



United States Office
Of Government Ethics

Report Number 09-013

Highlights

Model Practices

- OTS encourages all employees to attend annual ethics training.
- OTS tailors education and training to provide relevant training to targeted audiences.

OGE Recommends

- OGE recommends that OTS ethics officials ensure that OTS Form 1569 complies with the criteria set forth in DAEOgrams DO-07-014 and DO-09-004, including the requirement to obtain CIO approval for a digital signature process.

Ethics Program Review Office of Thrift Supervision Department of the Treasury

April 2009 Report

Executive Summary

The United States Office of Government Ethics (OGE) has completed its review of the ethics program at the Office of Thrift Supervision (OTS), Department of the Treasury (Treasury). 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 for administering the program.

OGE's review identified two model practices that the OTS ethics office has implemented to administer the ethics program. First, the OTS ethics office encourages all employees to attend annual ethics training. Second, the OTS ethics office tailors education and training to provide relevant training to targeted audiences.

OGE found that OTS's confidential financial disclosure system is in need of improvement. In particular, almost half of the confidential financial disclosure reports filed in 2007 were not reviewed and certified in a timely manner. Additionally, OGE found that OTS accepts the electronic submission of confidential financial disclosure reports. However, it does not appear that OTS is strictly adhering to the criteria for submission of confidential financial disclosure reports outlined in DAEOgrams DO-07-014 and DO-09-004. OGE recommends that OTS ethics officials ensure that OTS Form 1569 complies with the criteria set forth in DAEOgrams DO-07-014 and DO-09-004, including the requirement to obtain Chief Information Officer (CIO) approval for a digital signature process.

OTS is to advise OGE within 60 days of the specific actions OTS has taken on OGE's recommendation. OGE stands ready to assist OTS in implementing this recommendation as well as other initiatives that OTS may choose to undertake. OGE will follow up with OTS in six months. This report has been sent to Treasury's Designated Agency Ethics Official and Treasury's Inspector General.



**United States Office
Of Government Ethics**

Report Number 09-013

Ethics Program Review
Office of Thrift Supervision
Department of the Treasury

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 initiatives.

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 § 2638. OGE's review of the Office of Thrift Supervision (OTS), Department of the Treasury (Treasury), focused on the elements listed below.

- Program structure
- Financial disclosure systems
- Ethics training
- Ethics counseling
- Enforcement
- Travel payments from non-Federal sources
- Outside activities

The onsite fieldwork portion of the review was conducted at OTS in late June and early July 2008.

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Program Elements

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

PROGRAM STRUCTURE

The OTS ethics program serves 1,032 full-time employees in headquarters and 5 regions. OTS is a component of the Department of the Treasury (Treasury). Treasury's Designated Agency Ethics Official (DAEO) serves as the OTS DAEO. Treasury's Alternate DAEO serves as the OTS Alternate DAEO. At OTS, a Special Counsel serves as the Ethics Counsel. The Ethics Counsel is closely involved in the administration of the ethics program. The Ethics Counsel performs the ethics functions as collateral duties. At the regional level there are six officials who work on ethics on a part-time basis.

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).

Public Financial Disclosure System (SF 278)

OTS has comprehensive written procedures for administering its public financial disclosure system. The written procedures contain detailed instructions to aid in the review of public financial disclosure reports. Successful written procedures allow for consistent and uninterrupted administration of the public financial disclosure system.

The Ethics Counsel receives a bi-weekly report from Human Resources of the names, grades, titles, job codes, and locations of all employees who have recently received a salary action. The Ethics Counsel reviews these bi-weekly reports, notes any employee moving into or out of public filer positions, and adjusts the master list of public filers as appropriate.

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Upon receipt of the public financial disclosure reports, the Ethics Counsel conducts the initial review and certification. During the initial review, the Ethics Counsel evaluates technical sufficiency. After the initial review, the Ethics Counsel reviews the public financial disclosure reports for conflicts of interest, outside activities, and liabilities; the report is then certified.

To evaluate the filing, review, and certification of public reports at OTS, OGE examined all 12 reports required to be filed by non-Presidentially-appointed, Senate-confirmed (non-PAS) employees in 2008. The following is a summary of OGE's examination of the 12 reports:

Type of Report

- 9 incumbent reports
- 2 new entrant reports
- 1 incumbent/termination report

12 total

Filing Timeliness

- All 12 reports were filed timely.

Review/Certification Timeliness

- All 12 reports were reviewed and certified timely.

Quality of Review

Written comments on the reports and documentation in the files indicated that the reports underwent a thorough review by the Ethics Counsel. In some cases there was evidence of communication with the filer regarding follow-up questions. OGE also identified recusal and divestment memoranda signed by filers.

Confidential Financial Disclosure System

OTS has comprehensive written procedures for administering its confidential financial disclosure system. The written procedures contain detailed instructions to aid in the review of confidential financial disclosure reports. Successful written procedures allow for consistent and uninterrupted administration of the confidential financial disclosure system.

On November 28, 2006, OTS requested OGE's approval for an alternative confidential financial disclosure procedure pursuant to 5 CFR § 2634.905(c). On December 15, 2006, OGE approved OTS Form 1569 as an alternative confidential financial disclosure procedure. Per OGE's approval, OTS removed all mention of electronic submission of OTS Form 1569. On May 16, 2007 OGE issued DAEOgram DO-07-014 titled, *Guidance on Electronic Filing of Public and Confidential Financial Disclosure Reports*, allowing agencies to undertake their own

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electronic filing process to use with either the public or confidential financial disclosure systems if certain criteria are met. On February 2, 2009 OGE issued DAEOgram DO-09-004 titled, *Guidance on the Use of Digital Signatures with the Confidential Financial Disclosure Form*, which permits an agency to allow digital signatures on the confidential financial disclosure form as long as the agency's Chief Information Officer (CIO) has approved a digital signature process.

During the onsite portion of the review, OGE learned that OTS accepts the electronic submission of OTS Form 1569. However, it does not appear that OTS is strictly adhering to the criteria for submission of confidential financial disclosure reports outlined in DAEOgrams DO-07-014 and DO-09-004. If OTS wishes to continue accepting electronic submission of OTS Form 1569, OGE recommends that OTS ethics officials ensure that OTS Form 1569 complies with the criteria set forth in DAEOgrams DO-07-014 and DO-09-004, including the requirement to obtain CIO approval for a digital signature process.

To evaluate the confidential financial disclosure system at OTS, OGE examined 100 of the 811 confidential financial disclosure reports required to be filed in 2007. The following is a summary of OGE's examination of the 100 reports:

Type of Report

- 87 annual reports
- 13 new entrant reports

100 total

Filing Timeliness

- 98 reports were filed timely.
- 2 new entrant reports were submitted more than 30 days late.

100 total

Review/Certification Timeliness

- 56 reports were reviewed and certified timely.
- 39 reports were not reviewed and certified timely.
- 5 reports were not certified.

100 total

According to 5 CFR § 2634.605(a), all reports shall be reviewed within 60 days from the date of filing. Final certification may, of necessity, occur later, when additional information is being sought. At OTS, the Ethics Counsel reviews and certifies the majority of confidential

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financial disclosure reports.¹ The Ethics Counsel stated that with present staffing conditions it is not possible to conduct a thorough review and certification of the reports in a timely manner. Additionally, the Ethics Counsel explained that the five uncertified reports were the result of an oversight on her part. OGE requested that the reports be certified as soon as possible; during the course of OGE's review the Ethics Counsel certified the reports.

Quality of Review

Written comments on the reports and documentation in the files indicated that the reports underwent a thorough, albeit in many cases protracted, review by the Ethics Counsel.

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. OTS has written procedures for managing the education and training program.

Initial Ethics Orientation

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

To meet the initial ethics orientation requirement, within 30 days from the time an employee begins work at OTS, the employee is provided with a book titled *OTS Employee Ethics and Standards of Conduct Resource Guide* which includes, among other useful documents:

- the Standards;
- the names, titles, office addresses, and phone numbers of the Ethics Counsel and other ethics officials;
- Treasury's supplemental standards of conduct as they apply to OTS; and
- a summary of post-employment restrictions.

¹ While confidential financial disclosure reports for headquarters and four regions are reviewed and certified at headquarters, review of West Region employees' confidential financial disclosure reports is the responsibility of the West Region Ethics Officer.

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In addition to the initial ethics orientation written materials, the OTS Ethics Counsel has developed PowerPoint presentations that are delivered to new employees electronically, and when possible, in-person. The PowerPoint presentations target distinct groups within OTS headquarters: examiners, supervisors, covered employees, and all others. Targeted training is a model practice; it ensures that the training is relevant to the audience.

All new employees are required to send a certification e-mail that states that they have completed reviewing the PowerPoint presentation. The certification e-mails are used to ensure that new employees have received initial ethics orientation.

During 2007, 146 employees were required to receive initial ethics orientation but 137 actually received it. The Ethics Counsel explained that the discrepancy is due to interns not receiving initial ethics orientation and employees resigning soon after they began working.

Annual Ethics Training

Public financial disclosure filers are required to receive verbal annual ethics training each year. *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 annual ethics training at least once every three years and may receive written annual 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;
- the Standards;
- any agency supplemental standards;
- 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).

OTS annual ethics training consists of a review of the following:

- the 14 Principles of Ethical Conduct,
- the Standards,
- Treasury's supplemental standards of conduct as they apply to OTS,
- 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).

OGE's review of OTS's annual ethics training materials found them to meet content requirements.

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In addition to providing required initial ethics orientation and annual ethics training for covered employees, the OTS ethics office encourages all employees to complete annual ethics training, not just covered employees. Encouraging annual ethics training for all employees is a model practice.

To meet the annual ethics training requirement, the OTS Ethics Counsel has developed a PowerPoint presentation that is delivered to all employees electronically, or when possible, in-person. All employees are required to send a certification e-mail that states that they have reviewed the presentation. The certification e-mails are used to track that employees have received annual ethics training.

All covered employees and select non-covered employees received annual ethics training in 2007.

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 meet the counseling requirements at OTS, ethics-related counseling is provided to employees primarily by the Ethics Counsel. To evaluate the counseling provided, OGE examined a sample of written determinations rendered during the period covered by the review. The counseling was primarily in the areas of gifts, post-employment, seeking employment, impartiality, and conflicts of interest. OGE found that the counseling rendered accurately addressed applicable statutes and regulations.

ENFORCEMENT

The DAEO is required 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 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).

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As a component of Treasury, OTS is subject to Treasury's Office of the Inspector General (OIG). The OGE review team interviewed a Special Counsel who is a liaison between the OTS ethics office and Treasury's OIG. According to the Special Counsel, the OTS ethics office coordinates with Treasury's OIG as necessary on ethics-related matters. The Special Counsel explained that OTS and Treasury's OIG have a successful working relationship. OTS appears to be meeting the requirements of 5 CFR § 2638.203(b)(11) and (12).

According to the OTS Ethics Counsel there were no criminal conflict of interest violations referred to the Department of Justice during 2007.

According to the OTS Ethics Counsel, during 2007, there were no substantiated violations of the Standards. However, during its onsite fieldwork OGE was informed of an ongoing investigation being conducted by Treasury's OIG which could potentially uncover a violation of the Standards by an OTS employee.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

An employee may accept payment of travel expenses from a non-Federal source 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 of travel payments from non-Federal sources in excess of \$250 to OGE. *See* 31 U.S.C. § 1353.

OTS accepts travel payments from non-Federal sources under the authority of 31 U.S.C. § 1353. As a component of Treasury, OTS submits semiannual reports to Treasury for inclusion in Treasury's semiannual report to OGE.

OTS has comprehensive written procedures to administer the acceptance of travel payments from non-Federal sources. The procedures require the Ethics Counsel to review and approve all payment acceptance requests. OGE's review team examined memoranda documenting the analysis completed by the OTS Ethics Counsel for the only payment accepted during the period covered by the review. The review and approval by the Ethics Counsel occurred after the trip had taken place. The employee's supervisor provided verbal approval in this unusual circumstance. OGE reminds OTS ethics officials that prior written approval should be sought before accepting travel payments from non-Federal sources.

OUTSIDE ACTIVITIES

Treasury's supplemental standards of conduct regulation requires OTS employees to obtain prior approval before engaging in any outside activities. *See* 5 CFR § 3101.104. The requirement is also contained in the *OTS Employee Ethics and Standards of Conduct Resource Guide* book that is provided to all new employees.

Requests for approval of outside activities are submitted in writing using OTS Form 1714 which requires either concurrence from the OTS ethics office or the appropriate Regional Counsel. The Regional Counsels consult an ethics officer if the request raises unusual issues. The

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Ethics Counsel maintains a master list of all outside activity approvals which are made available to the Regional Counsels. Copies of approved requests are maintained in employees' ethics files.

To evaluate OTS compliance with the supplemental regulation, OGE noted any outside employment activities reported on the public and confidential financial disclosure reports examined. OGE reviewed a sample of 10 requests from filers who reported outside employment activities approved during the period covered by review. Overall, the outside employment requests and approvals met the requirements of the supplemental regulation.

Summary

OGE's review identified two model practices that the OTS ethics office has implemented to administer the ethics program. First, the OTS ethics office encourages all employees to attend annual ethics training. Second, the OTS ethics office tailors education and training to provide relevant training to targeted audiences.

OGE found that OTS's confidential financial disclosure system is in need of improvement. In particular, almost half of the confidential financial disclosure reports filed in 2007 were not reviewed and certified in a timely manner. Additionally, OGE found that OTS accepts the electronic submission of confidential financial disclosure reports. However, the criteria to allow electronic submission of confidential financial disclosure reports outlined in DAEOgrams DO-07-014 and DO-09-004 are not being met.

Recommendation

OGE recommends that OTS ethics officials ensure that OTS Form 1569 complies with the criteria set forth in DAEOgrams DO-07-014 and DO-09-004, including the requirement to obtain CIO approval for a digital signature process.

OTS is to advise OGE within 60 days of the specific actions OTS has taken on OGE's recommendation. OGE stands ready to assist OTS in implementing this recommendation as well as other initiatives that OTS may choose to undertake. OGE will follow up with OTS in six months.

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