

## National Institutes of Health

### Minutes of the Meeting of Ethics Coordinators and Deputy Ethics Counselors

November 12, 2002 - 1:00 pm to 2:30 pm  
Rockledge II, Room 9104

#### 1. Welcome and Introductions

#### 2. Discussion about OGE 450 Time Frames and Submission Issues

The time frames for appropriate OGE 450 submission and relevant deadline extension requests were reviewed.

- August     Review list of filers, contact Division Directors, Personnel, IC Directors, AOs as needed to verify that all employees who should file are identified
- Sept 30    Each IC DEC and EC distributes all request packages no later than September 30<sup>th</sup>.
- Oct 31     The deadline for employees to submit their completed 450 is October 31<sup>st</sup>, covering the previous fiscal year (October 1 through September 30). Filers cannot sign their form prior to September 30<sup>th</sup> as the report must cover the entire time frame (unless the employee submitted a New Entrant report earlier during the reporting period). Technically, a filer has a 30 day grace period after the due date to submit their completed form, or until November 30<sup>th</sup>.

#### Extensions

If a filer wants the first 45-day extension (which each IC has authority to grant), the extension should be requested in writing prior to the October 31<sup>st</sup> deadline, not during the 30 day grace period. A second 45-day extension, which can only be authorized by OGC, should be requested in writing before the first 45-day extension expires. Send the request to the ethics attorneys in the NIH office of the OGC Ethics Division. The 30-day grace period applies at the end of the filing year and at the end of either extension.

There was a general discussion about 450 filers who either do not file, or who filed late. There is no fine associated with late filing of the 450, such as with the 278s. The following recommendations were made to get non-filers to file on time:

- E-mail reminders, with read/receipt so you know your employee received and opened the message. Send a week prior to due date, on the due date. After the due date, cc the supervisor and/or IC Director.
- Work with supervisors to educate them about the importance of the financial disclosure reports, and ask them to assist when their subordinates do not file.
- To ensure a timely submission of 450s, set a policy that no administrative actions will be approved for any employee whose 450 is not submitted on time, lasting until the employee submits the completed 450. For example, 1) disapprove personnel actions such as annual leave; 2) disapprove official travel; or 3) disapprove further ethics requests.

- For employees who routinely are late, or those who are very late, consider telling the employee that you are reviewing their qualifications for the position. Since filing the 450 is a requirement of the position, the IC must evaluate whether the employee meets the required qualifications for the position, with the possibility of removing the employee and evaluating whether the employee's grade could be maintained.

### **3. Membership on a Board of Directors**

If an employee serves on a Board of Directors, the financial interests of the outside organization (i.e. the organization's stock portfolio), are imputed to the employee. When an employee serves on such a Board in a personal capacity (Outside Activity via approved HHS-520), the employee must be aware of the holdings of the outside organization so that he/she can be disqualified (recused) from official particular matters which affect that outside organization's holdings. Because Board members have a fiduciary responsibility to the organization, it is important that the employee serving on a Board exercise due diligence in knowing the financial portfolio of the organization, to avoid participating personally and substantially in any official particular matter which would affect the financial interests of the organization or its financial portfolio. The best course is to advise the employee during the 520 approval process to make sure that he/she does not personally and substantially participate in particular matters at work that will directly and predictably affect those interests of the outside organization. If he/she discovers a conflict, he/she should contact the DEC/EC to discuss whether a regulatory exemption applies, or a waiver instead of recusal is appropriate. When an employee serves on a Board of Directors in an official capacity, a waiver under 18 USC 208 is needed to resolve the conflict of interest between the employee's fiduciary responsibility to the organization and his or her responsibility to the Federal Government. Employees are NOT required to report the holdings of an entity/organization on their own financial disclosure report.

### **4. Relationship Between Federal Employees and Contract Employees**

This topic was included because of the increasing number of contractors in the workplace, and the confusion about which rules apply when dealing with contractors. From the group discussion the following points were made:

- Any gift from a contract employee to a federal employee should be considered a gift from an outside source and must meet the criteria as outlined in 5 CFR 2635, Subpart B, Gifts From Outside Sources.
- If a contract states that the contract employees are subject to the government's Standards of Ethical Conduct, a gift from a contractor to a federal employee would then be considered under the Gifts Between Employees rules as outlined in 5 CFR 2635, Subpart C.
- Government employees should know they always have the option to decline any gift.
- Awards and other 'perks' that the contract company gives to their own employees are not covered by the Standards of Ethical Conduct for Employees of the Executive Branch, nor other Federal regulations.

### **5. Waivers - What Can and Cannot be Included**

The purpose of the waiver document is to mitigate, or waive, any financial conflict. Those interests which do not result in a actual conflict cannot be included in the waiver document,

because we cannot waive a conflict that does not exist. The following items should **not** be listed on a 208 waiver:

- Publicly traded, widely diversified, mutual funds
- Other federal employment
- Interests without a true financial conflict

Activities that may be only an appearance of conflict should be listed in a 502 Authorization request. An Authorization under 5 CFR 2635.502 only applies in specific party matters, not to matters of general applicability.

## **6. Other Ethics Issues or Questions**

- The NIH Committee Management Office provides the annual ethics training for Special Government Employees, using information provided by the HHS Office of the General Counsel, Ethics Division.
- When completing the Annual Ethics Training Plan, please obtain the number of expected SGEs from your Committee Management Office.

### **Next Meeting:**

December 10, 2002

Bldg 50, Room 1227 (new building near Metro, next to Bldg 12).

### **Future Meetings:**

Dates and locations are posted on the NIH Ethics Program web site at

<http://ethics.od.nih.gov>