

National Institutes of Health

Minutes of the Meeting of Ethics Coordinators and Deputy Ethics Counselors

March 19, 2002 –1:00pm - 2:00pm
Conference Room 7

1. Welcome and Introductions

2. Financial Disclosure and Conflicts

The attendees reviewed who must file the Public Financial Disclosure Report (SF-278) and the Confidential Financial Disclosure Report (OGE-450). Public filers are determined mainly by their pay mechanism (SES, ST, SL, CO-7 and above) and sometimes by position (IC Directors, regardless of pay mechanism). See attachment A1 for criteria for public filers.

Confidential filers are determined by position and responsibilities (see attachment A2). The attendees discussed how their ICs implemented these criteria for procurement staff, employees with purchase cards, and other particular positions. It was noted that some ICs include all procurement staff with a Level I warrant, but not necessarily purchase card holders with the authority to spend the same amount of money. Some ICs consider whether the employee controls resources (e.g., control a budget). There is no single interpretation used across NIH; each IC customizes the criteria to meet their needs.

Attendees reviewed the issue of which form non-GS employees with salaries over the public filer threshold would file. See attachments B and C for additional information. Attachment B is the March 1998 memo from the HHS Designated Agency Ethics Official transmitting the OGE decision that the salary determination for SBRS and similar mechanisms (Title 42) is based on the lowest salary for that mechanism, not the employee's actual salary. So these individuals file the confidential form only if their responsibilities meet the criteria outlined in attachment A2. Attachment C is the notes from a presentation by Stan Olesh (HHS OGC Ethics Division) on the same issue.

The discussion of conflicts and how to deal with conflicts focused on the conflict caused by financial interests in companies related to official work (e.g., pharmaceutical which makes drugs used in a particular clinical trial) and the competitors of that company. It was noted that testing a drug may affect not only the company which makes the drug, but also that company's competitors. For example, if a drug test looked positive, it could negatively affect a competitor's economic standing; and if a drug test looked negative, it could positively affect the competition. So conflict can also be caused by employees holding financial interests in companies which compete with their current work.

Ways to resolve the conflict include sending the employee a 'letter of caution' reminding them of the potential for conflict and what constitutes a conflict.

ACTION: ICs who use 'letters of caution' will share copies with the NIH Ethics Office for distribution to the other ICs.

3. Delegation of Authority

Attendees reviewed the delegation to a Deputy Ethics Counselor which comes from the HHS Designated Agency Ethics Official (DAEO), and the NIH policy on redelegation. The DAEO delegates authority to review and certify financial disclosure and requests for approval of an outside activity. In addition, DEC's are delegated the authority to issue procurement integrity advisory opinions. Attachment D is a sample of such delegation, including a sample procurement integrity advisory opinion.

In June 1994, the NIH set a policy that the DEC could not redelegate authority for compensated outside activities except in specific circumstances, such as extended leave by the DEC. A copy of that authority was distributed as Attachment E.

4. Report of the HHS Ethics Contacts Meeting

The HHS Ethics Contacts met on March 5 and was hosted by FDA, who gave an update on their process for releasing waiver information for specific SGEs based on statute specific to FDA. The main thrust of the discussion was then on how to encourage HHS to set up an HHS Ethics Division web site to facilitate information dissemination. Several attendees volunteered to help draft a proposal and web site to submit to the HHS DAEO for consideration. A subgroup of the HHS Contacts will meet prior to the DEC Workshop in May 2002 to prepare the draft web site.

5. Interesting Ethics Case

Can the recipient of a small conference grant separate out funds from other sources to provide sponsored travel for NIH employees to attend the conference? The NIH portion was very small relative to the total costs of the conference, but the conference was still a prohibited source (grantee). One issue was how much discretion is possible for sponsored travel. No resolution was determined.

6. Announcements/General Information

- As a result of recent misunderstandings by employees about what constitutes a gift, it was suggested that there be targeted ethics training for meeting planner, grants technical assistants, and other employees who routinely interact with hotels to set up meetings. The misunderstood issue concerned use of the 'free' rooms offered by hotels when a meeting or sleeping rooms are reserved. These free rooms belong to the IC and can only be used with permission by the appropriate authority. It was suggested that a module be added to the on-line training specifically for this group of employees.
ACTION: NIH Ethics Office staff will lead the development of a module. DEC's and EC's are asked to volunteer to assist.
- Attachment F to the agenda was a reminder of the *Multi-campus* regulatory exemption at 5 CFR 2640.203(c), which permits an employee to participate in a particular matter affecting one campus of a state multi-campus institution of higher education when the employee is employed at another campus and has no multi-campus responsibilities.
- Distributed at the meeting was the notice from the IRS (Announcement 2002-18) stating that frequent flyer miles and other promotional items will not be taxed. The announcement is available on the OGE web site at: http://www.usoge.gov/pages/whats_new/irs_memo.pdf
- Also distributed at the meeting was a summary of what is meant by "senior" for purposes of Post-Employment (at 18 USC 207). Under 207(c), the rate of basic pay which determines whether an employee is senior means the actual amount of pay the individual employee receives, excluding locality pay and other comparable adjustments. These individuals are

subject to additional post-employment restrictions. This definition is different than that used for financial disclosure filing, where rate of basic pay means the bottom of the scale for that pay mechanism. Therefore, many employees paid under Title 42 file the OGE-450 because of their responsibilities, but may be considered 'senior' for post-employment purposes. Those employees who currently have a base pay greater than \$130,000 are considered 'senior' for purposes of the post-employment statute. This is outlined in OGE Advisory Opinion 98X2, available on the OGE web site at:

http://www.usoge.gov/pages/advisory_opinions/advop_files/1998/98x2.html

- Questions regarding NIH's use 'indefinite' for the time frame for outside activities and how annual updates were completed arose as a result of the IG report on an audit of HRSA's outside activities. It was noted that the DEC's at NIH permit 'indefinite' as an end date for outside activities with no defined end, and that NIH does not require annual approval for each 520, but rather we continue to annual review ongoing outside activities even though the HHS Form 521 is no longer required for that purpose.

Next Meeting: Tuesday, April 23, 2002, Rockledge 2, Rooms 9112-9116

Future Meetings: Dates and locations are currently being finalized for fall 2002. They will be posted on the NIH Ethics Program when they are finalized.

Reminder: HHS DEC Workshop, Tuesday, May 14, 2002

Lister Hill Auditorium (Bldg 38A), 9:00 am to 4:00 pm

Registration and agenda information will be distributed by HHS when it is available