



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Office of Inspector General



Report No. **A-1011EOG-012** Final Report

Date: April 2011

Enterprise Ethics Audit

Overview

The Office of Inspector General (OIG) participated in the State of Florida enterprise ethics audit lead by the Office of the Governor's Chief Inspector General. On behalf of the Department of Environmental Protection (DEP), the OIG conducted an agency-wide ethics audit in compliance with the multi-agency audit procedures. The audit included tests of Department internal control structure, compliance, and ethical climate. The results of this audit will be included in a comprehensive report to the Governor with an overall look at ethics in the state government in Florida.

We identified areas to consider for improvement and made recommendations to Division management for strengthening policy practices. We also identified noteworthy accomplishments that should be continued.

We recommend:

- The Office of General Counsel (OGC) and the Bureau of Personnel Services (Personnel) should work together to revise the Code of Ethics and training to outline a process for reporting ethical violations. This process should be clearly communicated to employees.
- We recommend the Department, specifically the Office of General Counsel along with the Bureau of Personnel Services and the Office of Inspector General Internal Investigations Section, consider additional methods to strengthen consistent and uniform discipline of ethical violations.

Noteworthy Accomplishments

A number of noteworthy accomplishments were identified during our audit, including:

- The DEP Code of Ethics and the online training are effective in educating employees, creating awareness, and promoting shared values and norms.
- The DEP Code of Ethics is in compliance with the Governor's Code and Executive Order Number 11-03. In addition, the DEP Code of Ethics is more stringent and goes beyond the Florida Statute requirements.
- Overall, the ethical climate at DEP is positive according to the agency-wide survey results.

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Scope & Objectives

The scope of this audit focused primarily on recent actions taken by the agency to design, communicate, monitor, promote and enforce ethical standards and policies applicable to its employees.

The purpose of this audit is to provide a comprehensive review of ethics in Florida state government.

The objectives were to determine:

- Each agency's implementation of the Office of the Governor's Executive Order Number 11-03, Ethics and Open Government.
- The design and effectiveness of each agency's ethics-related objectives, guidance, and activities in order to identify areas of potential weakness and best practices that could be shared among all agencies.

Methodology

This audit was conducted under the authority of Section 20.055, Florida Statutes (F.S.) and was a component of the Governor's Chief Inspector General's audit plan to provide an overall look at ethics in state government in Florida. The audit was conducted according to the *International Standards for the Professional Practice of Internal Auditing*, published by the Institute of Internal Auditors. This audit included tests of DEP records and procedures as well as interviews and representations from appropriate personnel as determined necessary under the circumstances.

The first component of the ethics audit included an Internal Control Structure checklist based on the Governor's Code of Ethics. To complete this checklist, we performed the following:

- Reviewed applicable executive order, statutes, directives, employee handbooks, and training materials related to the DEP Code of Ethics.
- Analyzed ethics training course topics with topics covered in Florida Statutes, DEP directives, Executive Order Number 11-03, Governor's Code of Ethics, and Florida Commission on Ethics Guide to ensure adequacy.
- Conducted interviews with lead ethics staff in Office of General Counsel, Division of Administrative Services, and Inspector General' Internal Investigation Section.

A second component of the ethics audit included a State Enterprise-Wide Ethical Survey to assess the ethical climate of state agencies. To apply this survey, we performed the following:

- Distributed an ethical survey to all of DEP employees, including multiple districts and divisions to assess the ethical climate.
- Summarized interview responses in a measurable, quantitative format for comparison and analysis.
- Analyzed monitoring and tracking processes of ethics-related investigative cases, employee inquiries, and online training.

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Background

Ethics Background

Merriam-Webster's Dictionary defines ethics as a noun meaning the discipline dealing with what is good and bad and with moral duty and obligation, or a set of moral principles governing an individual or a group.

The 2011 Sterling Criteria for Organizational Performance Excellence states: "Organizations should stress ethical behavior in all stakeholder transactions and interactions. Highly ethical conduct should be a requirement of and should be monitored by the organization's governance body."

Since November 1991, the United States Sentencing Commissions "Federal Sentencing Guidelines Manual" has encouraged organizations (including governments) to adopt formal ethics and legal compliance programs. These include establishing standards and procedures, high-level oversight, due diligence in hiring and promoting, effective communication (including training), compliance monitoring, enforcement, and preventive measures.

In January 1999, Governor Jeb Bush issued Executive Order 99-20, directing the immediate adoption and implementation of a revised Code of Ethics by all Secretaries and Deputy Secretaries of executive agencies under the purview of the Governor. In the Order, the Executive Office of the Governor/Lieutenant Governor was to provide training on ethics to each executive agency head. It was the desire of the Governor that such agencies will, thereafter, arrange for similar ethics training to all employees on an annual basis. Another stipulation of the Order declared that each executive agency shall designate an Ethics Officer. The Ethics Officer shall undertake appropriate measures to ensure that the employees responsible for adhering to the Code of Ethics become familiar with all relevant ethics requirements. In January 2007, Governor Charlie Crist issued Executive Order 07-01, which also directed immediate adoption and implementation of a Governor's Office Code of Ethics and a Code of Personal Responsibility. Executive Order 07-01 both reinforced and built upon sections of Executive Order 99-20.

In January 2011, Governor Scott issued Executive Order 11-03, directing the immediate adoption and implementation of a revised Code of Ethics by the Office of the Governor and that it applies to all employees within the Office of the Governor, as well as the secretaries, deputy secretaries, and chiefs of staff of all executive agencies under the Governor's purview. It requires each executive agency secretary to designate an individual at his or her agency to act as the agency's chief ethics officer, who will make reasonable efforts to ensure that the employees responsible for adhering to this Code become familiar with relevant ethics, public records and open meeting requirements. Each agency is directed to implement any agency-specific adjustments to the code within 45 days of the date of the order. This Code of Ethics imposes more stringent requirements than the Code it revises.

To provide an overall look at ethics in state government in Florida, the Governor's Chief Inspector General has called on all inspectors general to come together to conduct an enterprise evaluation of each agency's ethical climate. Over 20 state agencies have undertaken this assignment. Each team will provide a report to their

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agency head. Based on findings and recommendations in agency reports, the Chief Inspector General will provide a roll-up report to the Governor.

Agency Background

DEP Directive 202 provides DEP with guidance and direction on ethical issues. This directive, along with Chapter 112 F.S. "Code of Ethics for Public Officers and Employees," provides DEP employees a framework for addressing ethical issues in the course of their employment. There are three areas within DEP that share the responsibility of ethical leadership, training, and reporting; which include the Office of General Counsel (OGC), Division of Administration Services' Bureau of Personnel Services, and OIG Internal Investigations Section.

Department Ethics Officer

The Secretary has designated the General Counsel as DEP's Ethics Officer and public records/open government contact person. According to DEP Directive 202, the General Counsel is responsible for acting as the agency's contact person, for providing information, and for interpretation concerning ethical issues. The General Counsel is also the primary liaison between DEP and the Governor's Office of Open Government for purposes of training and compliance. Staff from OGC has worked with the Bureau of Personnel Services to incorporate ethical standards in the DEP Employee Handbook as well as the new employee and annual training materials. According to OGC staff, the current Secretary has demonstrated and emphasized a heightened level of ethical awareness and accountability since his appointment.

The Division of Administration Services' Bureau of Personnel Services is responsible for providing ethics training courses, course tracking, and compliance monitoring to ensure employees are compliant with DEP Directive 202. The bureau coordinates DEP-wide ethics training program, which is presented in an online format, and is focused on employee ethical development, professional skills enhancement, and compliance training. The courses promote ethical awareness through the presentation of popular ethical topics, test questions, and likely scenarios.

Results & Conclusions

Ethics Policy and Training

Directive DEP 202 is the Code of Ethics for the agency and it is updated by the Ethics Attorney from OGC. The Code of Ethics establishes policies and procedures for employees and provides ethical standards, definitions, and training information. The code was revised by OGC to comply with the changes required by Executive Order Number 11-03. However, it does not include a process for reporting violations.

Code of Ethics training is housed and administered by the training section in the Division of Administrative Services. The training section began requiring ethics training in FY 2007-2008. Training is completed through

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the online training platform-ClarityNet. ClarityNet is a learning management system that not only houses ethics training, but all other DEP-related compliance training. This learning management system also generates monthly reports for the training section to help monitor and track training deadlines.

The DEP online Code of Ethics training course contains seven sections including:

1. gifts, restrictions, and exceptions,
2. honoraria,
3. doing business with DEP,
4. moonlighting,
5. anti-nepotism and post-employment restrictions.

This course is a mandatory requirement for all new employees and must be completed within 30 days. A combination refresher course must be taken annually. The training section informs supervisors when an employee is not in compliance with the training requirements. The training in this course covers the DEP code of ethics.

Chief Ethics Officer

The General Counsel at DEP is also the Chief Ethics Officer. An ethics attorney assists the chief ethics officer with ethical issues and training material. Regular meetings are not held to discuss ethics, but the chief ethics officer and the ethics attorney maintain contact and discuss ethics whenever necessary. An annual report on possible/potential/actual violations does not have to be submitted by OGC.

The Chief Ethics Officer position description does not specifically address responsibilities and percentage of time, but the OGC makes reasonable efforts to ensure that the agency's employees become familiar with relevant ethics, public records, and open meeting requirements by providing the Division of Administrative Services with training material and contact information in the training and code of ethics for any ethics related questions. The Ethics Attorney tracks, monitors, and analyzes employee ethic inquiries in an electronic file. The file lists the date of inquiry and response, employee's name requesting the information, division, topic, inquiry, and response. Inquiries resulting from casual conversations are not included in this file and are estimated to be an additional ten percent.

The table below summarizes the results from the inquiry tracking sheet maintained by OGC.

Fiscal Year	Gifts	Honorarium	Personnel/ Dual Employment	Anti- Nepotism	Post Employment	FSECC/ Fundraising	Travel	Membership/ Representation	Contract/Permit Conflict of Interest	Use of State Property	Other	Total
FY 06-07	11	3	5		2	1	5	8	1	1	2	39
FY 07-08	49	5	11	1	5	5	7	15	4	2	13	117
FY 08-09	41	16	21	1	1	11	3	32	11	7	12	156
FY 09-10	30	14	16	0	2	8	10	27	6	5	5	123

Ethics inquiries have increased since the Department-wide annual training began in FY 2007-2008. The increase in inquiries were likely caused by the heightened Department awareness of ethical issues.

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Code of Ethics Enforcement

DEP Directive 435, Conduct of Employees provides guidance related to enforcement actions of employee ethical behavior. In May 2002 this directive was changed to remove the disciplinary matrix. Applying a matrix that would be all-inclusive of behavioral infractions connecting all-encompassing disciplinary actions was not feasible. The directive states that management is responsible for ensuring reasonable, consistent, and uniform disciplinary actions are equitably applied. The directive is consistent with statutory requirements, but it does not state specific consequences for different types of ethical violations.

Some of the survey comments indicated that employees would like to be able to report potential ethical violations anonymously, for fear retaliation. DEP does not have an ethics hotline for employees but complaint forms are available on the Inspector General's web site.

OIG's Internal Investigations Section is responsible for investigating complaints related to ethics violations. The Internal Investigations Section tracks the ethics related cases.

Department Ethical Climate:

An agency-wide survey was distributed to 4,653 employees via e-mail to determine the ethical climate at DEP. The response rate was 36% with 1,697 employees responding. See the following table:

Survey Question	Strongly Agree	Agree	Disagree	Strongly Disagree	Don't Know or no opinion	Yes	No
My agency's senior management models and promotes ethical behavior.	40.7%	41.6%	4.8%	2.4%	10.5%		
My supervisor models and promotes ethical behavior.	59.2%	32.4%	3.7%	2.6%	2.1%		
My coworkers model and promote ethical behavior.	40.7%	50.1%	5.4%	1%	2.8%		
I know how to report suspected unethical behavior and fraud within my agency.						89%	11%
I have been adequately trained by my agency to know what constitutes ethical and unethical behavior.	56.1%	40.4%	1.7%	.03%	1.5%		
My agency has written ethical guidance, such as a code of conduct, policy and/or other guidelines.					5.7%	94%	.4%
The agency's ethical guidance, including code of conduct, policy and/or other guidelines, is clear and comprehensive.	42.3%	47.9%	3.6%	.7%	5.5%		
I believe my agency has made clear my ethical responsibilities.	47.9%	46.9%	3%	.4%	1.9%		
Unethical conduct is appropriately handled by management in my agency.	27.2%	34.4%	8.8%	3.2%	26.5%		
Do you know of instances where benefits were accepted that might be perceived as potentially						2.9%	97.1%

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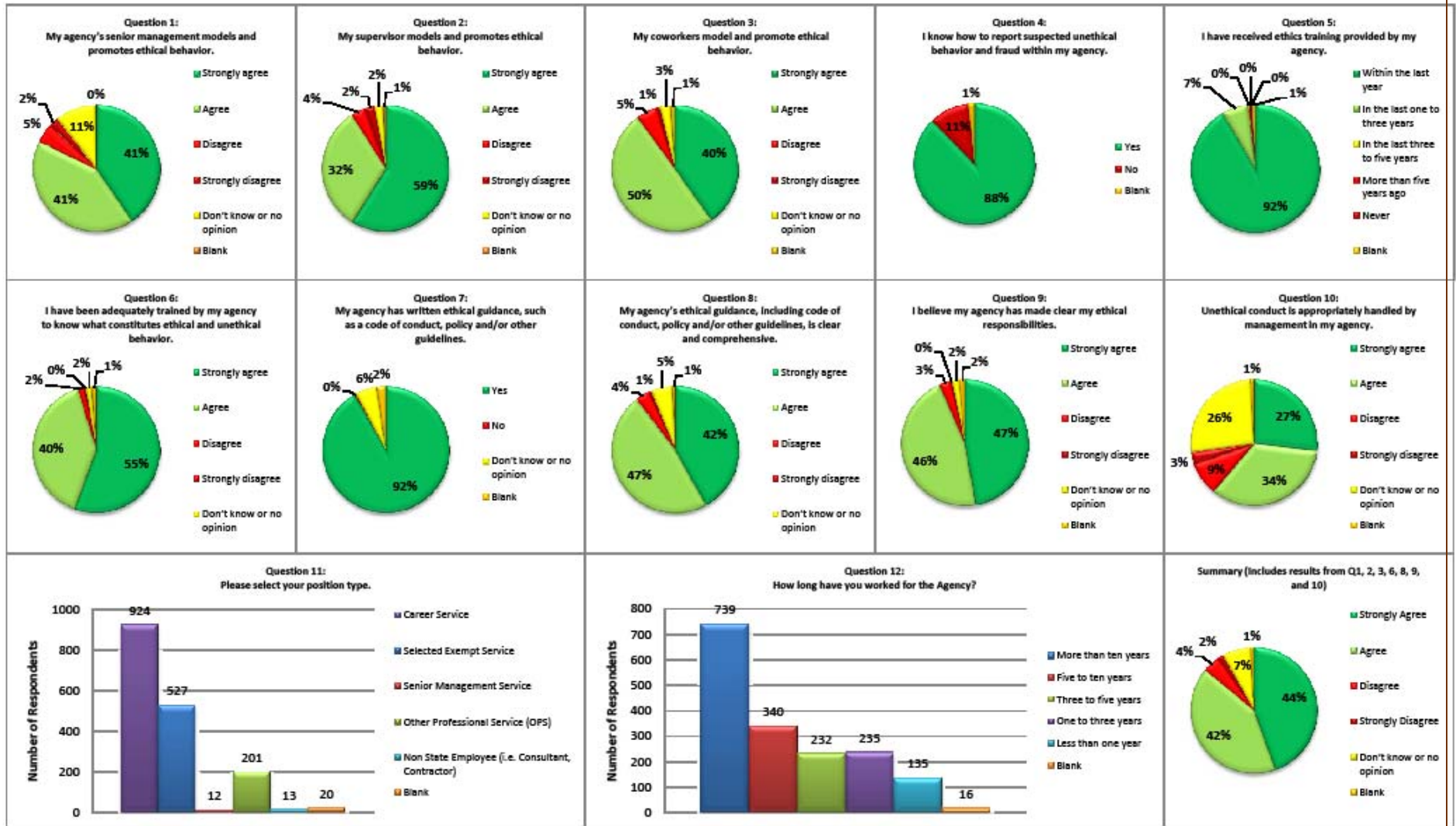
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influencing or rewarding their job-related decisions?							
If you answered yes to the question above, did you report the instance?						13%	87%
Do you personally know of any unethical behavior or fraud in the agency?						9.9%	90.31%
If unethical behavior was observed, did you report it?						51.8%	48.2%

Overall, the survey responses were positive. The following graph shows that most respondents either agreed or mostly agreed with the survey questions.

Ethical Climate Survey Results - DEP - 1,697 Respondents



Produced from the Ethical Control Survey results.

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The survey allowed the respondents space to share comments. Of the 1,697 respondents, we received 251 comments. These comments were analyzed and grouped into the following five categories:

Comment Category	Number of Comments
Concerns of unequal practices and treatment	76
Favorable view of department ethics	52
Neutral view of department ethics	45
Negative view of senior management	44
Other	34

A significant number of comments related to unequal practices and treatment were related to concerns regarding retaliation after reporting unethical behavior and their confusion on how to report a violation. Another common topic among the comments was the lack of clear and uniform discipline for ethical violations imposed by management.

Best Practices

The Nineteenth Statewide Grand Jury Report analyzed public corruption in Florida and recommended solutions. Some of the solutions in the report relate to ethical standards that could be applied throughout the state to strengthen the ethical structure within each agency. The best practices listed from the Grand Jury Report that would be helpful to the Department included the following:

- A tip line and/or website for the Inspector General’s Office providing a method for employees to voice ethical concerns.
- A track sheet of the ethical inquiries submitted to OGC to be used by personnel to continually update and improve training topics.
- Regular ethics meetings of Department management to discuss current topics and issues.

Findings & Recommendations

Finding 1: Code of Ethics: Directive DEP 202

In order to implement an effective ethics policy, an organization has to have clear and specific guidance. Employees should be informed in the training of the process for reporting ethical violations. In addition, the policy should guide the process for reporting of such violations.

Directive DEP 202 states the code of ethics policy, procedures, and definitions for employees. The directive directs employees to the ethics officer, ethics attorney, or OGC intranet site for further questions. Clear direction for employees to report ethical violations and the process to report such violations is not included.

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The Governor's Code of Ethics directs every agency to have the highest standards of ethics and make any necessary adjustments to maintain and effectively enforce those standards. Providing direction for employees to report ethical violations and the process to report those violations would clarify the policy and strengthen the ethical structure.

Accordinging survey comments, some employees witnessed unethical conduct but did not know how to report the violations. Others did not report the violations because of retaliation concerns. Addressing these issues would strengthen the ethical climate at DEP.

Recommendation

We recommend the Department revise the Code of Ethics and training to outline a process for reporting ethical violations.

Finding 2: Conduct of Employees: Directive DEP 435

For an effective ethics policy, an organization needs a zero-tolerance level for ethical misconduct. Ethical misconduct should be dealt with swiftly, firmly and, justly within an organization. In addition, senior leaders should be models of ethical behavior.

When ethical investigations are conducted, directive DEP 435 Conduct of Employees provides general guidance related to enforcement actions for employee behavior. In 2002, a change was made to the directive eliminating a matrix that failed to be all-inclusive capturing all behavioral infractions warranting disciplinary action and all-encompassing on what those actions would entail. Because the 2002 guidance supports management discretion, enforcement of ethics violations by employees may have different outcomes for the same offense. Management decides the appropriate enforcement action on a case by case basis.

Some of the survey comments indicated a concern for lack of consistent discipline by management regarding reported unethical behavior. Specific consequences for ethical violations would help management with consistent discipline.

Recommendation

We recommend the Department, specifically the Office of General Counsel along with the Bureau of Personnel Services and the Office of Inspector General Internal Investigations Section, consider additional methods to strengthen consistent and uniform discipline of ethical violations.

Closing Comments

OIG would like to recognize members of the Department senior team, OGC, and Bureau of Personnel Services and staff for their assistance during the course of this audit. Our fieldwork was facilitated by the cooperation and assistance provided by all personnel involved. We appreciate the professionalism and dedication of the staff of the organization.

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To promote accountability, integrity and efficiency in state government, the OIG completes audits and reviews of agency programs, activities, and functions. Our audit was conducted under the authority of section 20.055, F.S., and in accordance with the International Standards for the Professional Practice of Internal Auditing, published by the Institute of Internal Auditors, and Principles and Standards for Offices of Inspector General, published by the Association of Inspectors General. The audit was conducted by Carmen Saras and supervised by Valerie Peacock.

Please address inquiries regarding this report to the OIG's Audit Director by telephone at (850) 245-3151. Copies of final reports may be viewed and downloaded via the internet at <http://www.dep.state.fl.us/ig/reports/default.htm>. Copies may also be obtained by telephone (850) 245-3151, by fax (850)245-2970, in person or by mail at Department of Environmental Protection, Office of Inspector General, 3900 Commonwealth Boulevard, Mail Station #41, Tallahassee, FL 32399.

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TO: Roy Dickey, Acting Inspector General

FROM: Herschel T. Vinyard, Secretary *HTV*

DATE: April 27, 2011

SUBJECT: March 2011 Draft Enterprise Ethics Audit (A-1011-EOG-012)

I have reviewed the Office of Inspector General's March 2011 Draft Enterprise Ethics Audit (A-1011-EOG-012) and agree with its finding and recommendations. I have asked Tom Beason and Cynthia Kelly to work together to outline in our Code of Ethics and training program a process for reporting ethical violations. I have also asked Tom and Cynthia to work with your office to evaluate additional methods to strengthen consistent and uniform discipline of ethical violations.

cc: Jennifer Fitzwater
Tom Beason
Cynthia Kelly