

United States Office of Government Ethics

Compliance Division

Ethics Program Review

United States African Development Foundation

Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the United States African Development Foundation's (ADF) ethics program during January and February of 2013. The results of the review indicate that ADF's ethics program appears to comply with most applicable ethics laws, regulations, and policies. However, some compliance deficiencies were identified in the area of ethics education and training.

Highlights

- ADF made in-person annual ethics training available to all employees.
- ADF developed detailed procedures for follow-up with delinquent confidential financial disclosure filers.

Concerns

- ADF's 2012 annual ethics training did not meet the content requirements.
- ADF Board members did not receive annual ethics training in 2012.
- ADF maintained financial disclosure reports beyond the established retention period.

Contents

Objectives, Scope, and Methodology.....	3
Program Administration.....	3
Financial Disclosure.....	4
Education and Training.....	6
Advice and Counsel.....	7
Conflict Remedies.....	8
Enforcement.....	8
Special Government Employees.....	8
1353 Travel Acceptances.....	9
Agency Comments.....	9

Objectives, Scope, and Methodology

OGE provides leadership for the purpose of promoting an ethical workforce, preventing conflicts of interest, and supporting good governance. 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 as set forth in relevant laws, regulations, and policies and (2) ethics-related systems, processes, and procedures for administering the program. OGE has the authority to evaluate the effectiveness of executive agency ethics programs. *See* title IV of the Ethics in Government Act, 5 U.S.C. app. § 402, and 5 C.F.R. part 2638.

To assess ADF's ethics program, OGE examined a variety of documents provided by ADF, including the 2011 and 2012 annual questionnaires, ADF's 2012 public and confidential financial disclosure reports, and a sample of the ethics advice and counseling rendered to ADF employees. We also reviewed OGE's prior program review report issued in September 2009 to determine whether issues identified in that report have been sufficiently addressed. In addition, members of OGE's Compliance Division met with ethics officials to seek clarification on issues that arose during OGE's analysis of the documents gathered and verify data collected.

Program Administration

ADF is an independent federal agency established through the African Development Foundation Act of 1980 to encourage the establishment and growth of development institutions that are indigenous to countries in Africa and that can respond to the requirements of the poor in those countries. The majority of the agency's budget is applied to project grants that directly fund expansion and growth activities for small enterprises, farmer associations, cooperatives, and community groups. The grants may provide up to \$250,000 to community groups and enterprises that benefit marginalized groups. Marginalized groups are people that have significant needs that are not being addressed by existing governments programs, non-governmental organizations, or other international development efforts. ADF's active portfolio consists of over 400 grants, with over \$20 million awarded in FY 2012.

ADF is a public corporation managed by a seven-member Board of Directors (Board) who are nominated by the President of the United States and confirmed by the U.S. Senate. Board members, who are considered special Government employees, serve staggered six-year terms and select the President of ADF, who is responsible for directing the agency's day-to-day activities. The President is assisted by a staff of 33 full-time employees, including the Regional Program Directors who are responsible for overseeing ADF's activities at the various countries where it operates. Although it has no federal employees stationed overseas, ADF utilizes personal services contractors (PSCs) who are local to the African regions where the agency has a presence. PSCs are responsible for collecting, screening, and forwarding grant applications to ADF.

All aspects of ADF's ethics program are centrally managed from headquarters in Washington, D.C. by its General Counsel and Associate General Counsel who are also the agency's respective Designated Agency Ethics Official (DAEO) and Alternate DAEO (ADAEO). These officials

have nearly 16 years of combined ethics experience at the agency. According to the DAEO and ADAEO, ADF's Board and President are supportive of the ethics program. For example, the Board has made annual ethics training mandatory for all ADF employees and the President has assisted ethics officials in following up with delinquent financial disclosure filers. In addition, ADF has incorporated the ethics office into the exit procedures for departing employees, requiring a debrief with the DAEO on conflict of interest and post-employment restrictions.

Financial Disclosure

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 publicly disclose their personal financial interests using the OGE Form 278. Title I also authorizes OGE to establish a confidential financial disclosure system, in which less senior executive branch personnel in certain designated positions may be required to complete the OGE Form 450. Financial disclosure serves to prevent, identify, and resolve conflicts of interest by providing for a systematic review of the financial interests of officers and employees. The financial disclosure reports assist agencies in administering their ethics programs and also assist in providing counseling to employees. *See* 5 C.F.R. part 2634.

Written Procedures

Section 402(d)(1) of the Ethics in Government Act requires that each executive branch agency establish written procedures for collecting, reviewing, evaluating, and where applicable, making publicly available financial disclosure reports filed by the agency's officers and employees. ADF has issued written procedures that cover both the public and confidential financial disclosure systems. As required, these procedures address the collection, review, evaluation, and public availability, as applicable, of the financial disclosure reports of the agency's officers and employees. In particular, the procedures for the confidential reports contained detailed processes for following up with filers and escalating delinquent reports.

Public and Confidential Financial Disclosure

To identify new filers, the DAEO has a direct liaison with human resources and is notified of any new employees scheduled to be hired. Since the agency is a small organization, ethics officials are quickly aware when a new employee is hired. The ADF President and the DAEO are the agency's only public filers. Confidential filers are identified by consulting with supervisors and determining whether a particular position at the agency can influence or make decisions about grant applications or award of contracts.

Ethics officials provide reminder emails to annual confidential financial disclosure filers a month prior to the financial disclosure submission deadline in February. ADF's President and the DAEO are the only annual filers at the agency. The DAEO informally reminds the President approximately a month prior to the May filing deadline. Personal reminder emails continue beyond the deadline for delinquent filers. Given the size of the agency, the DAEO will also

provide in-person reminders to employees with outstanding reports. For confidential reports that are delinquent for over thirty days and where the filer is not responsive, ADF's written procedures require the DAEO to contact the filer's supervisor for appropriate action. If the filer has not subsequently filed, the DAEO is to refer the matter to the Chair of the Board, or other appropriate ADF official. Filers submit their completed reports to the DAEO or ADAEO who reviews the reports for conflicts of interest and provides final certification.

ADF's 2012 master list of financial disclosure report filers identified 2 public filers and 28 confidential filers. The two public filers submitted annual reports for 2012. Both reports were filed and certified timely.

Of the 28 confidential reports that were required to be filed in 2012, 6 were new entrant reports, and 22 were annual reports. We found that 3 of the 6 new entrant reports were filed late, while 6 of the 22 annual reports were filed late. However, we concluded that the late filings were not indicative of a systemic problem at the agency. The late filings for the new entrant reports occurred due to administrative factors, including a security clearance delay, employment status change, and transition from another federal agency. Regarding the annual reports, five of the six late filings were no more than five days late, while one annual report was filed over 30 days late because the filer was on travel. OGE reminds ethics officials to evaluate any filing delays to determine how they may be avoided in the future. All 28 confidential reports were certified timely.

ADF also allows confidential filers to complete the OGE Form 450-A: Confidential Certificate of No New Interests (Executive Branch), indicating no changes from a previously submitted confidential financial disclosure report. We noted that the corresponding full confidential report was appropriately retained for each OGE Form 450-A submitted by ADF employees in 2012.¹

Public and confidential financial disclosure reports are to be retained by agencies for six years and then destroyed, unless needed for an ongoing investigation. *See* 5 C.F.R. § 2634.603 and 604. ADF's written procedures reflect this guidance, and ethics officials stated they review the financial disclosure files to identify for destruction those reports older than six years. However, OGE's physical review identified reports dated to 2004, beyond the six-year destruction threshold. Ethics officials confirmed during the course of this review that the reports held beyond the retention period were destroyed on March 1, 2013.

Recommendation

- Develop a revised process to ensure financial disclosure reports are assessed for retention at the beginning of each calendar year and destroyed when appropriate.

¹ ADF allows employees to complete the OGE Form 450-A on a three-year cycle. Per 5 C.F.R. § 2634.905(b)(4) and (5), all ADF confidential filers should submit a full confidential financial disclosure report in 2013.

Initial Ethics Orientation

OGE regulation requires all new agency employees receive ethics official contact information along with the following material within 90 days of beginning work for an agency: (1) the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards) and any agency supplemental Standards to keep or review; or (2) summaries of the Standards, any agency supplemental Standards, and the Principles of Ethical Conduct (the Principals) to keep. Employees must receive one hour of official duty time to review the material. *See* 5 C.F.R. § 2638.703.

According to ADF's ethics officials, due to the size of the agency it is not necessary to have a system to track initial ethics orientation provided to new employees. A new employee receives the written initial ethics orientation material, along with the financial disclosure forms, when they arrive to work. Subsequently, ethics officials schedule the initial ethics orientation and, if the employee is a filer, an informal training session with the employee to review the financial disclosure forms. In addition, employees that are new to the government receive more detailed training on ethics issues. Ethics officials provided OGE reviewers copies of ADF's written initial ethics orientation material, which contained a summary of the Standards, the Principles, and the agency's ethics contact information.

According to ethics officials, ADF had four new employees in 2012. We were informed that three of the four employees received initial ethics orientation within the 90-day deadline,² while the fourth employee was not provided initial ethics orientation because that employee worked at another federal agency prior to joining ADF and had received ethics training at that agency. OGE regulation requires that an agency provide initial ethics orientation to all new employees and does not provide an exemption for transferees from another federal agency. Therefore, OGE reminds ADF to ensure initial ethics orientation is provided to all new employees, including transferees from other federal agencies.

Annual Ethics Training Plan

OGE regulations under 5 C.F.R. § 2638.706 require agencies to develop, at the beginning of each year, a written plan for annual ethics training. The plan must contain a brief description of the agency's annual training and include estimates of the number of employees who will receive written training. We reviewed ADF's annual ethics training plan for 2013 and found the plan contained, as required, a brief description of the training to be provided, including the topics to be covered, such as financial conflicts of interest, gifts, and outside employment. The training plan also stated that all ADF employees are to be provided verbal annual training, with no written training anticipated.

² Because ADF does not have a tracking system to record completion of initial ethics orientation, we were unable to verify that the training was provided within the 90-day deadline.

Annual Training

OGE regulation requires all covered employees receive annual ethics training consisting of a review of: (1) the Principles; (2) the Standards; (3) any agency supplemental Standards; (4) the criminal conflict of interest statutes; and (5) ethics official contact information. Training length and delivery method varies by an employee's financial disclosure filing status. *See* 5 C.F.R. § 2638.704 and 705.

We were informed that ADF requires all employees to attend its annual verbal training session, usually held during September of each year. To confirm attendance, ethics officials compare the sign-in sheets to the roster of employees. We verified that all public and confidential filers received the annual training provided by ADF in 2012. However, our review of the content of the training indicated that it did not meet the requirements of 5 C.F.R. § 2638.704 & 705. While the training provided to ADF's employees covered government travel rules and the Hatch Act, it did not contain a review of the Standards, the Principles, or the criminal conflict of interest statutes. Therefore, OGE recommends that ADF ensure that the requirements of 5 C.F.R. § 2638.704 & 705 are met for the annual training provided from 2013 onwards.

ADF also provided a training titled "Introduction to Ethics" to its PSCs that included portions of the Standards, the Principles, and the federal conflict of interest statutes. According to ethics officials, PSC contracts typically require PSCs to abide by the laws and regulations governing the ethical conduct of employees of the federal government. Therefore, ADF provides the overseas PSCs with ethics training and materials.

Recommendation

- Develop a plan to ensure that annual ethics training provided to covered employees includes a review of the Principles, the Standards, the criminal conflict of interest statutes, and ethics official contact information.

Suggestion

- Develop a system for tracking and maintaining evidence that employees receive initial ethics training.

Advice and Counsel

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 C.F.R. § 2638.203. The DAEO may delegate to one or more deputy ethics officials the responsibility for developing and conducting the counseling program. *See* 5 C.F.R. § 2638.204.

ADF's ethics officials stated that they typically only receive two or three ethics-related questions or requests for counsel each year. Answers to questions that may be answered quickly without detailed conflicts analysis are provided verbally and not documented. Responses that require a detailed analysis are provided and documented via email. In 2012, ethics officials received only one request for counsel that was documented via email. Based on our review, we determined that the advice provided was timely.

Conflict Remedies

The Ethics in Government Act expressly recognizes the need for Presidentially appointed, Senate-confirmed (PAS) nominees to address actual or apparent conflicts of interest by requiring written notice of the specific actions to be taken in order to alleviate the conflict of interest. Our review of the PAS files maintained at OGE showed that three ADF Board members had ethics agreements requiring compliance. All three Board members complied with their ethics agreements within 90 days of confirmation, and ADF submitted the required evidence of compliance to OGE by the established deadlines.

All board member decisions are made during board meetings, which are attended by the DAEO or ADAEO. The DAEO and ADAEO informed us they are aware of board members' ethics agreements, including any applicable restrictions, and are able to ensure that members do not violate the terms of any ethics agreements when directing the agency's business during board meetings.

Enforcement

ADF reported no disciplinary actions based wholly or in part upon violations of the criminal conflict of interest statutes (18 U.S.C §§ 203, 205, 207, 208, and 209) or the Standards (5 C.F.R. part 2635) in 2012.

The United States Agency for International Development Office of the Inspector General provides investigative services for ADF. In 2012, ADF had no referrals to the Department of Justice on potential violations of the criminal conflict of interest statutes. In the event of a referral to the Department of Justice, the DAEO indicated that ADF ethics officials would notify OGE of the referral and its disposition, in accordance with 5 C.F.R. § 2638.603.

Special Government Employees

Special Government employees (SGE) are officers or employees of the executive or legislative branch retained, designated, appointed, or employed to perform their duties, full-time or intermittently, for not more than 130 days in any 365-day period. SGEs typically serve on agency advisory boards or commissions.

ADF's seven Board members are considered SGEs who are exempt from filing annual financial disclosure reports. The exemption is based on an October 1997 direction by ADF's President, as permitted by 5 C.F.R. § 2634.904(b). Under this exemption, agencies may exclude certain individuals, including SGEs, from submitting confidential financial disclosure reports when the agency head or designee determines that the possibility for a real or apparent conflict of interest is remote, based on the duties of their positions.

We were informed that the two Board members who were nominated in 2012 were confirmed by the Senate in January 2013 and received written IEO material from ethics officials. The IEO material provided to SGEs met the applicable content requirements. However for the remaining five Board members, ADF's ethics officials stated that neither verbal nor written annual ethics training was provided in 2012. Therefore, OGE recommends that ethics officials include SGE training into ADF's 2013 annual ethics training plan to ensure that SGEs are provided annual ethics training.

Recommendation

- Develop a plan to ensure appropriate annual ethics training is provided to SGEs.

Suggestion

- Develop a system for tracking and maintaining evidence that SGEs receive initial and annual ethics training.

1353 Travel Acceptances

Federal agencies may allow employees to accept payments from non-Federal sources for travel, subsistence, and related expenses incurred on official travel under the authority of the General Services Administration (GSA) regulation at 41 C.F.R. chapter 304, implementing 31 U.S.C. § 1353. Semiannual reports of payments accepted under 31 U.S.C. § 1353 must be submitted to OGE by May 31 and November 30 of each year.

ADF has issued a manual that provides instructions to employees when receiving offers from non-Federal sources for reimbursement of expenses incurred on official travel. The manual requires employees to obtain prior approval from the appropriate ADF department head before accepting the reimbursement. Employees are also required to obtain the concurrence of the agency's DAEO. ADF submitted both semiannual reports for 2012 by the established deadlines, and neither report contained acceptances of payments from non-Federal sources.

Agency Comments

ADF's ethics officials provided the following responses to OGE's recommendations and suggestions in this report:

Recommendations

- Develop a revised process to ensure financial disclosure reports are assessed for retention at the beginning of each calendar year and destroyed when appropriate.

ADF Response: Each year the DAEO and ADAEO will add an automatic alert to their January Outlook calendars that reminds them to destroy financial disclosure reports that were filed six years earlier.

- Develop a plan to ensure that annual ethics training provided to covered employees includes a review of the Principles, the Standards, the criminal conflict of interest statutes, and ethics official contact information.

ADF Response: The agency will ensure that all future annual ethics training plans include the required topics stated in the recommendation.

- Develop a plan to ensure appropriate annual ethics training is provided to SGEs.

ADF Response: The ethics training will be incorporated into the annual schedule of Board of Directors' meetings.

Suggestions

- Develop a system for tracking and maintaining evidence that employees receive initial ethics training.

ADF Response: With the recent designation of the DAEO as the liaison with the agency's human resources service provider, a new system has been put in place to provide for early notice to the ethics officials of any new hire. The initial ethics training will be integrated into the new employee's orientation. Upon completion, the new employee will receive a training certificate.

- Develop a system for tracking and maintaining evidence that SGEs receive initial and annual ethics training.

ADF Response: The agency will continue to have Board members sign certificates on the completion of their training.