



U.S. Office of Government Ethics
Program Review Division

Ethics Program Review

The Presidio Trust

Report No. 11-017
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Results in Brief

The United States Office of Government Ethics (OGE) conducted a review of the Presidio Trust (the Trust) ethics program in March 2011. The results of the review indicated that the Trust's ethics program appears to be in compliance with applicable laws, regulations, and policies except in the area of financial disclosure. In this area, OGE was unable to determine if conflicts of interest existed.

Highlights

- Ethics program information was very well-organized and maintained.
- A robust working relationship exists between the ethics office and the General Counsel's (GC) office.
- The DAEO was highly responsive to potential program improvements, immediately making or planning corrective action when vulnerabilities were identified.

Concerns

- Financial disclosure reports consistently displayed incomplete entries and lacked the corrective follow-up necessary for a complete conflict of interest analysis.
- New entrant filers were not identified in a timely manner, filing reports an average of almost 4 months late.
- In its current format, annual ethics training may be too complex to be effective.

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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 and 5 CFR part 2638.

To assess the Trust's ethics program, OGE examined a variety of documents provided by the Trust's ethics office. OGE examined financial disclosure reports that were required to be filed at the Trust in 2010, covering calendar year 2009. We examined all public and confidential financial disclosure reports required to be filed in 2010. In addition, the OGE review team met with the Trust's Executive Director, Designated Agency Ethics Official (DAEO), alternate DAEO (ADAEO), GC, and Deputy GC to (1) obtain additional information on the Trust's ethics program, (2) seek clarification on issues and (3) verify data collected.

Program Administration

The Trust's ethics program is administered within the Human Resources (HR) office. The Director of HR serves as the DAEO; the Senior HR Specialist serves as the ADAEO. The DAEO is responsible for day-to-day administration of the ethics program. The GC is also the former DAEO at the Trust, contributing to a close working relationship between both offices.

The ethics program appears to be appropriately positioned within the organization for meeting the Trust's ethics responsibilities. Ethics-related documents were very well-organized and readily accessible, providing rapid access to key ethics material and a strong foundation for future succession planning.

Financial Disclosure

OGE's review revealed some substantial weaknesses within the Trust's financial disclosure program. Both public and confidential financial disclosure filers repeatedly failed to report their assets in accordance with statutory and regulatory requirements. The consistent failure to follow the reporting requirements raised doubts about the accuracy and completeness of the reports in general. Given the increasingly privatized nature of the Trust's mission, incomplete financial disclosure reporting presents a significant vulnerability to the Government and its employees. The DAEO responded immediately to this situation by directing all filers to complete mandatory financial disclosure training prior to the next filing deadline.

Financial disclosure files showed no evidence of follow-up or corrective action taken to ensure accurate reporting. Conflicts analysis of 2010 reports was limited to comparing listed

information against a record of Presidio tenants and did not include a comparison against the list of contractors providing professional-level services on the Presidio. The DAEO stated that both sources of potential conflicts would be consulted during future reviews and has agreed to take the supplemental training necessary to further improve his review proficiency.

Additionally, late identification of employees required to file public financial disclosure reports led to six of the seven employees submitting their 2010 reports an average of 113 days beyond the required due date. These employees performed their Government duties without the safeguards of a timely conflict of interest review by the ethics office. Despite the advantages of the ethics program's position in the HR office and the various processes in place to identify filers, the DAEO attributed the delay in identifying these filers to human error. Going forward, the DAEO agreed to review and improve HR procedures to ensure all filers are appropriately identified and tracked.

Recommendations

- Train financial disclosure filers to improve completeness and accuracy of reports in accordance with published requirements.
- Improve the DAEO's financial disclosure review proficiency through additional training.
- Revise internal controls to ensure timely identification and tracking of new entrant filers.

Education & Training

For 2010, the ethics office made the determination that verbal training would be impractical for its employees. OGE does not believe the Trust's determination meets the intent of the exception, which is typically applied in situations where employees are geographically dispersed or communication is restricted in some way. With the small number and relatively close proximity of employees, and with the Trust's inherently close relationships with outside entities, OGE believes in-person training would provide the best opportunity for preventing potential conflicts of interest through education. The DAEO recognized OGE's concerns and agreed to adopt in-person training in the future.

Annual ethics training for Trust employees in 2010 consisted of an online training module from OGE and a review of the complete text of the Standards of Conduct regulation. While the necessary information for annual training could be found in the material, conveying it relies on employees reviewing the regulation in sufficient depth. OGE suggests that annual training material, similar to the Trust's annual gifts and discounts memorandum, should be developed to make the requirements more succinct, accessible and engaging.

Suggestions

- In-person training should be provided to Trust employees.
- Develop annual training for Trust employees that conveys the required information in a more approachable manner.

Advice & Counsel

The Trust's advice and counsel process is clearly defined within the agency, with the DAEO or ADAEO handling most ethics-related questions. They receive additional support from the GC and DGC on matters where a sufficiently legal determination is required. Written advice and counsel samples reviewed by OGE were consistently accurate and issued in a timely manner. OGE commends the ethics office for actively sharing novel counseling situations with ethics program stakeholders and highlights the DAEO's orderly chronological archive of advice issued to employees.

Enforcement

During the period covered by the review, the Trust reported no disciplinary actions based wholly or in part upon violations of the standards of conduct provisions, the criminal conflict of interest statutes, and made no referrals to the Department of Justice (DOJ) of potential violations of the criminal conflict of interest statutes. The Trust does not have a dedicated Office of the Inspector General (OIG) nor any affiliation with another OIG. Therefore, OGE is pleased to see the close working relationship between the ethics office and the GC--a key component in the handling of potential ethics violations within the Trust.

1353 Travel Acceptances

The required semi-annual reports of payments accepted from non-Federal sources were submitted to OGE in a timely manner. The Trust's ethics office does not review 31 U.S.C. § 1353 travel payments prior to acceptance, although instances of acceptance at the agency are rare, with only one payment accepted in 2010. OGE discussed the possibility of requiring supervisors and managers to consult with the ethics office for a conflict of interest review prior to accepting future travel payments.

Agency Comments

The Presidio Trust was sent a draft report for comment. The Trust provided comments via email on April 12, 2011, and are provided below:

The Presidio Trust ethics team appreciates the opportunity to provide general comments on the draft ethics program review report. While OGE states “[w]ritten advice and counsel samples reviewed by OGE were consistently accurate and issued in a timely manner . . . OGE commends the ethics office for actively sharing novel counseling situations with ethics program stakeholders and highlights the DAEO’s orderly chronological archive of advice issued to employees”, the DAEO also acknowledges OGE’s recommendation for more robust conflict analyses of financial disclosure reports. To that end:

- All SF-278 filers have since completed the agency-required OGE 2010 on-line module “How to File an SF-278 Report” with the sole exception of one employee out on maternity leave;
- All OGE Form 450 filers have been required to complete “How to File a OGE Form 450 Report” (due April 29, 2011);
- The DAEO is scheduled to attend the U.S. OGE April 14, 2011 Certifying 278 Reports training;
- In-person required annual training is currently being arranged for delivery in May, 2011.