 2634.907(b) of this subpart to file a supplemental confidential financial disclosure report which contains information that is more extensive than the information required in the reporting individual's public financial disclosure report under this part.

(d) Any employee who, notwithstanding his exclusion from the public financial reporting requirements of this part by virtue of a determination under Sec. 2634.203, is covered by the criteria of paragraph (a) of this section.

[57 FR 11826, Apr. 7, 1992, as amended at 63 FR 69992, Dec. 18, 1998; 64 FR 2422, Jan. 14, 1999]

5 CFR Sec. 2634.905 Exclusions from filing requirements.

Any individual or class of individuals described in Sec. 2634.904 of this subpart, including special Government employees unless otherwise noted, may be excluded from all or a portion of the confidential reporting requirements of this subpart, when the agency head or designee determines that:

- (a) The duties of a position make remote the possibility that the incumbent will be involved in a real or apparent conflict of interest;
- (b) The duties of a position involve such a low level of responsibility that the submission of a confidential financial disclosure report is unnecessary because of:
 - (1) The substantial degree of supervision and review over the position; or
 - (2) The inconsequential effect of any potential conflict on the integrity of the Government;
- (c) The use of an alternative procedure approved in writing by the Office of Government Ethics is adequate to prevent possible conflicts of interest; or
- (d) The use of OGE Optional Form 450-A (Confidential Certificate of No New Interests) is adequate to prevent possible conflicts of interest. This form may be used by eligible filers, as described in this paragraph, who can certify, after reexamining their most recent previous OGE Form 450, that they (and their spouse and dependent children) have acquired no new interests required to be reported on OGE Form 450, and that they have not changed jobs (no new position description or other significant change in duties) at their agency since filing that previous report. OGE Optional Form 450-A will be used under the following conditions:
 - (1) OGE Optional Form 450-A will only be made available for use by current employees who are not special Government employees.
 - (2) OGE Optional Form 450-A will only be used by incumbent filers, as described in Sec. 2634.903(a) of this subpart, in lieu of filing an annual OGE Form 450, who have a previous OGE Form 450 on file with their agency for the position they currently hold. Its due date is as specified in Sec. 2634.903(a), unless extended under Sec. 2634.903(d).
 - (3) As indicated on the OGE Optional Form 450-A, eligible filers may use OGE Optional Form 450-A, if applicable to their circumstances, or they may file a new OGE Form 450, at their option. Therefore, a blank OGE Form 450 and its accompanying written instructions should ordinarily be distributed to them, along with the blank OGE Optional Form 450-A. The instructions to OGE Form 450 will also provide guidance on what is meant by "reportable" interests on OGE Optional Form 450-A. In lieu of distributing a blank OGE Form 450 and its instructions, agencies may choose to develop separate guidance on the meaning of "reportable" interests, or they may refer certificate users to guidance contained in any available source, such as the Office of Government Ethics' Web site on the Internet or agency-approved electronic software for OGE Form 450. Filers would then also have to be advised of where to obtain a blank OGE Form 450, if needed.
 - (4) OGE Optional Form 450-A may be used by eligible filers for a maximum of three consecutive years before they are required to complete a new OGE Form 450 every fourth year, on a uniform basis for all incumbent (annual) filers, as provided in paragraph (d)(5) of this section. Agencies may, however, elect to permit use of the OGE Optional Form 450-A for only one year (or two years), and to require a new OGE Form 450 every

second (or third) year, on a uniform basis for all incumbent filers, as provided in paragraph (d)(5) of this section.

(5) In each year divisible by four, beginning in 2000 (or divisible by two or three, beginning in 1998, for agencies that choose one of the more frequent options described in the second sentence of paragraph (d)(4) of this section), all incumbent filers, as described in Sec. 2634.903(a) of this subpart, must file a new OGE Form 450 rather than OGE Optional Form 450-A, regardless of how recently they may have filed an OGE Form 450 (either as a new entrant or as an annual filer who was not eligible to use, or chose not to use, the optional certificate).

(6) When submitting OGE Optional Form 450-A, filers are not required to attach a copy of their previous OGE Form 450, unless their agency determines that it is necessary. Filers should be encouraged, however, to retain a copy of their previous OGE Form 450, so that it will be readily available for their examination prior to completing an OGE Optional Form 450-A.

[57 FR 11826, Apr. 7, 1992; 57 FR 21855, May 22, 1992; 62 FR 33976, June 24, 1997]

United States
Office of Government Ethics

2005 AGENCY ETHICS PROGRAM QUESTIONNAIRE

Your response to this questionnaire will constitute your annual report for 2005. Section 402(e)(1) of the Ethics in Government Act of 1978, as amended, requires that executive agencies submit an annual report to the Office of Government Ethics (OGE) concerning certain aspects of their ethics programs. This annual report shall be filed with OGE on or before **February 1** of each year (5 C.F.R. § 2638.602(a)).

Please respond to each question as completely and accurately as possible. Use an [X] where appropriate. You may attach additional sheets as necessary. Throughout the questionnaire, your responses should reflect the calendar year (i.e., 1/1/05 through 12/31/05) except where specified.

If you have any questions, contact Teresa Weakley at 202-482-9283.

DEADLINE: FEBRUARY 1, 2006

PART 1. ORGANIZATION/RESOURCES

1. Agency: _____
2. Number of full-time agency employees as of December 31, 2005 (*include employees detailed to another agency*): _____
 Number of special Government employees¹ (SGE) as of December 31, 2005: _____
 Number of IPAs² (Intergovernmental Personnel Act) as of December 31, 2005: _____
3. Name and title of the Designated Agency Ethics Official (DAEO):

¹ For purposes of this questionnaire, the term "special Government employee" (SGE) means an officer or employee who is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for not more than 130 days during any period of 365 consecutive days. In addition to these officers and employees, the term includes:

- Part-time United States commissioners
- Part-time United States magistrates
- Independent counsels appointed under chapter 40 of title 28 and any person appointed by those independent counsels under section 594(c) of title 28, regardless of the number of days of appointment for either of these positions
- Reserve officers of the Armed Forces and officers of the National Guard of the United States (unless otherwise officers or employees of the United States) while on active duty solely for training or serving involuntarily

The terms "officer or employee" and "SGE" shall not include enlisted members of the Armed Forces.

² The term "IPA" refers to employees appointed or detailed to positions under the Intergovernmental Personnel Act (5 U.S.C. §§ 3371-3376. Include the number of incoming appointments and outgoing details.

Identify the length of time the DAEO has held this position:

- _____ 10 or more years
- _____ 5 – 9 years
- _____ 1 - 4 years
- _____ Less than 1 year
- _____ Position vacant

Approximate percent of the DAEO's time spent on ethics: _____%

4. Name and title of the Alternate DAEO:

Identify the length of time the Alternate DAEO has held this position:

- _____ 10 or more years
- _____ 5 – 9 years
- _____ 1 - 4 years
- _____ Less than 1 year
- _____ Position vacant

Approximate percent of the Alternate DAEO's time spent on ethics: _____%

5. Do you have designated Deputy DAEO(s)? ____ Yes ____ No

Name(s) and title(s) of designated Deputy DAEO(s):

6. Does your agency have regional or field office ethics officials? ____ Yes ____ No

Functional locations(s) of regional/field ethics officials. Check all that apply.

- _____ Legal office
- _____ Human Resources office
- _____ Employee Relations office
- _____ Other (specify) _____

7. Total number of ethics officials who worked in the ethics program in 2005:

	Worked full-time on ethics	Worked part-time on ethics
HQ Ethics Officials		
Regional or Field Office Ethics Officials		

8. Is the ethics program a separate budgeted item? ____ Yes ____ No

PART 2. PROGRAM ADMINISTRATION

1. Use the following scale to rate the amount of time you spend to administer each item.
Time Spent Scale: 1= No time 2=Limited amount of time 3=Moderate amount of time
4=Considerable amount of time 5=Extreme amount of time

	Time Spent				
	1	2	3	4	5
Public financial disclosure system	1	2	3	4	5
Confidential financial disclosure system	1	2	3	4	5
Outside activity approval system	1	2	3	4	5
Written opinions and counseling	1	2	3	4	5
Education and training	1	2	3	4	5
Disciplinary process for violations	1	2	3	4	5
Special Government employees' activities	1	2	3	4	5
Developing information technology applications for any aspect of the ethics program	1	2	3	4	5

2. Indicate which ethics program areas(s) your agency contracted out (*outside of the Government*) in 2005. Check all that apply.

- Initial ethics orientation
- Annual ethics training
- Financial disclosure review
- Internal program evaluation
- Advice and counseling
- Program administration (tracking systems, databases etc.)
- Other (specify) _____
- None

Provide a brief description and the outcome (optional): _____

3. Did your agency perform an internal ethics program review (*formal self evaluation, IG review, etc.*) in 2005? Yes No

What organization within your agency conducted the review?

- Agency Ethics Official(s)
- Inspector General's Office
- General Counsel's Office
- Other (specify) _____

Were you provided feedback from the review?

- Yes, written
- Yes, verbal
- No feedback provided

PART 3. EDUCATION AND TRAINING

1. Number of employees *required to receive* initial ethics orientation: _____

Number of employees who *actually received* initial ethics orientation: _____

How often do you provide initial ethics orientation?

- _____ Once a week
- _____ Every two weeks
- _____ Every ninety days
- _____ Other (specify) _____

2. Number of employees who received annual ethics training (include all types of training):

	<i>Required</i> to receive annual ethics training	<i>Actually</i> received annual ethics training
SF 278 filers (PAS)		
SF 278 filers (non-PAS)		
OGE Form 450 filers		
Others		

If the number of employees required to receive annual training is different than the number of employees that actually received annual training, provide a brief explanation.

Number of PAS officials who received one-on-one annual ethics training: _____

How do you ensure that your required employees receive annual ethics training? Check all that apply.

- _____ Attendance rosters
- _____ Training evaluations
- _____ Training management system
- _____ Other (specify) _____

3. Identify the topical areas in which annual ethics training was provided:

- _____ 14 Principals of Ethical Conduct
- _____ Conflicting Financial Interests
- _____ Gifts
- _____ Post Employment
- _____ Impartiality
- _____ Seeking Employment
- _____ Misuse of Position
- _____ Hatch Act
- _____ Outside and Representational Activities
- _____ Other (specify) _____

4. What kinds of training methods and materials did you use for your training? Check all that apply.

- Written materials
- Copies of the Standards of Conduct and/or agency supplemental regulations
- Summaries of the Standards of Conduct
- Pamphlets/Brochures
- Newsletters
- Self-study manual
- Hypothetical case studies
- Videos
- OGE produced
- Agency produced
- Satellite/Videoconferencing
- Classroom instruction
- Individual briefings
- Computer/web-based training
- Other (specify) _____

PART 4. ETHICS OPINIONS, ADVICE AND COUNSELING

1. Use the following scale to rate the topics on the frequency with which you provided opinions, advice and counseling.

Frequency Scale: 1= Not at all 2= Rarely 3= Periodically 4= Frequently 5= Very Frequently.

	Frequency				
	1	2	3	4	5
Outside employment/activities					
Post-employment restrictions					
Conflicting financial interests					
Awards					
Impartiality in performance of official duties					
Misuse of position, Government resources and information					
Travel, subsistence, and related expenses from non-Federal sources					
Gift acceptance, excluding awards and travel, subsistence, and related expenses from non-Federal sources					

2. Who is authorized to provide written advice on standards of conduct and conflict of interest statutes? Check all that apply. **If the DAEO is the General Counsel, please mark DAEO.**

- DAEO/Alternate DAEO/Deputies/Ethics Officials
- General Counsel/Staff Attorneys
- Regional Counsels
- Supervisors
- Directors of Personnel/Staff
- Agency Head
- Other (specify) _____

3. How does your DAEO or HQ ethics office ensure that accurate consistent opinions, advice and counsel are provided to employees? Check all that apply.

- Review all written opinions
- Discuss verbal opinions prior to providing them to employees
- Review written opinions randomly
- Review ethics officials' phone logs
- Conduct periodic discussions with staff
- Offer training
- Other (specify) _____

PART 5. ENFORCEMENT OF STANDARDS OF ETHICAL CONDUCT, CRIMINAL AND CIVIL STATUTES

1. Report the number of disciplinary actions taken based wholly or in part upon violations of the standards of ethical conduct provisions (5 C.F.R. part 2635). For purposes of this question, disciplinary actions include removals, demotions, suspensions, and written reprimands or their equivalents. _____

2. Report the number of disciplinary actions taken based wholly or in part upon violations of the criminal conflict of interest statutes, 18 U.S.C. §§ 203, 205, 207, 208, and 209. For purposes of this question, disciplinary actions include removals, demotions, suspensions, and written reprimands or their equivalents. _____

Report the number of referrals of potential violations of the criminal conflict of interest statutes: _____

Which office(s) within your agency make referrals of potential violations of the criminal conflict of interest statutes to the Department of Justice, including offices of U.S. Attorneys? Check all that apply.

- DAEO (Ethics Officials)
- General Counsel
- Agency Head
- IG
- Other (specify) _____

Which office(s) are responsible for notifying OGE when a referral of a potential violation of the criminal conflict of interest statutes have been made to the Department of Justice, including the U.S. Attorneys? Check all that apply.

- DAEO (Ethics Officials)
- General Counsel
- Agency Head
- IG
- Other (specify) _____

PART 6. PUBLIC FINANCIAL DISCLOSURE

1. Report the total number of public financial disclosure reports (SF 278) required to be filed in 2005, *excluding SGEs*, and the total number of reports actually filed. Derive totals for required new entrant/termination reports from the number of appointments to and the number of terminations from positions during 2005. Some totals may include late filings actually received in 2006.

	Nominee/ New Entrant required filed	Annual required filed	Termination required filed	Combination ³ required filed	TOTAL required filed
PAS ⁴					
Non-Career SES ⁵					
Career SES ⁵					
Schedule C					
Other ⁶					
TOTAL					

2. Does your agency require an intermediate review by someone other than an ethics official of all SF 278s? ___ Yes ___ No
3. Total number of Schedule C employees exempted from the filing requirement by OGE: _____
4. Number of filers who requested filing extensions: _____
Number of filers who were granted filing extensions: _____
5. Number of filers who requested waivers of the late filing fee: _____
Number of filers who were granted waivers of the late filing fee: _____
6. Number of filers who paid the late filing fee: _____
7. Number of requests your agency received for public release of 278s: _____
8. Number of individual SF 278 reports requested to be released: _____
Number of PAS SF 278 reports requested: _____
Number of non-career SES SF 278 reports requested: _____
Number of career SES SF 278 reports requested: _____
9. Number of public financial disclosure filers who took specific corrective or remedial (nondisciplinary) actions in 2005: _____

³ Includes reports filed to satisfy both annual and termination requirements, as well as new entrant and termination requirements.

⁴ Presidential appointees confirmed by the Senate.

⁵ Senior Executive Service, Senior Foreign Service, Senior Cryptologic Service, Defense Intelligence Senior Executive Service, etc.

⁶ Includes members of the Uniformed Services, Administrative Law Judges, Senior Level employees (SES Equivalent), etc.

10. Number of 18 U.S.C. § 208(b)(1) waivers granted to public financial disclosure filers:

PART 7. CONFIDENTIAL FINANCIAL DISCLOSURE

1. Total number of confidential financial disclosure reports (OGE form 450 and alternative approved form) *required* to be filed by permanent full-time employees in 2005, **excluding SGEs**: _____

Number of OGE form 450s, OGE form 450As, or alternate OGE approved forms *actually* filed, **excluding SGEs**:

	Number actually filed
OGE 450	
OGE 450A	
Alternate OGE approved form	

2. Does your agency require an intermediate review by someone other than an ethics official of all OGE form 450s? ____ Yes ____ No

3. Number of confidential financial disclosure filers who took specific corrective or remedial (nondisciplinary) actions in 2005: _____

4. Number of 18 U.S.C. § 208(b)(1) waivers granted to confidential financial disclosure filers:

PART 8. ADVISORY COMMITTEES/SPECIAL GOVERNMENT EMPLOYEES⁵

1. Number of advisory committees (*do not include Federal Advisory Committees (FACA)*):

Number of advisory committee members (*do not include FACA members*): _____

2. Number of FACA advisory committees: _____

Number of FACA advisory committee members: _____

3. Does your agency provide ethics program services for any boards or commissions that are independent of your agency?

____ Yes (please provide the names of the boards and commissions)

____ No

4. Number of SGEs who served as advisory committee members or as experts/consultants and who were required to file financial disclosure reports in 2005. Include the total number who actually filed.

	Confidential Reports		Public Reports	
	Required	Filed	Required	Filed
Advisory Committee Members (FACA & non-FACA)				
Experts/Consultants				
Board Members				
Commissioners				
Other (specify):				
TOTAL				

5. Number of SGE filers who took specific corrective or remedial (nondisciplinary) actions in 2005. _____
6. Number of § 208(b)(1) waivers granted to SGEs? _____
- Number of § 208(b)(3) waivers granted to SGEs? _____
-

OGE EMPLOYEE SURVEY

This appendix contains:

- *Executive Branch Employee Ethics Survey 2000*
- Excerpt of Executive Summary from the *Final Report of the Executive Branch Employee Ethics Survey 2000* (the full report can be found at http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/surveys_ques/srvyemp_rpt_00.pdf)



United States Office
of Government Ethics

Executive Branch Employee Ethics Survey 2000

Please respond within 7 days of receipt.

Survey prepared by Arthur Andersen LLP for
the U.S. Office of Government Ethics



Please Read the Following **Before** Completing This Survey.

PURPOSE

This survey is designed to gather feedback from employees about their awareness of the Government's executive branch ethics program and their attitudes toward ethical issues in their agencies. It will be used to help the U.S. Office of Government Ethics improve the executive branch ethics program.

FREQUENTLY ASKED QUESTIONS

How will confidentiality be maintained?

The survey does not ask for any information that would reveal your identity (for example, your name, social security number or specific work location) or your agency's identity. No one will be able to identify your survey responses.

Why did I receive a survey and a coworker of mine did not?

Employees who received the survey were randomly selected from employees in the executive branch. Employees were selected to ensure representation of certain employee groups (for example, various grade levels).

Whom should I contact if I have questions about this survey?

Arthur Andersen LLP is managing the survey process for the U.S. Office of Government Ethics. If you have any questions, please contact the contractor directly via e-mail at ethicssurvey@us.arthurandersen.com or by phone at 630-444-4379.

DEFINITION

For the purpose of this survey, the terms "ethics" and "ethical" have a narrow meaning. They are intended to describe the rules of ethical conduct based on two fundamental principles. Executive branch employees--

- Should act impartially in carrying out their official duties and
- Should not use their public office for private gain.

The rules of ethical conduct, for example, include ethics restrictions and prohibitions that limit or bar employees from --

- Accepting gifts given to them because of where they work or what they do in their Government jobs;
- Giving gifts to their supervisors or accepting gifts from their subordinates;
- Doing work for the Government that could benefit them personally;
- Using Government property, time, or resources for personal tasks;
- Using their Government title or position to get favors for themselves or their friends and relatives; and
- Accepting payment for doing their Government jobs from people outside the Government.

Types of misconduct NOT covered by this survey include:

- Sexual harassment
- Discrimination
- Unfair treatment in terms of promotions, awards, discipline and ratings
- Substance abuse

Your agency's ethics program involves activities that are undertaken to assist employees in understanding and adhering to the executive branch rules of ethical conduct. Program activities include educating employees regarding the ethics standards expected of them and providing counseling and answering employee questions about ethics.



GENERAL INSTRUCTIONS

- Please complete this survey only if you are a Federal employee in the executive branch.
- Please respond within 7 days of receipt.
- The survey will take approximately 20 minutes to complete.
- Please select the best response for each question based on your experiences, opinions, or perceptions.
- Indicate your responses in pencil by marking the circle corresponding to your response choice.
- Return your completed survey in the postage-paid envelope provided. If your envelope was misplaced, please send the survey to:

Employee Ethics Survey
 Arthur Andersen LLP
 1405 N. Fifth Avenue
 St. Charles, IL 60174

PART A

Instructions: Unless the instructions otherwise indicate, please select the one most appropriate response for each question.

	<u>Very Much So</u>				<u>Not at All</u>
1. How familiar are you with your agency's ethics program?	⑤	④	③	②	①
2. To what extent do you believe each of the following items describes an objective of your agency's ethics program?					
2a. To prevent violations of ethics policies.	⑤	④	③	②	①
2b. To educate employees regarding the ethics standards expected of them.	⑤	④	③	②	①
2c. To ensure and strengthen the public's trust in Government.	⑤	④	③	②	①
2d. To detect unethical behavior.	⑤	④	③	②	①
2e. To discipline/prosecute violators.	⑤	④	③	②	①
2f. To ensure fair and impartial treatment of the public and outside organizations in their dealings with your agency.	⑤	④	③	②	①
2g. To answer employee questions about ethics.	⑤	④	③	②	①
3. How familiar are you with the rules of ethical conduct for executive branch employees?	⑤	④	③	②	①
4. How useful are the rules of ethical conduct in guiding your decisions and conduct in connection with your work?	⑤	④	③	②	①



	Yes	No
5. Are you aware that there are officials in your agency whose job responsibilities include providing advice to employees on ethics issues?	①	②

6. In the last 5 years have you sought ethics-related advice in connection with your work?	①	②
--	---	---

If you selected "No" to Question 6, skip to Question 10.

7. If you have sought ethics-related advice in the last 5 years, did you consult your agency ethics official?	①	②
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If you selected "No" to Question 7, skip to Question 8.

	Very Helpful			Not Helpful	
7a. How helpful was your agency ethics official?	⑤	④	③	②	①

8. If you consulted someone other than your agency ethics official, indicate who you consulted (e.g. Supervisor, Human Resources Office, General Counsel's Office, Colleague, etc.) and rate the helpfulness of each.

	Very Helpful				Not Helpful
-----	⑤	④	③	②	①
-----	⑤	④	③	②	①
-----	⑤	④	③	②	①

9. If you have sought advice in the last 5 years, but did not consult your agency ethics official, why not? (Select all that apply.)

- ① There is no ethics staff
- ② Didn't know there was an ethics staff
- ③ They don't have time for me
- ④ No confidence I'd get good advice
- ⑤ Believed nothing would be done
- ⑥ Afraid I'd get into trouble
- ⑦ Other (Specify) _____

If you answered Question 9, skip to Question 11.

10. If you have not sought ethics-related advice in the last 5 years, why not? (Select all that apply.)

- ① Never had a question
- ② Didn't know whom to ask
- ③ Confident in my own ability to address issue
- ④ No confidence I'd get good advice
- ⑤ Believed nothing would be done
- ⑥ Afraid I'd get into trouble
- ⑦ Other (Specify) _____



For the purposes of Questions 11 through 13, “ethics training” includes not only instructor-led training in a classroom setting but also the opportunity to review written materials, watch videotapes, participate in computer-based training, etc.

11. During the past 5 years, how often have you received ethics training?

- ① Once, as part of my new-employee orientation
- ② Every few years
- ③ Every year
- ④ More than one time each year
- ⑤ Have not received training in the last five years
- ⑥ Have never received any training

If you selected 5 or 6 in Question 11, skip to Part B.

12. In general, how useful was the ethics training you received...

	<u>Very Useful</u>				<u>Not Useful</u>
12a. In making you more aware of ethics issues in connection with your work?	⑤	④	③	②	①
12b. In guiding your decisions and conduct in connection with your work?	⑤	④	③	②	①

13. For each of the following training methods, indicate whether you have received ethics training via that method during the past 5 years and, if yes, rate the effectiveness of the training you received.

	<u>Received</u>		<u>Effectiveness</u>				
	<u>Yes</u>	<u>No</u>	<u>Very Effective</u>				<u>Not Effective</u>
13a. In-person instructor-led lecture/discussion	①	②	⑤	④	③	②	①
13b. Teleconference or satellite broadcast	①	②	⑤	④	③	②	①
13c. Videotape	①	②	⑤	④	③	②	①
13d. Computer-based training (e.g., Internet, Intranet, CD-ROM)	①	②	⑤	④	③	②	①
13e. Reference materials (e.g., legal documents, laws, regulations)	①	②	⑤	④	③	②	①
13f. Direct communications (e.g., newsletter, pamphlets, memo, e-mail)	①	②	⑤	④	③	②	①
13g. Other (Specify) _____	①	②	⑤	④	③	②	①



PART B

Instructions: Please mark the response indicating your level of agreement with each of the following statements based on your experiences, opinions, or perceptions.

	<u>Strongly Agree</u>				<u>Strongly Disagree</u>
1. Supervisors at my agency include discussions of ethics when talking with their employees.	⑤	④	③	②	①
2. This agency follows up on ethical concerns that are reported by employees.	⑤	④	③	②	①
3. Our agency leadership cares more about getting the job done than about ethics.	⑤	④	③	②	①
4. This agency practices what it preaches when it comes to ethics.	⑤	④	③	②	①
5. Employees in this agency feel comfortable talking about ethics.	⑤	④	③	②	①
6. You can ignore ethics and still get ahead in this agency.	⑤	④	③	②	①
7. Leadership of this agency regularly shows that it cares about ethics.	⑤	④	③	②	①
8. Senior officials in this agency are less likely to be disciplined for violating ethical standards than other employees.	⑤	④	③	②	①
9. If ethics concerns are reported to the agency, action is taken to resolve them.	⑤	④	③	②	①
10. Supervisors at my work location usually do not pay attention to ethics.	⑤	④	③	②	①
11. This agency makes a serious effort to detect violations of ethics standards.	⑤	④	③	②	①
12. Employees who are caught violating ethics policies are disciplined.	⑤	④	③	②	①
13. Employees in this agency openly discuss the ethics of their decisions and actions.	⑤	④	③	②	①
14. Ethics rules and agency practices are consistent.	⑤	④	③	②	①
15. Employees in this agency are expected to do as they're told, no matter what.	⑤	④	③	②	①
16. Employees at all levels in this agency are held accountable for adhering to ethical standards.	⑤	④	③	②	①



PART C

Instructions: Please mark the response indicating your level of agreement with each of the following statements based on your experiences, opinions, or perceptions.

	Strongly Agree				Strongly Disagree
1. Employees in this agency recognize ethics issues when they arise.	⑤	④	③	②	①
2. Employees seek advice within the agency when ethics issues arise.	⑤	④	③	②	①
3. Employees are comfortable delivering bad news to their supervisors.	⑤	④	③	②	①
4. Employees here make decisions that comply with ethics policies because of the ethics program that is in place.	⑤	④	③	②	①
5. Employees can talk with supervisors about problems without fear of having their comments held against them.	⑤	④	③	②	①
6. I would feel comfortable reporting ethics violations.	⑤	④	③	②	①
7. When ethical issues arise, employees look for advice within the agency.	⑤	④	③	②	①
8. Employees in this agency do not recognize ethics issues that come up at work.	⑤	④	③	②	①
9. Ethics problem solving in this agency is better because of the agency's ethics program.	⑤	④	③	②	①



10. In your opinion, how often do these types of conduct occur at your agency?

	Very Frequently			Never	
10a. Agency employees improperly accepting gifts given to them because of where they work or what they do in their Government jobs.	⑤	④	③	②	①
10b. Agency employees improperly giving gifts to their supervisors or accepting gifts from their subordinates.	⑤	④	③	②	①
10c. Agency employees improperly benefiting financially from work they do for the Government.	⑤	④	③	②	①
10d. Agency employees misusing Government property.	⑤	④	③	②	①
10e. Agency employees misusing their Government positions.	⑤	④	③	②	①
10f. Agency employees misusing official time.	⑤	④	③	②	①
10g. Agency employees improperly accepting payment for doing their Government jobs from people outside the Government.	⑤	④	③	②	①
10h. Agency employees in supervisory positions asking for donations from subordinate employees in connection with personal charitable activities.	⑤	④	③	②	①



PART D

Instructions: Please write your responses to the following questions in the space provided. Please write legibly.

1. In your opinion, what, if anything, *makes it difficult* for employees to comply with ethics policies?

2. In your opinion, what, if anything, would *further assist* employees to act ethically in connection with their work?



PART E

Instructions: Please mark the one response for each question that most closely describes you.

1. How long have you worked for the Federal Government?
 - ① Less than 3 months
 - ② 3 months to 1 year
 - ③ 1+ year to 5 years
 - ④ 5+ years to 10 years
 - ⑤ 10+ years to 20 years
 - ⑥ More than 20 years

2. What are your financial disclosure responsibilities?
 - ① I file a Public Financial Disclosure Report (SF 278)
 - ② I file a Confidential Financial Disclosure Report (OGE Form 450, 450-A, or agency-specific alternative)
 - ③ I am not required to file a financial disclosure report
 - ④ I don't know my filing status

3. What is your pay plan?
 - ① Wage grade
 - ② General Schedule or similar, grade 1-12
 - ③ General Schedule or similar, grade 13-15
 - ④ SES, SL, or equivalent
 - ⑤ Other (Please be specific) _____

4. What is your work location?
 - ① Washington, D.C. Metro Area (includes DC, MD, VA and WV)
 - ② Other U.S. Location

5. Do you hold a supervisory position?
 - ① Yes
 - ② No

Thank you for completing the Employee Ethics Survey!

Please return your completed survey in the postage-paid envelope provided.
If your envelope was misplaced, please send the survey to:

Employee Ethics Survey
Arthur Andersen LLP
1405 N. Fifth Avenue
St. Charles, IL 60174

Executive Branch Employee Ethics Survey 2000

Final Report

Report prepared by Arthur Andersen for
the U.S. Office of Government Ethics

Results in Brief

The following summarizes the key results and recommendations from the Executive Branch Employee Ethics Survey 2000.

There is a clear relationship between employee filing status and perception of an ethical culture

Financial disclosure report filers tend to have a more positive perception of their agency ethical culture than do non-filers. Public filers are significantly more positive in their view than are confidential filers, while confidential filers are more positive than are non-filers and people who do not know their filing status. Similarly, supervisors have a more positive perception of their agency ethical culture than do non-supervisors.

These patterns of results were consistent across the study and are reflected in nearly every finding. Conversely, few differences were found when comparing employees in the Washington, D.C. area with those in other work locations.

Measure 1: Program Awareness

Program awareness and understanding are high

The vast majority of survey respondents indicated that they were aware of the executive branch ethics program and that they understood its objectives. This is a positive result. However, this result is tempered by the fact that there were employees the program did not reach who could have benefited from its resources. Approximately 12% of employees, or the equivalent of approximately 140,000 individuals, comprise this group. This group is made up of individuals who indicated that they had ethics issues during the past five years and sought advice, but did not seek advice from ethics officials because they were not aware that the officials existed. Other employees did not seek advice at all because they didn't know whom to ask. While 100% awareness may never be achievable, the Government may wish to consider exploring ways to expand communication to employees regarding the ethics program and resources to ensure that fewer employees have needs that are not addressed.

Survey findings also confirm that executive branch employees are moderately familiar with program objectives, generally, and most familiar with program objectives involving education and prevention of ethics policy violations. This finding is strongly positive since these two objectives are key goals of the executive branch ethics program.

Awareness and understanding of the program are significantly higher for financial disclosure report filers than for non-filers. This is an important result, given that the job responsibilities of filers are more demanding, their activities are more visible, and their experience with ethics training and other program resources is more extensive. Supervisors also indicated a higher level of program awareness than did non-supervisors, which is consistent with the knowledge that many supervisors are required to file financial disclosure reports because of their job responsibilities.

Measure 2: Program Effectiveness

Executive branch employees are willing to seek advice for ethics concerns

Survey results show that in the past five years, nearly one-fourth of all respondents reported seeking ethics-related advice. Their reported level of inquiries to agency ethics officials and other advisors

demonstrates the importance of these resources. Employees who are required to file financial disclosure reports are also more likely to seek advice.

Most respondents who seek ethics-related advice consult their agency ethics official, and ethics officials were seen as more helpful than other resources that were consulted. Again, financial disclosure report filers were more likely to seek advice from an agency ethics official than were employees who were not required to file. Supervisors were also more likely to seek advice from an agency ethics official than were non-supervisors.

Frequency of training is related to the perception of a positive ethical culture

Survey results show that the frequency of ethics training is directly related to employees' positive perception of an ethical culture and ethical employee behavior in their agencies. In other words, employees receiving more frequent training perceive a more ethical culture than do those receiving less training. Employees who received training once a year or more during the past five years had significantly more positive perceptions of an ethical culture and employee behavior than did those receiving training less frequently. This finding is important because it suggests that receiving training contributes to the perception that the executive branch is "ethical."

Results from the open-ended responses support this finding that training is important. Training and education were cited most frequently as factors that assist employees to act ethically. Similarly, a frequently cited barrier to complying with ethics policies is lack of training, knowledge, or education.

Training methods vary; in-person instructor-led lecture or discussion is perceived as most effective

Ethics program training is provided in various ways, including in-person instructor-led lecture or discussion, videotape, direct communications, reference materials, computer-based training, and teleconferences or satellite broadcasts. Sixty-one percent (61%) of all executive branch employees received training via more than one of these methods during the past five years.

Overall, 56% of all survey respondents indicated they received training through in-person instructor-led lecture or discussion during the past five years. This training method was also rated the most effective type of training. Videotape training was the second most frequent type of training reported (46%) by employees. Significantly fewer employees reported receiving computer-based (13%), or teleconference or satellite broadcast training (10%).

Measure 3: Culture Factors

Employees perceive agency ethical culture as neither strongly positive nor strongly negative

Employees' ratings of culture factors were grouped around the midpoints of the five-point rating scales. These results indicate that employees have neither strong positive nor strong negative perceptions of their agencies' ethical culture. As noted later in this report, the highest-rated culture factors were "Ethical behavior is rewarded," "There is follow-up on reports of ethics concerns," and "Unethical behavior is punished." Culture factors with the lowest ratings were "Open discussions about ethics are encouraged and occur," "Employees are treated fairly," and "Efforts are made to detect violators."

Overall, these results present a basically good picture of executive branch agency ethical culture. In IntraSight_{sm} studies in the private sector, the perception that ethical behavior is rewarded and that reports are followed up were factors highly related to desirable outcomes. Both factors suggest

employees perceive a genuine concern in their organization with a prevention-focused, positive culture.

Executive branch agencies support training with follow-through actions

The three highest-rated culture factors—Ethical Behavior Rewarded, Follow-Up on Reports of Ethics Concerns, and Unethical Behavior Punished—represent an important finding. These results show that employees perceive a commitment to ethics within their agencies—which may be manifested by leadership support for ethics training. This is in contrast to the findings in past research that indicate that for many organizations, training programs are seen as simply one way to satisfy a compliance checklist.

There is a perception of inconsistency between policies and practices

Though not the lowest-rated factor, one area where survey findings were less positive than desired was the finding that employees perceive a gap between what ethics policies and standards say and the way those policies and standards are enacted in day-to-day activity. It is important to note that in past research, consistency between policies and practices was the factor most highly related to desirable outcomes, suggesting that if employees do not believe their organizations “walk the talk,” it will be difficult for an ethics program to achieve desired outcomes.

Measure 4: Culture Outcomes

Employees have favorable perceptions of some outcomes and neutral or negative perceptions of others

Employee perceptions of culture outcomes were favorable with respect to awareness of ethics issues, the occurrence of unethical behavior, and the extent to which employees report ethics violations. Perception was neutral with regards to whether employees seek advice when ethics issues arise. Employees did not perceive that it was OK to deliver bad news or that ethics were integrated into decision-making.

Awareness when issues arise is perceived as the most positive culture outcome

The study results indicated that employees have positive perceptions regarding awareness of ethics issues when they arise. This finding is consistent with the high level of awareness about the program reported by employees. This finding is significant because awareness of ethics issues is one of the primary objectives of the Government ethics program. As with other results, filers reported a more positive perception of this outcome than did non-filers; supervisors reported a more positive perception than did non-supervisors.

Unethical behavior, as defined by the survey, is perceived by employees as infrequent

Overall, employees perceive the frequency of unethical behaviors within their agencies to be relatively low. Among the specific behaviors examined, employees perceived that misuse of Government time or resources occurred most frequently. Conversely, it was perceived that employees accepting payment for doing their Government jobs from people outside the Government rarely occurred. Financial disclosure report filers and supervisors have the most positive perceptions, indicating a lower perception that unethical behavior occurs.

Culture Factors and Outcomes

Ethical culture factors and outcomes are related

The study findings show that relationships exist between the ethical culture factors and outcomes. Seeking advice, integrating ethics in decision-making, and perceiving that it is OK to deliver bad news were the outcomes with the strongest relationships to culture factors.

These are positive results because the first two outcomes are specific objectives of the Government ethics program. These relationships suggest that to enhance these outcomes, attention and remedy should be directed to the most strongly related factors—supervisory and executive leadership attention to ethics, consistency between policies and practices, open discussions about ethics, and follow-up on reports of ethics concerns.

Supervisors play a critical role in promoting and maintaining an ethical culture

Survey results indicate that strong relationships exist between supervisory leadership attention to ethics and program outcomes. This result is supported by the prior research on which the survey is based. The Government may want to consider revising the current practice in which frequency of ethics training is determined by filing status. A revised practice could target frequency of training based on employees' supervisory responsibility. The research also suggests that training should assist supervisors in talking openly about ethics in the workplace, encouraging employees to deliver bad news when needed, and to help employees integrate ethics into decision-making processes.

Executive leadership is also important in supporting an ethical culture

While it is a truism that ethics begins at the top, Survey results confirm that executive leadership attention to ethics is related to several desired outcomes. (Prior research supports this finding.) The only program factor with a stronger relationship to outcomes is supervisory attention to ethics. If leaders do not actively promote and visibly endorse ethics programs and ethical behavior, then desired outcomes will be difficult to achieve.

Program awareness and usefulness are related to outcomes

The study findings show that significant relationships exist between program awareness (i.e., familiarity with the ethics program and the Rules of Ethical Conduct), program usefulness (i.e., in making employees more aware of issues, and in guiding decisions and conduct), and ethics outcomes. Employees seeking advice and integrating ethics in decision-making are outcomes with the strongest relationships to program elements.

Executive Summary Conclusion

The Executive Branch Employee Survey 2000 has provided important, positive evidence of the effectiveness of the executive branch ethics program, and of a basically ethical culture within executive branch agencies. However, the U.S. Office of Government Ethics and agencies should not rest on their accomplishments. It should continue to refine its program, with added attention to supervisory leadership and enhanced communication efforts.

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