



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

March 6, 1995

Stephen Sharfman
Legal Advisor
Postal Rate Commission
Suite 300
1333 H Street, NW.
Washington, DC 20268

Dear Mr. Sharfman:

The Office of Government Ethics (OGE) has completed its second review of the Postal Rate Commission's (PRC) ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objectives were to determine the ethics program's effectiveness and compliance with applicable laws and regulations. To achieve our objectives, we examined the following program elements: the administration of the ethics program, the public and confidential financial disclosure systems, the ethics education and training program, the counseling and advice services, the acceptance of travel and related expenses from non-Federal sources under 31 U.S.C. § 1353, and the internal procedures used to process standards of conduct and criminal conflict-of-interest violations. The review was conducted during December 1994 and January 1995 in Washington, DC.

BACKGROUND

PRC is an independent agency created by the Postal Reorganization Act, as amended. Its primary function is to submit recommended decisions regarding postage rates, fees, and mail classifications to the United States Postal Service Governors. Additionally, PRC acts on appeals of Postal Service decisions to close or consolidate post offices and investigates complaints concerning postage rates, fees, mail classifications, or services. It also responds to requests for advisory opinions from the Postal Service.

PRC is composed of five Commissioners appointed by the President with the advice and consent of the Senate, one of whom is designated as Chairman, and approximately 40 additional employees trained in the areas of law, economics, statistics, and cost accounting.

ADMINISTRATION OF THE ETHICS PROGRAM

The PRC ethics program is centralized within the Office of the Legal Advisor (OLA). The Legal Advisor is the Designated Agency Ethics Official (DAEO) and an attorney-advisor within OLA is the

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Alternate DAEO. Both the DAEO and the Alternate DAEO share the day-to-day responsibilities of administering the ethics program along with the Personnel Office, which assists in managing the confidential financial disclosure and ethics education and training programs.

PRIOR OGE REPORT

OGE previously conducted a review of PRC's ethics program during August 1985. The October 1985 report stemming from this review commended PRC ethics officials on the effort devoted toward the program, but recommended several improvements to make the program more effective. These recommendations focused primarily on the public and confidential financial disclosure systems and included: reviewing all positions to ensure that appropriate employees file confidential reports, conducting more thorough reviews of both public and confidential reports, ensuring that copies of waivers are included in filers' individual financial disclosure files, and obtaining letters from all employees certifying that they do not have holdings prohibited by PRC regulations. With regard to the ethics education and training and counseling and advice programs, the report recommended sending employees periodic reminders to familiarize themselves with PRC's standards of conduct and providing employees with post-employment counseling upon departure.

STANDARDS OF CONDUCT

PRC's standards of conduct were originally found at 39 C.F.R. part 3000. This regulation was superseded by the executive branch-wide standards of conduct at 5 C.F.R. part 2635, with the exception of certain sections which PRC revised and reissued at 39 C.F.R. part 3000. The revised regulation includes a general provisions statement acknowledging that the executive branch standards of conduct apply to PRC employees and notes that the DAEO is designated by the Chairman and is responsible for the ethics program. It also retains the existing rules relating to ex parte communications by PRC employees regarding particular matters in contested proceedings before the Commission. Portions of PRC's supplemental standards of conduct regulation are also restated in this revised regulation for ease of reference.

PRC's supplemental standards of conduct regulation at 5 C.F.R. part 5601 focuses on prohibited financial interests, seeking employment, and outside employment. The prohibited financial interests section at 5 C.F.R. § 5601.102 prohibits employees from having any financial interests in a person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail, or the operations of the Postal Service. Section 3000.735-103(b) of 39 C.F.R. expands upon this prohibition by authorizing the PRC Chairman to determine the

appropriate maximum limit for an employee's interest in stocks, bonds, or other forms of securities in any one entity or person.

Section 5601.103 of 5 C.F.R. essentially restates the seeking employment rules contained in the executive branch-wide standards of conduct. This section also requires employees to provide notice of disqualification to their supervisor upon determining that they will not participate in a particular matter affecting the financial interests of a prospective employer.

Section 5601.104 of 5 C.F.R. prohibits PRC employees from engaging in outside employment with or for a company or person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail, or the operations of the Postal Service. This section also requires employees to obtain written approval from the DAEO before engaging in outside employment.

PUBLIC FINANCIAL DISCLOSURE SYSTEM

PRC has procedures in place to ensure that public financial disclosure reports are generally filed and reviewed in accordance with applicable laws and regulations. However, the written procedures governing the administration of the public financial disclosure system should be revised to include procedures for identifying and collecting reports from new entrant and termination filers. Additionally, PRC should review the public reports in a more timely manner.

Public Financial Disclosure Procedures Are Generally Effective

The Alternate DAEO is primarily responsible for the administration of the public financial disclosure system, including distributing and collecting the public reports (SF 278). The Alternate DAEO is also responsible for conducting the initial review of the public reports. Once the initial review is completed, the Alternate DAEO forwards the reports to the DAEO for final review and certification.

PRC has written procedures which formalize the steps followed to administer both the public and confidential financial disclosure systems. However, these procedures do not include a system for collecting new entrant or termination public reports from incoming or departing covered employees. PRC should update the written procedures to incorporate a system for identifying these employees and collecting their public reports.

Public Reports Were
Generally Filed In
A Timely Manner

We reviewed 5 of the 11 public reports filed in 1994, all of which were incumbent reports.¹ Our review revealed that 4 of the 5 reports were filed by the appropriate filing deadline in accordance with 5 C.F.R. § 2634.201.²

Public Reports Were Not Reviewed
In A Timely Manner

None of the public reports were reviewed within 60 days from the date of filing as required by 5 C.F.R. § 2634.605(a). PRC ethics officials informed their OGE desk officer after the 60-day time frame had elapsed that the reports had not yet been reviewed due to extenuating circumstances. All public reports were subsequently reviewed and certified by December 15, 1994. PRC should ensure that all future public reports are reviewed within the 60-day time frame.

Review Of The Public Reports
Was Thorough

The review of the public reports by the DAEO and Alternate DAEO appeared to be thorough. We found no substantive or technical deficiencies during our review of these reports. We were impressed with the Alternate DAEO's use of follow-up memorandums to notify filers of deficiencies which needed to be addressed before their reports could be finally certified.

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

PRC has procedures in place to ensure that confidential financial disclosure reports are generally filed and reviewed in accordance with applicable laws and regulations. However, PRC should obtain written approval from OGE for their additional confidential reporting requirement.

¹The six reports we did not review were filed by the Commissioners and the DAEO. These reports were previously forwarded for review to OGE in accordance with 5 C.F.R. § 2634.602(c)(1).

²One filer received an extension until May 31, 1994, but did not file a report until June 23, 1994.

Confidential Financial
Disclosure Procedures
Are Effective

As with the public system, the Alternate DAEO is primarily responsible for the administration of the confidential financial disclosure system. In addition to distributing and collecting the confidential financial disclosure reports (SF 450), the Alternate DAEO is solely responsible for the review and certification of the confidential reports. Once the review and certification is completed, the Alternate DAEO notifies the DAEO of the results of the review.

The Personnel Office notifies OLA when new employees enter positions that require the filing of a confidential report. As with the incumbent reports, the new entrant reports are distributed, collected, reviewed, and certified by the Alternate DAEO.

Written Approval Needed From
OGE For Additional Reporting
Requirement

Section 3000.735-103(b) of 39 C.F.R. authorizes the PRC Chairman to determine the appropriate maximum limit for an interest in stocks, bonds or other forms of securities in any one entity or person held by a PRC employee. In accordance with this authority, PRC currently requires confidential filers to note any holdings exceeding \$15,000 on their confidential report.

Section 2634.103(a)(2) of 5 C.F.R. states that an agency cannot impose "additional reporting requirements on either public or confidential filers, unless specifically authorized by the Office of Government Ethics as supplemental confidential reporting." If PRC wishes to maintain this supplemental reporting requirement, it is necessary to submit a written request to OGE for approval.

Confidential Reports Were
Filed And Reviewed In A
Timely Manner

We reviewed all of the 20 confidential reports filed in 1993. Of these, 19 were incumbent reports and 1 was a new entrant. Additionally, we reviewed all of the 1994 incumbent confidential reports for timeliness of filing; however, we did not conduct any further review of these reports since they had not been reviewed or certified at the time of our review.

All of the 1993 and 1994 incumbent reports were filed by the appropriate deadline, or shortly thereafter. However, the one new

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entrant report filed in 1993 was filed more than 30 days from the date the employee entered a covered position. In addition, both the 1993 and 1994 confidential reports were reviewed and certified within 60 days of the date of filing.³

ETHICS EDUCATION AND TRAINING

PRC has established an effective ethics education and training program which complies with the requirements of applicable ethics regulations.

Initial Ethics Orientation Requirement Being Met

Pursuant to 5 C.F.R. § 2638.703, new employees are provided an initial ethics orientation within 90 days of entering on duty. The Personnel Office provides new employees with copies of 5 C.F.R. parts 2635 and 5601, 39 C.F.R. part 3000, and the names and telephone numbers of the DAEO and Alternate DAEO. Employees are provided one hour of official duty time to review these materials.

Annual Ethics Training Was Completed

All covered employees received annual ethics training in 1994. Almost half of the covered employees attended an annual ethics training course provided in September by OGE in coordination with the Small Agency Council. The remaining employees were provided annual ethics training by the Alternate DAEO. This training included a presentation of an ethics training video and a discussion of the corresponding case studies. To ensure that all covered employees received annual ethics training, course attendees were required to sign attendance sheets.

COUNSELING AND ADVICE SERVICES

Ethics counseling and advice are provided to employees of PRC by the DAEO and Alternate DAEO; however, there were very few written determinations issued recently. The DAEO stated that because of the small size of PRC, most advice on ethics questions is issued verbally and on an informal basis.

³According to the Alternate DAEO, the 1994 incumbent confidential reports were reviewed and certified during the final week of December 1994.

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Counseling And Advice Services
Are Consistent With Ethics
Laws And Regulations

We reviewed all written advice issued in 1993 and 1994. The written advice addressed such issues as gift acceptance, fund-raising activities, official travel, and outside employment. The advice appeared to be consistent with applicable ethics laws and regulations.

Outside Employment Notification
Is Required

PRC's supplemental standards of conduct regulation requires all employees to notify the DAEO in writing before accepting or engaging in outside employment. According to the DAEO, there have been no such requests recently.

Post-Employment Counseling
Is Provided Upon Request

According to the Alternate DAEO, there is no requirement that departing employees receive post-employment counseling from OLA. Post-employment counseling is provided upon request, but because of the small size of the agency and the relatively low turnover, this type of counseling is rarely provided. The Alternate DAEO provided us with a copy of a memorandum for departing employees which he prepared subsequent to the completion of our fieldwork. This memorandum summarizes the post-employment restrictions and instructs departing employees to contact the Legal Advisor with any questions they may have regarding these restrictions.

GENERAL SERVICES ADMINISTRATION TRAVEL

Under the General Services Administration's (GSA) Interim Rule 4 at 41 C.F.R. part 304-1, implementing 31 U.S.C. § 1353, Federal agencies can accept travel, subsistence, and related expenses from non-Federal sources in connection with employees' attendance at certain meetings and similar functions related to their official duties. This regulation requires agencies to report to OGE on a semiannual basis the acceptance of those travel expense payments over \$250. During the most recent six-month period from April 1, 1994, to September 30, 1994, PRC did not accept any payments in excess of \$250.

Procedures For Accepting
Travel Expense Payments
Are Effective

A PRC memorandum dated May 7, 1993, establishes the procedures for PRC acceptance of travel expense payments under the GSA

authority. These procedures effectively delineate the process for requesting and accepting such payments. Additionally, the procedures have recently been updated to reflect the requirements of the most recent version of the GSA regulation (Interim Rule 4). Finally, we were impressed that the PRC Chairman is the only official authorized to approve requests to accept travel payments under this authority. This delegation of authority is notable because according to 41 C.F.R. § 304-1.3(c), agencies are to ensure that officials delegated the authority to determine the propriety of accepting such payments are at as high an administrative level as practical to ensure adequate consideration and review of the circumstances surrounding the offer and acceptance of the payment.

STANDARDS OF CONDUCT AND CONFLICT-OF-INTEREST VIOLATIONS

PRC does not have an Inspector General. Therefore, OLA is responsible for processing allegations of standards of conduct violations and referring alleged violations of the criminal conflict-of-interest laws to the Department of Justice. According to the DAEO, there have been no standards of conduct violations or criminal referrals in the past two years.

CONCLUSIONS

Overall, PRC has an effective ethics program. The public reports were filed in a timely manner and the review of these reports appeared to be thorough. The confidential reports were also filed and reviewed in a timely and thorough manner. In addition, the ethics education and counseling programs provide employees with appropriate and timely information. Finally, PRC maintains effective and up-to-date procedures for the acceptance of travel expense payments under 31 U.S.C. § 1353. However, PRC should ensure that public financial disclosure reports are reviewed within 60 days from the date of filing. Additionally, PRC should obtain written approval from OGE for their supplemental confidential reporting requirement.

RECOMMENDATIONS


We recommend that you:

1. Ensure that public financial disclosure reports are reviewed within 60 days from the date of filing as required by 5 C.F.R. § 2634.605(a).
2. Obtain written approval from OGE for the supplemental confidential reporting requirement in accordance with 5 C.F.R. § 2634.103(a)(2).

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In closing, I would like to thank the OLA and Personnel Office officials for all of their efforts on behalf of the ethics program. Please advise me within 60 days of the specific actions your agency has taken or plans to take concerning the recommendations in our report. A brief follow-up review will be scheduled within six months from the date of this report. In view of the corrective action authority vested with the Director of the Office of Government Ethics under subsection 402(b)(9) of the Ethics in Government Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that PRC officials take actions to implement our recommendations in a timely manner. A copy of this report is being forwarded to the PRC Chairman. Please contact Dale Christopher at 202-523-5757, extension 1130, if we may be of further assistance.

Sincerely,


Stephen D. Potts
Director

Report Number 95-010

