



Millennium Challenge Corporation

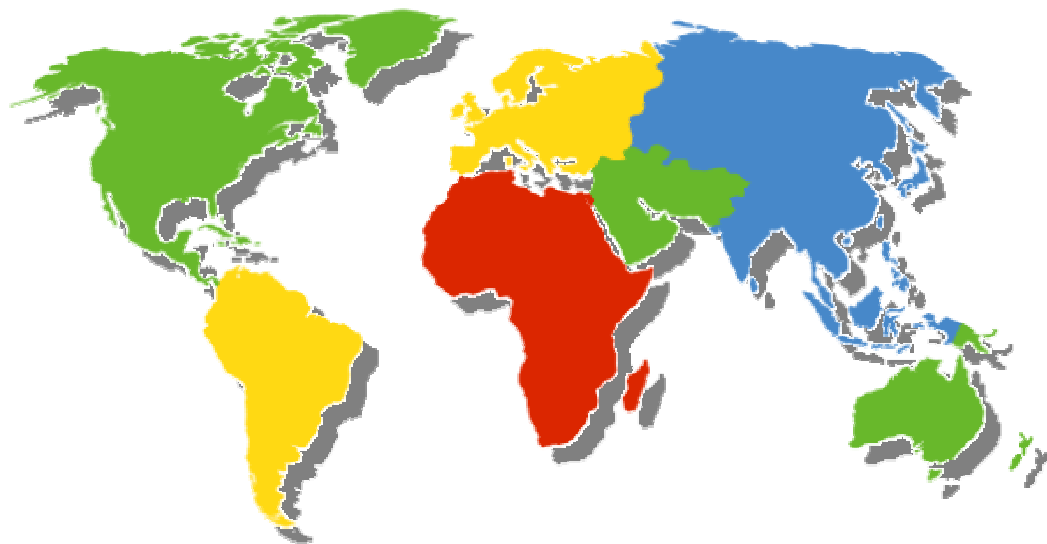
Reducing Poverty Through Growth

OFFICE OF INSPECTOR GENERAL

Audit of the Millennium Challenge Corporation's Compliance with Federal Requirements for Annual Ethics Training and Financial Disclosure Reports for Selected Employees

Report No. M-000-05-001-P

March 31, 2005



Washington, D.C.



Millennium Challenge Corporation

Reducing Poverty Through Growth

Office of Inspector General

March 31, 2005

MEMORANDUM

FOR: Vice President and General Counsel, Millennium Challenge Corporation,
Jon A. Dyck

FROM: Assistant Inspector General for the Millennium Challenge Corporation,
Henry L. Barrett /s/

SUBJECT: Audit of Millennium Challenge Corporation's Compliance with Federal
Requirements for Annual Ethics Training and Financial Disclosure Reports
for Selected Employees (Report No. M-000-05-001-P)

This memorandum transmits our final report on the subject audit. In finalizing the report, we considered your comments on our draft report and have included them in their entirety as Appendix II.

The report contains two recommendations for corrective action. Based on your written comments and the supporting documentation provided we consider that final action has been taken on both recommendations.

I appreciate the cooperation and courtesy extended to my staff during the audit.

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Summary of Results

The Assistant Inspector General for the Millennium Challenge Corporation (AIG/MCC) conducted this audit as a part of its fiscal year 2005 audit plan to determine whether the Millennium Challenge Corporation (MCC) had complied with federal requirements for financial disclosure reporting and annual ethics training for selected employees. Overall, MCC has made significant progress in the development of its ethics program. MCC complied with federal regulations for annual ethics training providing in-person training for all of its employees. In the area of financial disclosure reporting, some public disclosure reports were not timely filed and the required late fee was not collected (see pages 7-8).

Four of 38 MCC employees¹ that were required to file public financial disclosure reports did not timely file their reports and in three of these four cases the required late filing fee had not been collected nor had a written waiver of the fee been requested or prepared. Prompt filing of financial disclosure reports is necessary to provide protection from possible questions of conflicts of interest (see pages 8-10).

Other areas requiring improvement include: (1) preparing documentation concerning MCC's review of financial disclosure reports for MCC board members who are officials in other government agencies, and (2) identifying in MCC's ethics program procedures how it will handle the ethics requirements of employees detailed from other government agencies (see page 10).

This report includes two recommendations to address the issues noted regarding late filing of public financial disclosure reports. MCC has taken final action on both of the recommendations. For the first recommendation, it modified its written procedures to reduce the number of public filers in the future and it waived late filing fees in the cases cited. For the second recommendation, MCC revised its procedures to address how it will obtain reports from incumbent public filers. MCC also took action to address the other noted areas requiring improvement (see page 11). Management comments are included in their entirety in Appendix II (see page 15).

Background

Federal government regulations require government agencies to establish an ethics program for its employees. The purpose of the "ethics in government" program is to ensure that executive branch decisions are neither tainted by nor appear to be tainted by any question of conflicts of interest on the part of the employees involved in the decisions. A government agency's ethics program includes collecting and reviewing financial disclosure reports, providing annual ethics training to employees, counseling employees on post employment matters

¹ For purposes of this audit, "employees" included direct hire personnel, personal service contractors and members of MCC's Board of Directors.

and ethics issues, preparing written opinions on ethics issues, and handling disciplinary actions for ethics violations.

The Office of Government Ethics (OGE) provides overall policy direction to federal agencies regarding their ethics programs. Because the integrity of decision-making is fundamental to every government program, the head of each agency has primary responsibility for the day-to-day administration of the ethics program for the employees who carry out the substantive programs of that agency. The head of each agency selects an individual employee to serve as the agency's Designated Agency Ethics Official (DAEO). MCC's DAEO is the Assistant General Counsel for Administration. Ethics program activities managed by the MCC's ethics staff and reviewed in this audit are (1) collection of public financial disclosure reports, (2) collection of confidential financial disclosure reports, and (3) annual ethics training.

Public Financial Disclosure: Certain high-level federal employees are required to disclose, in a public system, personal financial interests and affiliations for themselves, their spouses and minor children. These public financial disclosures are made, in part, to demonstrate that the officials are able to carry out their duties without either actual or apparent conflicts of interest. Disclosures also assist agencies in maintaining the integrity of their essential programs and counseling employees on avoiding conflicts of interest. Thirty-eight MCC employees should have filed public financial disclosure reports as of December 1, 2004.

Confidential Financial Disclosure: The confidential filing system requires other, less senior employees, whose government duties involve significant discretion in certain sensitive areas, to report financial interests and outside business activities to their employing agencies. Thirteen MCC employees were required to file confidential financial disclosure reports as of December 1, 2004.

Annual Ethics Training: Each agency is responsible for developing an annual ethics training program for its employees. Ethics training seeks to ensure all federal employees are aware of their responsibilities in conducting themselves and the business of the Government in a manner that is consistent with the standards of conduct expected of public servants. This includes not only informing employees, but also helping them understand in practical terms how those statutes and regulations might impact their actions as individual employees. MCC required all of its employees to attend an initial ethics orientation.

MCC is a relatively new U.S. government entity that was established in January 2004 to further global development by promoting economic growth, eliminating extreme poverty, and strengthening good governance, economic freedom, and investment in people. MCC's first DAEO was appointed on May 10, 2004. MCC also appointed an alternate DAEO and, in August 2004, hired a paralegal that performs duties as the Ethics Program Administrator.

**Audit
Objective**

The Assistant Inspector General for the Millennium Challenge Corporation (AIG/MCC) conducted this audit as a part of its fiscal year 2005 audit plan. The objective of this audit was to answer the following question:

Did the Millennium Challenge Corporation comply with federal regulations for financial disclosure reports and annual ethics training for selected employees?

A description of our scope and methodology is contained in Appendix I.

**Audit
Findings**

Overall, the Millennium Challenge Corporation (MCC) has made significant progress in the development of its ethics program. MCC complied with federal regulations for annual ethics training. In the area of financial disclosure reporting, four MCC employees did not timely file their public financial disclosure reports and late filing fees were not collected or waived in three of these cases. Prompt filing of financial disclosure reports is necessary to provide protection from possible questions of conflicts of interest.

MCC ethics staff use automated spreadsheets to track federal requirements for public financial disclosure reports, confidential financial disclosure reports, and annual ethics training. Since MCC's inception, MCC ethics staff have made significant strides in establishing MCC's notification, review and tracking systems, which contained adequate and accurate information to allow MCC officials to determine whether MCC is complying with federal ethics program requirements. Financial disclosure reports and training certifications are also maintained that support data entries into the tracking system. In addition, MCC ethics staff have prepared detailed policies and procedures covering the ethics program that describe how MCC is implementing the federal ethics requirements.

A review of MCC's tracking system for ethics training showed that all 60 employees that required the training—as of December 1, 2004—had actually received the training. MCC went beyond the minimum ethics training requirements by giving in-person training by the DAEO to all of its employees. MCC supplemented its training program with brochures that highlighted the key statutory and regulatory provisions applicable to federal employee ethical behavior. We also noted—as of our audit cut-off date—that 12 of 13 employees required to file confidential financial disclosure reports had submitted their reports. MCC officials did not designate positions requiring such reports until November 2004.

However, 3 of 38 employees—new entrant filers—required to file public financial

disclosure reports did not timely file their reports and the required late filing fee had not been collected nor had a written waiver of the fee been requested or prepared. Also, MCC did not receive the disclosure report for an additional “incumbent filer” employee until over 200 days of MCC employment. The filing deadlines for public financial disclosure reports had not been strictly followed as MCC established operations and its ethics program. Prompt filing of financial disclosure reports is necessary to provide protection from possible questions of conflicts of interest.

Other areas requiring improvement that were noted include: (1) preparing documentation concerning MCC’s review of the financial disclosure reports of MCC government board members, such as the Secretary of State and Secretary of the Treasury, who file disclosure reports with their government agencies, and (2) identifying in MCC’s procedures how it will handle the ethics requirements of employees detailed from other government agencies.

Late Filing of Public Financial Disclosure Reports

Summary: The Millennium Challenge Corporation (MCC) did not collect public financial disclosure reports for four of its employees within the specified timeframe including allowable extensions. Three of 38 MCC employees—“new entrant” filers—required to file public financial disclosure reports did not file their reports within 150 days of being employed. The required late filing fee of \$200 had not been collected from the employees nor had a waiver of the fee been requested or prepared. In addition, MCC did not receive and review the disclosure report for an additional “incumbent filer” employee until over 200 days of MCC employment. The filing deadlines for public financial disclosure reports had not been strictly followed in MCC’s first year of operations as MCC established operations and its ethics program. Prompt filing of financial disclosure reports is necessary to provide protection from possible questions of conflicts of interest.

Federal requirements for financial disclosure reports are contained in 5 C.F.R. 2634 which sets forth uniform procedures and requirements for financial disclosure with respect to executive agencies.² According to 5 C.F.R. 2634.201, individuals required to file a public financial disclosure report (“incumbent” filers) must submit the report by May 15 each year. An individual assuming a public filer position (a “new entrant”) must file a public financial disclosure report within 30 days of assuming the public filer position. Individuals who have left a public filer position with a prior agency within 30 days of assuming a new public filer position with another agency do not have to file a new entrant report, however, the regulation recommends that the new agency obtain a copy of the

² Government corporations also fall within the definition of executive agencies under this regulation.

individual's last incumbent public financial disclosure report to review for possible conflicts with their new employment. There are similar requirements in 5 C.F.R. 2634.903 regarding employees hired from other agencies that file confidential financial disclosure reports.

Filing extensions of up to 90 days are permitted for good cause under 5 C.F.R. 2634.201. Finally, 5 C.F.R. 2634.704 requires any reporting individual who is required to file a public financial disclosure report to remit a late filing fee of \$200, payable to the U.S. Treasury, if such report is filed more than 30 days after the last day of any filing extension period. If extraordinary circumstances exist that would justify a request for a fee waiver, 5 C.F.R. 2634.704 contains provisions to allow a written waiver request by the employee and granting of a waiver by the agency. The late filing fee is not an exclusive remedy and administrative remedies for failing to file or filing late include removal, suspensions, and reductions in grade or pay.

MCC ethics staff maintain an automated spreadsheet to identify employees that are required to submit financial disclosure reports and to track the submission, review, and certification of these reports. The tracking system and supporting documentation show that MCC did not collect public financial disclosure reports for four of its employees within the specified timeframes. Three of 38 MCC employees (new entrants) required to file public financial disclosure reports had filed their reports more than 150 days after being employed. The late filing fee of \$200 required by 5 C.F.R. 2634.704 had not been collected from the employees nor had a waiver of the fee been requested or prepared.

Also, MCC did not have specific procedures for obtaining financial disclosure reports from its incumbent public filers. In one case, an "incumbent" filer hired from another agency in late May 2004 had filed a late report. The employee did not promptly provide a copy of the report filed with the other agency nor did MCC promptly request a copy from the other agency. MCC did not receive the report until December 3—201 days after the employee started work with MCC. To ensure there are no conflicts with MCC activities, MCC should ensure that incumbent filers promptly either file a new report or provide a copy of their last report from their prior employer. Alternatively, MCC ethics officials should request the report from the prior employer themselves.

MCC ethics officials explained that the filing deadlines for public financial disclosure reports had not been strictly enforced as the newly created MCC established operations.

Prompt filing of financial disclosure reports is one of the components of an ethics program necessary to ensure individuals and MCC are protected from possible questions of conflict of interest. The late filing fee requirement and other suggested administrative remedies are a reflection of the importance that is placed

on the timely submission of these reports. An employee's failure to file a required public financial disclosure report creates potential risk to the integrity of Government programs. Therefore, we are making the following recommendations:

Recommendation No. 1 – We recommend that the Millennium Challenge Corporation collect the required late filing fee from the three new entrant employees who filed their public financial disclosure reports after the required deadline.

Recommendation No. 2 – We recommend that the Millennium Challenge Corporation modify its financial disclosure reporting procedures to specifically address how it will obtain reports for its incumbent public filers.

Areas for Improvement

Two other areas requiring improvement were noted during the audit: (1) preparation of documentation concerning MCC's review of the financial disclosure reports of MCC government board members who file disclosure reports with their respective organizations, and (2) identification in MCC's procedures how it will handle the financial disclosure reporting requirements of employees detailed from other government agencies.

The MCC Board of Directors includes four high-ranking U.S. Government officials including the Secretary of State, Secretary of the Treasury, the Administrator of the U.S. Agency for International Development, and the U.S. Trade Representative. Although MCC officials report that they do communicate with ethics officials of these organizations concerning matters of joint interest and their review of the financial disclosure reports of these officials, MCC should maintain a written record that identifies how they ensured these financial disclosure reports were reviewed for possible conflicts of interest concerning MCC operations and the results of the review.

In another area, MCC's written procedures for financial disclosure reporting do not address how or when they will apply to employees that have been detailed to MCC from other federal agencies. In its first year of operations, MCC made wide use of detailed employees for administrative convenience. Although most of these employees remained with MCC for 60 days or less, at least one employee was detailed from the Department of State for six months before being permanently hired by MCC. No financial disclosure report was requested or obtained from the employee until after being hired by MCC. Although detailed employees may have met federal requirements for financial disclosure reporting with their "parent" organizations, MCC does have a responsibility to ensure

employees who work at MCC for extended periods do not have any conflicts of interest with MCC operations. MCC's procedures should address this issue and be applied accordingly.

We are making no formal recommendations in these areas because MCC has already addressed them.

Evaluation of Management Comments

In responding to the draft report, MCC disagreed with Recommendation No. 1 concerning collecting the required late filing from the three new entrant employees who filed their public financial disclosure reports after the required deadline. Subsequent to the audit, MCC revised its public filing requirements consistent with advice from the Office of Government Ethics. Under its revised requirements, approximately one-half of the employees who were asked to file public financial disclosure reports in 2004 will no longer be required to do so including the three employees cited in Recommendation No. 1. Accordingly, MCC waived the late filing fee for these employees. MCC's actions effectively address the recommendation and federal requirements for late public financial disclosure reports to either collect a late filing fee or the granting of a waiver by the employing agency.

Regarding Recommendation No. 2, to modify its financial disclosure reporting procedures, MCC implemented this recommendation by revising its procedures to specifically address how it will obtain reports for its incumbent public filers.

Based on MCC's comments and the supporting documentation it provided we consider that MCC has taken final action on both recommendations.

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Scope and Methodology**Scope**

The Assistant Inspector General for the Millennium Challenge Corporation (AIG/MCC) audited selected aspects of MCC's ethics program in accordance with generally accepted government auditing standards. The audit scope was limited to a review of MCC's compliance with federal requirements that selected employees receive ethics training and file annual financial disclosure reports. The audit primarily evaluated MCC's management controls and tracking systems that are intended to (1) identify MCC personnel subject to ethics program requirements, and (2) maintain documentation that the requirements were met. The audit focused on MCC's success in meeting these ethics program requirements for employees hired from MCC's inception in early 2004 until December 1, 2004.

The audit did not attempt to evaluate the quality and content of the ethics training and did not assess the process for reviewing the information contained in the financial disclosure reports for possible financial conflicts of interest. Other aspects of MCC's ethics program including written opinions and counseling, disciplinary actions for violations and the approval system for outside activities were also not a part of the audit scope.

Audit fieldwork was conducted at MCC's headquarters in Arlington, Virginia between November 29, 2004 and January 11, 2005.

Methodology

In order to gain an understanding of the ethics program as it relates to the audit objective, we held discussions with officials of MCC's Office of General Counsel who administer the MCC ethics program.

In addition, we also performed the following steps:

- Reviewed relevant laws, regulations, and guidance to gain an understanding of ethics requirements within the Federal Government.
- Obtained a listing of MCC's personnel and used this as the basis for assessing the completeness of MCC's ethics program tracking systems.
- Reviewed MCC's tracking system for ensuring employee compliance with ethics training and financial disclosure requirements.
- Reviewed physical copies of a selected number of financial disclosure reports to confirm they had been submitted, and reviewed a selected number of ethics training certification forms to confirm the training had been received.

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**Management
Comments**



Millennium Challenge Corporation

Reducing Poverty Through Growth

March 21, 2005

MEMORANDUM

TO: Henry L. Barrett, Assistant Inspector General, MCC

FROM: Jon A. Dyck, Vice President and General Counsel /s/

SUBJECT: Management Comments -- Audit of MCC's Compliance with Federal Requirements for Annual Ethics Training and Financial Disclosure Reports for Selected Employees (Report No. M-000-05-00X-P)

Attached please find Millennium Challenge Corporation (MCC) management's comments to the Inspector General's (IG) draft audit report relating to the MCC ethics program. MCC management appreciates the opportunity to comment on the draft report. We have reviewed the draft, discussed it with MCC ethics staff, and offer the following comments, which we trust you will consider as you prepare the final report.

If you have any questions about these comments please contact John Mantini, MCC's Designated Agency Ethics Official, at 202-521-3863 or mantinijc@mcc.gov. Thank you and your staff for assisting us in this important endeavor and for providing MCC management the opportunity to comment on the draft report.

Attachment

**MCC MANAGEMENT COMMENTS TO
DRAFT IG AUDIT REPORT ON MCC ETHICS PROGRAM**

I. GENERAL COMMENTS

MCC management appreciates the importance of an effective ethics program and is committed to ensuring that our ethics program not only complies with all applicable laws and regulations but is a model program as well. As such, we appreciate the report's recognition that MCC has made considerable progress in the overall development of its ethics program and that MCC has not only met, but exceeded, federal ethics training requirements. We also take the two recommendations included in the report seriously, the first of which we disagree with in light of the circumstances involved and the second of which has already been implemented.

As a general matter, we believe the final report should include some additional facts, including the following:

- prior to MCC's appointment of its Designated Agency Ethics Official (DAEO) in May 2004 -- when MCC staff consisted of primarily detailees from other agencies -- MCC coordinated with the United States Agency for International Development (USAID) to ensure that ethics services were provided to MCC. USAID's ethics staff provided MCC staff (including detailees) with ethics briefings and were available to answer ethics questions from MCC staff.
- the report notes that 12 of 13 employees required to file confidential financial disclosure reports filed the reports. The report should also note that the thirteenth report was not due until after the period of the audit. The omission of this latter fact could leave the reader with the incorrect impression that MCC did not timely collect the report.
- the report should make it clear that at all times during the development of its ethics program, MCC worked closely with the Office of Government Ethics (OGE), including whether to waive late filing fees for first time public filers during MCC's start-up year (the subject of Recommendation 1).

The inclusion of the additional facts identified above and in our specific comments below is important to provide added context to the report and to give readers of the report a better sense of the overall progress of MCC's ethics program.

II. RESPONSE TO SPECIFIC RECOMMENDATIONS

MCC comments on Recommendation 1: Recommendation 1 of the draft audit report asks MCC to collect the late filing fee of \$200 for three new entrant filers who failed to file their public financial disclosure reports on time. MCC appreciates the importance of the timely filing of financial disclosure reports. However, as MCC ethics staff explained to the auditor and during the exit conference, since MCC has subsequently determined that these employees should not have been asked to file the reports in the first place, MCC does not believe it would be appropriate to collect late fees from them.

During MCC's first year of operations, MCC ethics staff erred on the side of caution in determining which employees should be asked to file public financial disclosure reports. Upon subsequent review of MCC's public financial reporting requirements with OGE, however, it was agreed that MCC ethics staff

had been overly cautious in requiring public financial disclosure reports from certain MCC staff (mid-level staff below the Managing Director level).

MCC has since revised its public filing requirements consistent with advice from OGE. Under the revised public filing requirements, 20 of the 38 employees who were asked to file public financial disclosure forms in 2004 -- including the three first-time filers to whom this recommendation applies -- will no longer be required to submit public financial disclosure reports.

In light of these circumstances, MCC ethics staff determined (and the OGE Desk Officer concurred) that it would be inappropriate for MCC to penalize these late filers with a late fee. MCC management believes this decision was a reasonable one. Therefore, we request that you eliminate Recommendation 1 from the report.

MCC comments on Recommendation 2: Recommendation 2 of the draft audit report states that MCC should supplement its written financial disclosure reporting procedures to address specifically how it will obtain reports from incumbent filers. MCC emphasizes that it did in fact follow all of the substantive requirements of OGE regulations in this area during the audit period, which specify that an agency should contact an incumbent filer's previous agency, have the employee provide a copy of the most recent public financial disclosure report, or have the employee file a new report. We acknowledge a failure to document these particular procedures in writing and have since explicitly referenced the relevant OGE regulations in MCC's written procedures concerning incumbent filers. While there was some confusion in obtaining the incumbent public financial disclosure report of the MCC employee identified in your report (MCC ethics staff explained to the auditor in some detail the voluminous back and forth correspondence between MCC and the employee's former agency), MCC ethics staff is confident, in light of the unique circumstances involved in that situation, that problems with incumbent filers in the future are unlikely.

We request that the text of the report be modified to provide this additional context and that Recommendation 2 be modified to note that the recommendation has been implemented.

III. AREAS FOR IMPROVEMENT

The draft report notes as an "area for improvement" that MCC ethics staff should identify in MCC's ethics procedures how MCC will handle financial disclosure reporting requirements for employees detailed from other federal agencies. MCC notes that most of its detailees during the audit period were detailed only for a short period pending development of MCC's payroll systems and subsequently became MCC employees. These employees were made subject to the same disclosure requirements as other permanent MCC employees. MCC has also added to its written ethics procedures a requirement that where an employee is detailed to MCC for longer than 60 days or otherwise be involved in decisions that could trigger conflict of interest concerns, MCC's ethics staff will obtain a copy of a disclosure report from the employee's parent agency or, if necessary, request that the employee file such a report directly with MCC.

As we discussed with the auditor, MCC has also addressed the other "area for improvement" by annotating its public financial disclosure reporting requirements to ensure that the coordination with the ethics staff of our government board members occurs annually, in conjunction with the filing of public financial disclosure reports.

Therefore, we request that the text of the report be modified to provide this additional context and that the final sentence in the “areas for improvement” section be amended to read: “We are making no recommendations in these areas because MCC has already addressed them.”

