



United States Office
Of Government Ethics

Report Number 09-014

Highlights

Model Practices

- Ethics duties are included in the Alternate DAEO's position description and performance evaluations.
- Ethics officials created a comprehensive succession plan to ensure the continuity of the ethics program in the event of turnover in the ethics staff.
- Ethics officials provide annual ethics training to all PRC employees.
- Ethics officials conducted a self-assessment of the process by which Human Resources notifies the ethics office of new or departing employees.

OGE Suggests

- PRC develop procedures to ensure that OGE is notified of any referrals to the Department of Justice and of the disposition of any such referrals.

OGE Recommends

- PRC comply with the supplemental ethical standards requiring written approval for all outside employment of PRC employees in accordance with 5 CFR § 5601.104(b).

If you have any comments or would like to discuss this report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224

Ethics Program Review Postal Regulatory Commission

April 2009 Report

Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Postal Regulatory Commission (PRC). The purpose of a review is to identify and report on the strengths and weaknesses of a program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies, and (2) ethics-related systems, processes, and procedures in place for administering the program.

During its ethics program reviews, OGE identifies model practices that agencies have implemented to enhance their ethics programs. OGE's review of PRC identified several model practices that PRC has implemented.

To enhance PRC's ethics program, OGE makes one recommendation related to PRC's outside employment approval procedures. OGE also makes one suggestion pertaining to PRC's enforcement of the conflict of interest statutes.

This report has been sent to PRC's Designated Agency Ethics Official (DAEO) and its Inspector General (IG). OGE will follow-up with PRC within six months from the date of this report's issuance.



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Ethics Program Review

Postal Regulatory Commission

April 2009 Report

Introduction

OGE MISSION

The United States Office of Government Ethics (OGE) provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance.

PURPOSE OF A REVIEW

The purpose of a review is to identify and report on the strengths and weaknesses of an ethics program by evaluating: (1) agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures in place for administering the program.

REVIEW AUTHORITY AND SCOPE

OGE has the authority to evaluate the effectiveness of executive agency ethics programs. *See* Title IV of the Ethics in Government Act of 1978, as amended (the Ethics in Government Act), and 5 CFR part 2638. OGE's review of the Postal Regulatory Commission (PRC) focused on the elements listed below.

- Program structure
- Financial disclosure systems
- Ethics training
- Ethics counseling
- Outside employment
- Enforcement of ethics laws and regulations
- Travel payments from non-Federal sources

OGE's review focused on the ethics program at PRC headquarters. The on-site fieldwork was conducted in October 2008.

Ethics Program Review: PRC

Program Elements

This report consists of descriptions, analyses, and conclusions regarding each program element reviewed.

PROGRAM STRUCTURE

PRC's ethics program is administered within the PRC Office of General Counsel. The General Counsel serves as the Designated Agency Ethics Official (DAEO). An Attorney Advisor serves as the Alternate DAEO (ADAEO) and is involved in the day-to-day administration of the ethics program.

OGE found that ethics duties are included in the ADAEO's position description. The ADAEO's annual performance appraisal also includes an evaluation of the execution of his ethics duties.

The ADAEO has created a comprehensive succession plan for administering PRC's ethics program. The plan should help ensure the continuity of the ethics program in the event of turnover in the ethics staff.

The inclusion and evaluation of the ADAEO's ethics duties in his position description and performance appraisals and the development of a succession plan are both model practices.

FINANCIAL DISCLOSURE SYSTEMS

Title I of the Ethics in Government Act requires that agencies ensure confidence in the integrity of the Federal Government by demonstrating that officials are able to carry out their duties without compromising the public trust. High-level Federal officials demonstrate that they are able to carry out their duties without compromising the public trust by disclosing publicly their personal financial interests (SF 278). Title I also authorizes OGE to establish a confidential financial disclosure system for less senior executive branch personnel in certain designated positions to facilitate internal agency conflict of interest review (OGE Form 450).

Financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective officers and employees. The financial disclosure reports also assist agencies in administering their ethics programs and providing counseling to employees. *See* 5 CFR § 2634.104(b).

Self-Assessment

OGE encourages agencies to use self-assessment as a tool to evaluate their ethics programs. Self-assessments help ethics officials improve the efficiency of their programs by identifying areas of concern.

The ADAEO conducted a self-assessment of the process of requiring Human Resources (HR) to notify the ethics office of new or departing financial disclosure report filers. The

Ethics Program Review: PRC

ADAEO is confident that the self-assessment will improve the timeliness of providing new and departing filers with the appropriate new entrant or termination financial disclosure forms to complete.

Written Procedures

At the time of OGE's review, PRC did not have written procedures for the administration of its public and confidential financial disclosure systems as required by section 402 (d)(1) of the Ethics in Government Act. Written procedures ensure consistency in the collection, review, and certification of financial disclosure reports and assist reviewers in analyzing reports for conflicts of interest. Moreover, written procedures are essential for a good succession plan. The review team advised the ADAEO of the requirement to have written procedures for financial disclosure. Subsequently, the ADAEO created comprehensive written procedures.

Public Financial Disclosure System (SF 278)

The administration of PRC's public financial disclosure system is primarily carried out by the ADAEO. The ADAEO reviews and certifies all reports excluding PAS reports and his own. (The ADAEO's and PAS reports are reviewed and certified by the DAEO.) The ADAEO uses a prohibited sources list and the Internet to conduct a substantive review of the reports for conflicts of interest. He is also aware of the filers' job responsibilities which helps him to determine the potential for conflicts of interest.

To evaluate the filing, review, and certification of public reports at PRC, OGE examined all 29 public reports required to be filed by PRC employees in 2008. The following is a summary of OGE's examination.

Type of Report

- 26 annual reports
- 2 new entrant reports
- 1 termination report

29 total

Filing Timeliness

- All 29 reports were filed timely.

Review/Certification Timeliness

- All 29 reports were reviewed and certified timely.

Ethics Program Review: PRC

Quality of Review

Written comments on reports, documentation in files, and conversations with ethics officials indicated that the public financial disclosure reports underwent a thorough review. OGE identified minor technical errors in some of the reports such as missing dates of appointment and over reporting of assets and personal information.

Confidential Financial Disclosure System (OGE Form 450)

The administration of the confidential financial disclosure system is primarily carried out by the ADAEO. The ADAEO reviews and certifies all reports. The ADAEO uses a prohibited sources list and the Internet to conduct a substantive review of the reports for conflicts of interest. Additionally, he is aware of the filers' job responsibilities which helps him to determine the potential for conflicts of interest.

To evaluate the confidential financial disclosure system at PRC, OGE examined all 16 confidential reports required to be filed by PRC employees in 2008. The following is a summary of OGE's examination.

Type of Report

- 10 annual reports
- 6 new entrants

16 total

Filing Timeliness

- All 16 reports were filed timely.

Review/Certification Timeliness

- 15 reports were reviewed and certified timely.
- 1 report had not been certified at the time of OGE's review. The report had been filed only one day before OGE began its on-site fieldwork.

16 total

Quality of Review

Written comments on reports, documentation in files, and conversations with ethics officials indicated that the confidential financial disclosure reports underwent a thorough review. OGE identified minor technical errors in some of the reports such as a missing date of receipt.

Ethics Program Review: PRC

ETHICS TRAINING

An ethics training program is essential to raising awareness among employees about ethics laws and rules and informing them that an agency ethics official is available to provide ethics counseling. Each agency's ethics training program must include, at least, an initial ethics orientation for all employees and annual ethics training for covered employees.

Written Procedures and Training Plans

PRC ethics officials have developed comprehensive written procedures for managing their training program. In accordance with 5 CFR § 2638.706, PRC also develops annual training plans.

Initial Ethics Orientation

Within 90 days from the time an employee begins work for an agency, the agency must provide the employee with an initial ethics orientation. An initial ethics orientation must include:

- the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and any agency supplemental standards;
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials; and
- at least one hour of official duty time to review the items described above. *See 5 CFR § 2638.703.*

The initial ethics orientation for non PAS employees, provided by HR, consists of a copy of the Standards and PRC supplemental standards along with the names, titles, and office addresses and telephone numbers of the ethics officials. Employees are required to sign an acknowledgement of receipt of the materials.

PAS employees receive an in person initial ethics orientation from the DAEO.

Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training. *See 5 CFR § 2638.704(a).* Verbal training includes training prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. *See 5 CFR § 2638.704(c)(2).* Other covered employees (e.g., confidential filers) are required to receive verbal ethics training at least once every three years and may receive written training in the intervening years. *See 5 CFR § 2638.705(c).* The content requirements for both public filers and other covered employees are the same. Agencies are encouraged to vary the content of annual training from year to year but the training must include, at least, a review of:

- the 14 Principles of Ethical Conduct (Principles),
- the Standards,
- any agency supplemental standards,

Ethics Program Review: PRC

- the Federal conflict of interest statutes, and
- the names, titles, office addresses, and phone numbers of the DAEO and other ethics officials. *See* 5 CFR § 2638.704(b).

Annual training at PRC is provided by the ADAEO. The training is provided to all PRC employees, not just public and confidential filers, as directed by the PRC Chairman. In 2007, the ADAEO provided employees with a PowerPoint presentation covering the Principles, the Standards, gifts, and the Hatch Act. In 2008, the ADAEO utilized hypothetical case studies to engage the participants during training.

ETHICS COUNSELING

The DAEO is required to ensure that a counseling program for agency employees concerning ethics and standards of conduct matters, including post-employment matters, is developed and conducted. *See* 5 CFR § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 CFR § 2638.204.

OGE's assessment of an ethics counseling program focuses on five factors: (1) accuracy, (2) timeliness, (3) transparency, (4) accountability, and (5) consistency. To determine whether an agency's counseling program successfully addresses these factors, OGE reviews and assesses the program's processes and written procedures. Further, OGE reviews selected samples of advice to assess whether processes and written procedures are effective.

To evaluate the PRC's ethics counseling program, OGE reviewed a sample of eight pieces of written counseling, as well as several other ethics-related documents. OGE's review of the sample of counseling identified two issues that warranted follow-up with PRC. The issues involve the identification of prohibited sources and the thoroughness with which applicable standard of conduct prohibitions are addressed when answering questions from employees.

While noteworthy, the issues did not rise to the level of requiring a formal recommendation for improvement and thus are not detailed in this report. OGE provided PRC with a detailed summary of the issues and suggestions for addressing them under separate copy along with a draft of this report for comment by PRC.

ENFORCEMENT

The DAEO is to ensure that (1) information developed by internal audit and review staff, the Office of the Inspector General, or other audit groups is reviewed to determine whether such information discloses a need for revising agency standards of conduct or for taking prompt corrective action to remedy actual or potential conflict of interest situations and (2) the services of the agency's Office of the Inspector General (OIG) are utilized when appropriate, including the referral of matters to and acceptance of matters from that Office. *See* 5 CFR § 2638.203(b)(11) and (12).

Ethics Program Review: PRC

According to ethics officials, there were no potential violations of the criminal conflict of interest statutes referred to the Department of Justice from January 2007 through October 2008. There were also no identified violations of the Standards during that time.

PRC's OIG was established in June 2007. After conversations with the Inspector General (IG) and the ADAEO, the review team found there are no established procedures that specify which office would notify OGE of any referrals to the Department of Justice of alleged violations of the criminal conflict of interest statutes. OGE suggests that PRC develop procedures to ensure that OGE is notified of any referrals to the Department of Justice and of the disposition of any such referrals.

OUTSIDE EMPLOYMENT

According to PRC's supplemental standards of ethical conduct found at 5 CFR § 5601.104(b), all PRC employees who wish to engage in outside employment, either on a paid or unpaid basis, shall obtain the prior written approval of the DAEO. OGE's review found that the DAEO has not been requiring employees to submit written requests for approval of outside employment. OGE recommends that PRC ethics officials comply with the supplemental standards of conduct by requiring the written approval of the DAEO for all outside employment of PRC employees.

ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

An employee may accept payment of travel expenses from non-Federal sources on behalf of the employee's agency for official travel to a meeting or similar function when specifically authorized to do so by the agency. Agencies must submit semiannual reports to OGE of travel payments from non-Federal sources in excess of \$250. *See* 31 U.S.C. § 1353.

All of the semiannual reports, including negative reports, submitted to OGE covering the period from October 1, 2006 through March 31, 2008 were submitted in a timely manner. PRC accepted only one payment from a non-Federal source during this period. The ADAEO provided the review team with documentation of the employee's travel. OGE found that the travel payment was appropriately authorized by the employee's supervisor prior to the date of the event.

Summary

OGE's review identified several model practices that PRC has implemented. The model practices include:

- including the ethics duties of PRC's ADAEO in his position description and performance evaluations,
- creating a comprehensive succession plan to ensure the continuity of the ethics program in the event of turnover in the ethics staff,
- providing annual ethics training to all PRC employees, and
- conducting a self-assessment of the process by which HR notifies the ethics office of new entrant or departing filers.

Ethics Program Review: PRC

Suggestion

OGE found that there are no established procedures that specify which office would notify OGE of any referrals to the Department of Justice of alleged violations of the criminal conflict of interest statutes. Therefore, OGE suggests:

- PRC develop procedures to ensure that OGE is notified of any referrals to the Department of Justice and of the disposition of any such referrals.

Recommendation

OGE found that PRC has not been requiring employees to submit written requests to the DAEO for approval of outside employment in accordance with PRC's supplemental standards of ethical conduct. To enhance PRC's ethics program, OGE recommends that PRC:

- Comply with PRC's supplemental standards of conduct by requiring written approval of the DAEO for all outside employment of PRC employees.

PRC's DAEO is to advise OGE within 60 days of the specific actions PRC has taken or plans to take on OGE's suggestion and recommendation. OGE stands ready to assist PRC in implementing the suggestion and recommendation, as well as other program initiatives that PRC may choose to undertake. OGE will follow-up with PRC in six months.

If you have any comments or would like to discuss the report, please contact Dale Christopher, Associate Director, Program Review Division, at 202-482-9224.

