



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

February 16, 2007

Christian S. White
Designated Agency Ethics Official
Federal Trade Commission
600 Pennsylvania Avenue, NW.
Washington, DC 20580

Dear Mr. White:

The Office of Government Ethics (OGE) has completed its review of the ethics program at the Federal Trade Commission (FTC). Enclosed are an executive summary and report on the findings of our review.

The purpose of a review is to identify and report on the strengths and weaknesses of the program by: (1) measuring agency compliance with ethics requirements found in relevant laws, regulations, and policies and (2) evaluating ethics-related systems, processes, and procedures in place for administering the program. OGE determined that there is reasonable assurance that the performance and management of FTC's program is effective; however, OGE identified some technical deficiencies.

We suggest that FTC's ethics officials: (1) instruct Administrative Assistants to date stamp the confidential financial disclosure reports they receive; (2) remind all first-line supervisors who review confidential financial disclosure reports to sign on the appropriate line for final certification; (3) contact employees who fail to indicate approximate dates of employment on outside employment approval requests, and obtain the necessary information required to amend these requests; and (4) revise the sample memorandum for outside employment, found on FTC's ethics Web page, to include approving officials' dates of signature.

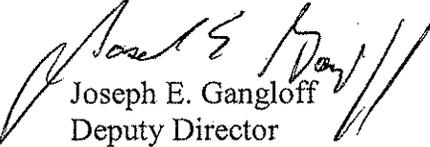
OGE's review also identified several model practices that FTC has implemented. These include the following: using checklists and cautionary letters to bolster the review of financial disclosure reports, developing innovative and engaging methods to teach annual ethics training, and maintaining an ethics Web page. Additionally, FTC offers in-person initial ethics orientation to all FTC employees, uses two screening arrangements to protect individuals who enter into ethics agreements, and has developed a self-assessment survey to review its ethics program.

OGE stands ready to assist FTC in implementing our suggestions and other program initiatives FTC may choose to undertake. OGE will follow-up with FTC in six months.

Mr. Christian S. White
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Please contact Marie Iannacone at 202-482-9244 or Jorge Guzman at 202-482-9246, if we may be of assistance.

Sincerely,


Joseph E. Gangloff
Deputy Director

Enclosures



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

February 16, 2007

Howard Sribnick
Inspector General
Federal Trade Commission
601 New Jersey Avenue, NW.
Washington, DC 20580

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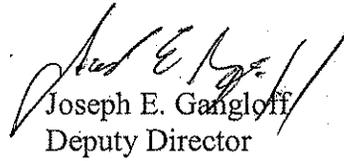
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United States Office
Of Government Ethics

Report Number 07-001

Ethics Program Review
Federal Trade Commission

February 2007 Report

Introduction

OGE MISSION

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

PURPOSE OF A REVIEW

The purpose of a review is to identify and report on the strengths and weaknesses of the program by: (1) measuring agency compliance with ethics requirements found in the relevant laws, regulations, and policies; and (2) evaluating 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. This review of the Federal Trade Commission (FTC) focused on the financial disclosure systems, ethics education and training, ethics agreements, advice and counseling, outside employment, the enforcement of ethics laws and regulations, and travel payments from non-Federal sources. Title IV of the Ethics in Government Act of 1978, as amended and 5 C.F.R. part 2638.

While FTC has several regional offices, this review focused on the program at headquarters. The on-site portion of this review was conducted at FTC headquarters in September 2006.

Ethics Program Review: FTC

Findings

PROGRAM STRUCTURE

FTC's ethics program is based within the Office of the General Counsel. The Deputy General Counsel for Legal Counsel serves as the Designated Agency Ethics Official (DAEO). An attorney serves as the Alternate DAEO. While the DAEO is responsible for the administration of the ethics program, much of the day-to-day duties are carried out by the Alternate DAEO, two additional attorneys, and an Ethics Program Assistant.

OGE's LAST REVIEW OF FTC

OGE last conducted a review of FTC's ethics program in April 2001. The report on this review indicated that the ethics program was well managed and in compliance with applicable laws and regulations. In particular, the previous review praised FTC's ethics program for the strength of its financial disclosure systems. There were no recommendations or suggestions issued in the previous report, and therefore, in accordance with previous policy, OGE did not conduct a six-month follow-up review.

FINANCIAL DISCLOSURE SYSTEMS

The current review found that the public and confidential financial disclosure systems are well managed. Master lists of financial disclosure report filers are used to track the filing of reports. While minor technical errors were found during our review of reports, we did not identify any substantive deficiencies.

The Ethics in Government Act requires that agencies document the process for collecting, reviewing, evaluating, and where appropriate, making publicly available financial disclosure reports. FTC ethics officials have effective written procedures in place, particularly for notifying filers of the requirement to file, providing guidance to filers, and tracking the submission of reports.

Model Practices

FTC ethics officials created checklists to aid in the review of financial disclosure reports. The checklists guide reviewers through each section to ensure that all information provided in the reports is analyzed to determine if there is a conflict of interest. Furthermore, the checklists help generate a cautionary letter that informs FTC employees of any potential conflicts of interest. The cautionary letter includes tailored information for each filer about potential issues regarding their holdings.

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Public Financial Disclosure System

OGE examined all 50 public financial disclosure reports required to be filed in 2006: there were 37 incumbent, 7 new entrant, 5 termination, and 1 incumbent/termination report. All 50 reports were filed by the appropriate deadline and all were reviewed and certified in a timely manner.¹ Documentation in the files, written comments on the reports, and the use of cautionary letters documented that there were questions from and annotations made by the reviewing officials, which indicated a thorough review of the reports.

FTC's Alternate DAEO conducts the initial review of the reports, contacts filers about technical reporting errors or omissions, and checks the financial entries reported against an FTC pending matters listing. After the review, individual memoranda are forwarded to the DAEO, which include a checklist citing findings and highlighting pending FTC matters. As the final report reviewer, the DAEO certifies the reports and issues cautionary letters to filers, as appropriate.

Confidential Financial Disclosure System

While almost all duties associated with administering the confidential system are carried out by FTC ethics officials, the review of confidential reports is bifurcated between ethics officials and filers' first-line supervisors. FTC's ethics officials review and certify approximately 40 reports filed by employees in the Office of General Counsel for Legal Counsel. The remaining 480 reports are reviewed and certified by filers' first-line supervisors and then forwarded to FTC's ethics office for retention. This split in the review function allows those who are most knowledgeable about work assignments, and therefore potential conflicts, to review filers' reports.

OGE examined a sample of 100 of the approximately 520 confidential reports required to be filed in 2005. All were annual reports. As with the public disclosure system, OGE was impressed with the thorough manner in which confidential reports were examined. However, we noticed that none of these reports indicated dates of receipt.² Therefore, we based filing timeliness on the filers' signature dates. Using this method, there were no reports that were filed more than 30 days late. OGE suggests that ethics officials ask the appropriate Administrative Assistants to date stamp the reports that they receive. Additionally, first-line supervisors repeatedly signed their names on the line indicated for the intermediate reviewer. This error may give the impression that the reports did not receive a final certification. OGE suggests that ethics officials remind reviewing first-line supervisors to sign on the appropriate final certification line. Other than this, we identified no substantive deficiencies.

¹ Nineteen of the 50 public financial disclosure report filers were granted a filing extension.

² For purposes of this review, "date of receipt" is defined as the date when a completed financial disclosure report is received by the agency.

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Special Government Employees

In lieu of using the OGE Form 450, there is another method of confidential disclosure in use at FTC. A small group of special Government employees, who serve as short-term agency experts/consultants, certify that they have no conflicts of interest by using a form entitled "Confidential Conflict of Interest Statement" (Certification).³ FTC ethics officials routinely review these Certifications after the DAEO examines and approves the documentation associated with hiring an agency expert/consultant. However, the blank Certification itself is provided to the potential agency expert/consultant through administrative officer channels during the hiring process. OGE examined all 23 Certifications filed by experts/consultants in 2005 and all 14 Certifications in 2006, and found that the alternative confidential system is operating as intended.

ETHICS EDUCATION AND TRAINING

FTC's education and training program complies with the provisions of 5 C.F.R. part 2638. Indeed, FTC exceeds mere compliance by using model practices. FTC routinely documents and describes the topics to be covered in the upcoming year and the method by which FTC intends to carry out the current plan.

Initial Ethics Orientation

The initial ethics orientation program exceeds the basic requirements of the training regulation. As part of FTC's in-processing, all FTC employees are given required written materials and receive an in-person ethics briefing. The written materials were provided within 90 days of the dates the employees started work. We attended an initial ethics orientation session on September 18, 2006. We were impressed with the manner by which FTC's ethics officials covered the key ethics rules and regulations. The ethics officials not only imparted general ethics-related information, but also covered matters of particular interest to FTC, such as the requirement that employees seek approval before pursuing outside employment.

Annual Ethics Training

Annual ethics training plans were in place for 2005 and 2006, in accordance with 5 C.F.R. § 2638.706. All covered employees received annual ethics training in 2005.⁴ In 2005, the annual training for Presidentially-appointed, Senate-confirmed (PAS) and other covered

³On October 19, 1999, OGE approved the use of this alternative confidential disclosure procedure, under the authority of 5 C.F.R. § 2634.905(c), based on FTC's September 20, 1999 request (which replaced a letter of June 14, 1999).

⁴Confidential financial disclosure report filers are required to receive verbal ethics training at least once every three years and to receive written ethics training in the intervening years. 5 C.F.R. § 2638.705.

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employees consisted of a game called "Ethics Apprentice." Employees sign-in upon entering the class; these signatures are used to track completion of annual ethics training.

On September 20, 2006 we observed 17 non-PAS employees receive their annual training in the form of "Ethics Apprentice." Two teams competed for points by completing assignments that the Alternate DAEO provided. Each team chose a corporation name and a Project Manager. The seven individual assignments dealt with gift acceptance, seeking employment, post-employment/clearance, Government travel, misuse of official position, misuse of Government property, outside employment, and impartiality. Each assignment had a maximum point value that the team could win depending on how well they completed the assignment. Each team had several minutes to work together to discuss and complete the assignment, after which, the teams presented their answers aloud for an open forum discussion involving questions and comments from both teams.

In 2006, annual training for Senior Executive Service (SES) and PAS employees will involve an ethics training game called the "Ethics Da Vinci Code." The "Ethics Da Vinci Code" is a game where two teams compete to break the code first. To break the code, the players need to collect all words from their "encryption bags" and put these words together to spell out a secret code phrase, which is one of the 14 ethics principles. To win words from their "encryption bags," players must correctly answer a series of questions from the following topics: gift acceptance, seeking employment, post-employment/clearance, misuse of official position, outside employment, and impartiality. The team that correctly identifies the secret code phrase first, wins.

For employees not required to attend face-to-face training in 2006, written training has been provided in the form of an "Ethics Quiz" sent to employees via e-mail.

Model Practices

OGE was very impressed with the amount of creativity shown during the annual ethics training sessions. We commend the efforts of FTC's ethics officials in creating a lively forum that kept all participants actively engaged. We were also impressed by the depth of ethics-related knowledge displayed by the ethics staff.

Ethics resources are provided on FTC's ethics Web page which employees access via the FTC Intranet. The resources include, among other things, the ethics staff's contact information, a link to fillable financial disclosure forms, in-processing materials, ethics information papers, recent ethics news, information on post-Government employment, and FTC's clearance policy.

OGE applauds FTC for making ethics information so easily accessible to its employees. Furthermore, the Alternate DAEO expressed interest in highlighting leadership initiatives by means of a message from FTC's Chairman on the ethics Web page. The message would emphasize the importance of ethics in the workplace.

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New employees at FTC, filers and non-filers alike, receive written ethics-related materials and attend an in-person ethics briefing by FTC ethics officials. The ethics officials' goal for the initial ethics orientation is to introduce the ethics program by offering a face with a name and encouraging open dialogue between employees and ethics officials.

ETHICS AGREEMENTS

There were two written ethics agreements entered into by PAS employees in 2005. The agreements, requiring the employees to execute recusals, were carried out in accordance with applicable regulations and the terms of the agreements.

Model Practice

FTC employees who enter into an ethics agreement identify parties or entities that would present a conflict of interest via a memorandum addressed to relevant individuals.⁵ This memorandum is a model practice that ensures employees are protected from inadvertent participation in matters that may result in a violation of ethics laws and regulations. An FTC internal practice requires all documents to include a footnote on the first page denoting all parties involved in a particular issue. This model practice further protects an individual from running afoul of the ethics rules.

ETHICS ADVICE AND COUNSELING

Ethics-related advice and counseling are provided to FTC employees primarily by the Alternate DAEO or one of FTC's attorneys. To evaluate the advice and counseling provided, a sample of approximately 90 written determinations rendered during the period covered by the review was examined. Generally, the advice was in the areas of outside employment, gifts (including gifts of travel), and post-Government employment.

According to the Alternate DAEO, there are several ways to track the volume of ethics advice rendered. First, all written advice is kept in one of two chronological files, the "Ethics Chron" or the "[DAEO's] Chron" depending on who delivers the written advice. All waivers and written advice are contained in these files and are kept by year. Second, much of FTC's advice is rendered by e-mail and then archived. Lastly, FTC frequently dispenses oral advice and documents the oral that is of particular note.

The Alternate DAEO advised OGE that about half of the advice dispensed in the agency is oral. This can be attributed to both the small size of the agency as well as the ethics officials' familiar relationship with FTC employees. In DAEOgram DO-05-019, dated November 17,

⁵For purposes of this review, "relevant individuals" is defined as Attorney-Advisors, Administrative Assistants, or any support staff that reviews, receives, or presents information to an individual who entered into an ethics agreement.

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2005, OGE shared some concerns and observations about when and how ethics officials should document ethics advice and provided guidance to help implement agencies' advice and counseling services successfully. Though OGE understands that it is not possible to document all oral advice, ideally ethics officials should maintain written documentation in circumstances where it is most likely questions could arise concerning the conduct at issue.

Overall, the advice rendered was appropriate, correct and timely; the advice appeared to be responsive to employees' needs.

OUTSIDE EMPLOYMENT

According to the Supplemental Standards of Ethical Conduct for Employees of the Federal Trade Commission, 5 C.F.R. part 5701, an FTC employee generally must obtain prior written approval from their supervisor and from the DAEO before engaging in any outside employment, whether or not for pay. The supplemental regulation excepts activities that (1) are unpaid, (2) do not involve "professional services," and (3) are performed to benefit certain types of non-profit organizations. In regards to pro-bono activity, FTC attorneys are encouraged, where their workloads permit, to render voluntary legal assistance to the poor and for the public good.

FTC's ethics Web page includes a section on outside employment. An FTC employee can read the text of the supplemental regulation and find a sample memorandum to request approval to engage in outside employment. The sample memorandum details the necessary information an employee must submit to request approval. The information requested includes: (1) the name of the person, group, or organization for whom the work is to be performed; (2) the proposed hours of work and approximate dates of employment; (3) the proposed duties; and (4) certification that the employee will not misuse Government property, time, or his or her title.

To evaluate FTC's compliance with the supplemental regulation, we noted any outside employment activities reported on the public and confidential financial disclosure reports we examined. We reviewed a sample of 13 requests from the 28 filers who reported outside employment activities. Overall, the outside employment requests met the requirements of the supplemental regulation. However, 5 of the 13 requests we examined did not mention approximate dates of employment as the supplemental regulation requires. OGE suggests that ethics officials contact those employees who fail to indicate the approximate dates of employment in their requests and amend the requests, as appropriate. Moreover, the sample memorandum provided as a guide for employees to follow does not include any space for the date of signature by an approving official. OGE suggests that ethics officials modify the sample memorandum on outside employment to include the date where approving officials sign.

Ethics Program Review: FTC

ENFORCEMENT

There were no conflict of interest violations referred to the Department of Justice from 2005 through September 2006, according to the Inspector General. In 2005 there was a single incident violating the Standards of Ethical Conduct for Employees of the Executive Branch. FTC took the appropriate actions, but the employee resigned while proposed disciplinary actions were pending.

Ethics officials meet the requirements of 5 C.F.R. § 2638.203(b)(12) pertaining to coordination with FTC's Office of the Inspector General (OIG) on ethics-related matters. Ethics and OIG officials stated that they continue to have an effective working relationship, and that they, as necessary, coordinate on employee misconduct cases and other ethics-related matters.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

FTC accepts travel payments from non-Federal sources for travel, subsistence, and related expenses incurred by agency employees on official travel for attendance at a meeting or similar function. 31 U.S.C. § 1353. The procedures for requesting and receiving authorization for acceptance of travel expenses from a non-Federal source are found in the "Travel Reimbursement" section of FTC's ethics Web page. In July 2006, FTC changed the process for obtaining advance approval for non-Federal source travel reimbursement. The advance approval is now documented by the signature of an ethics official on the "Reimbursement Approval Memorandum," rather than on the travel order. Employees are instructed to complete the "Reimbursement Approval Memorandum" at least one week prior to the anticipated date of travel.

FTC's Office of Budget and Finance provides travel information to the Ethics Program Assistant who compiles, and ultimately submits the semiannual reports to OGE. We reviewed three semiannual reports sent to OGE covering the period from October 1, 2004 through March 31, 2006. All three semiannual reports were sent to OGE in a timely manner using the appropriate SF 326 Form.

As part of this review, we examined a sample of the supporting documentation for the reported 206 acceptances. Of the 50 acceptances we examined, we found that all were completed and approved prior to the occurrence of travel. It appeared that the travel payments accepted under § 1353 were properly authorized. Conflict of interest analyses were conducted as part of the approval process for each acceptance.

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FTC's SELF-ASSESSMENT SURVEY

In an effort to assess the effectiveness of FTC's ethics program and to ensure that the program is meeting FTC's needs, the ethics officials conducted a self-assessment survey from April through June of 2006. The self-assessment consisted of conducting an anonymous survey of a judgmental sampling of FTC staff members on a number of key ethics issues.

The ethics officials designed the survey to ensure that it would be both informative for evaluative purposes and also user-friendly for the respondents. The survey consisted of 10 "Yes" or "No" questions with additional room for comments. The questions focused on determining the respondents' knowledge of key agency ethics personnel and key criminal ethics statutes, as well as determining if the respondents were satisfied with the training and advice supplied by the ethics officials. The survey was sent to a random sampling of 150 out of 1020 FTC employees; the sample represented each bureau and key offices in the agency as well as regional offices. The employees surveyed included staff from different GS levels and also the SES level. OGE commends FTC for undertaking this self-assessment survey.

This survey indicated that the ethics program at FTC is operating very successfully in accomplishing its goals of educating FTC staff regarding ethics rules and regulations, assisting staff with their specific questions, and raising awareness about important areas of concern.